

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TIKTOK INC.,
Petitioner

v.

DISTEFANO WEBSITE INNOVATIONS, LLC,
Patent Owner

PTAB Case No. IPR2025-01224

U.S. Reissued Patent No. 45,971

**OPPOSITION TO PATENT OWNER'S BRIEF IN SUPPORT OF
DISCRETIONARY DENIAL**

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PETITIONER'S EXHIBIT LIST

Exhibit No.	Description
1001	Certified Copy of U.S. Reissued Patent 45,971
1002	Certified File History of RE45,971
1003	Expert Declaration of Dr. Andy Cockburn
1004	Curriculum Vitae of Dr. Andy Cockburn
1005	Certified File History of 09/589,551
1006	Provisional U.S. Patent Application 60/172,983
1007	U.S. Patent Application 2003/0050976A1
1008	U.S. Patent 6,016,504
1009	U.S. Patent 5,845,299
1010	IPR2019-00419, Paper 6 (Patent Owner's Preliminary Response)
1011	<i>DiStefano Website Innovations, LLC v. Bytedance Ltd. et al.</i> , Case no. 1:24-cv-00763, Complaint (W.D. Tex. Jul. 8, 2024)
1012	<i>DiStefano Website Innovations, LLC v. Bytedance Ltd. et al.</i> , Case no. 2:24-cv-00874-RWS-RSP, Complaint (E.D. Tex. Oct. 29, 2024)
1013	RESERVED
1014	RESERVED
1015	U.S. Patent 5,995,099
1016	U.S. Patent 7,028,254
1017	U.S. Patent Application 2001/0034646
1018	U.S. Patent 7,139,727
1019	U.S. Patent 6,629,135
1020	Six Degrees, https://web.archive.org/web/19980416103152/http://sixdegrees.com
1021	Guide to Web Site Promotion: How Companies Can Draw More Qualified Traffic to Their World Wide Web Sites

Exhibit No.	Description
1022	Turbo Promote, https://web.archive.org/web/19970418080213/http://www.turbopromote.com/links.html
1023	Puzzle Depot, https://web.archive.org/web/19990417052546/http://www.puzzledepot.com:80/recips.shtml
1024	https://www.w3.org/People/Berners-Lee/FAQ.html# browser
1025	https://www.w3.org/People/Berners-Lee/WorldWide Web.html
1026	Macromedia, https://web.archive.org/web/19990223214509/http://www.macromedia.com/software/dreamweaver/
1027	U.S. Patent 5,911,145
1028	RAE Technology, WIKIPEDIA, https://en.wikipedia.org/wiki/Rae_Technology
1029	Macromedia Hums the E-Business Tune, FORBES (OCT. 7, 1999), https://www.forbes.com/1999/10/07/mu3.html
1030	<i>Macromedia, Inc. v. Adobe Sys. Inc.</i> , Case No. 01-03940 SI, Complaint (N.D. Cal. Oct. 19, 2021)
1031	Macromedia, WIKIPEDIA, https://en.wikipedia.org/wiki/Macromedia
1032	IPR2019-00419, Paper 2
1033	U.S. Patent No. 5,854,893
1034	Certified Copy of U.S. Patent 7,996,259
1035	Andy Cockburn, Steve Jones. Which way now? Analysing and easing inadequacies in WWW navigation. <i>International Journal of Human-Computer Studies</i> , Volume 45, Issue 1, 1996, Pages 105-129, ISSN 1071-5819, https://doi.org/10.1006/ijhc.1996.0044
1036	A Cockburn, B McKenzie and M JasonSmith, <i>Pushing Back: Evaluating a New Behaviour for the Back and Forward Buttons in Web Browsers</i> . <i>International Journal of Human-Computer Studies</i> . 57(5):397-414. Academic Press. 2002.

Exhibit No.	Description
1037	U.S. Patent 8,768,760
1038	Revised Opening Brief of Appellant DiStefano Patent Trust III, LLC filed in <i>DiStefano Patent Trust III v. LinkedIn Corporation</i> , Case No. 19-01210, Dkt. 25 (Fed. Cir. Mar. 27, 2019).
1039	<i>DiStefano Pat. Tr. III, LLC v. LinkedIn Corp.</i> , Civ. No. 1-17-cv-01798, Dkt. 1, Complaint (D. Del. Dec. 14, 2017)
1040	<i>DiStefano Pat. Tr. III, LLC v. LinkedIn Corp.</i> , 346 F. Supp. 3d 616, 623 (D. Del. 2018)
1041	https://www.oed.com/dictionary/site_n
1042	RESERVED
1043	RESERVED
1044	U.S. Patent No. 5,960,409
1045	U.S. Patent No. 6,058,417
1046	U.S. Patent No. 6,601,057
1047	U.S. Patent No. 6,330,575
1048	U.S. Patent No. 6,401,075
1049	U.S. Patent No. 5,937,392
1050	U.S. Patent No. 6,560,639
1051	MERRIAM-WEBSTER’S DICTIONARY OF BASIC ENGLISH (2000)
1052	THE OXFORD PAPERBACK DICTIONARY (Elaine Pollard ed., 4 th ed., 2000)
1053	U.S. Patent No. 5,774,660
1054	U.S. Patent No. 6,009,410
1055	Java Sun, https://web.archive.org/web/20000815063754/http://java.sun.com/docs/books/tutorial/getStarted/index.html
1056	Rick Darnell, <i>Using Macromedia Dreamweaver 1.2</i> (1998)
1057	Russell M. Shumway, <i>Common-Sense An Alternative Approach to Web Security</i> . In Proceedings of the 21st National information

Exhibit No.	Description
	Systems Security Conference (NISSC), held October 5-8, 1998, in Arlington, Virginia
1058	Petitioner's <i>Sotera</i> Stipulation
1059	[Proposed] Docket Control Order, <i>DiStefano Website Innovations, LLC. V. Bytedance Ltd., TikTok Ltd., and Heliophilia Pte. Ltd.</i> , No. 2:24-cv-00874-RWS-RSP (E.D. Tex. Sept. 22, 2025)

TABLE OF ABBREVIATIONS

Abbreviation	Term
'971 Reissued Patent	U.S. Reissued Patent 45,971
AIA	The Leahy–Smith America Invents Act
Challenged Claims	Claims 1–26 of U.S. Patent 11,763,316
DiStefano	DiStefano Website Innovations, LLC
EDTX Action or district court litigation	<i>DiStefano Website Innovations, LLC v. Bytedance Ltd. et al.</i> , Case No. 2:24-cv-00874-RWS-RSP (E.D. Tex. Oct. 29, 2024)
IPR	<i>Inter Partes</i> Review
Petitioner	TikTok Inc.

I. INTRODUCTION

Discretionary denial is unwarranted here. TikTok's Petition challenges the '971 Reissued Patent, which issued 16 years after the filing date of its corresponding provisional application, has since fallen into obscurity, and has otherwise never been used or practiced. Patent Owner waited until the patent was two years away from expiration to assert it.

Because TikTok worked diligently to file this Petition promptly after DiStefano filed suit in the Eastern District of Texas asserting the patent, each *Fintiv* factor either favors institution or is neutral. A Final Written Decision would be due more than three months before trial would occur in the district court. In addition, TikTok has filed a robust *Sotera* stipulation committing to forego in the district court litigation any ground that is or could have been raised in these proceedings if they are instituted, eliminating the risk of inconsistent judgments or inefficient use of party and judicial resources. The investment in the district court has been minimal, with discovery in its earliest stages and a *Markman* hearing still more than a year away. Thus, the factors concerning trial date, lack of investment, and lack of overlap all favor institution. In addition, given the Board's policy not to predict the outcome of a potential motion to stay and the fact that the parties in the district court litigation and these proceedings overlap, the remaining factors are neutral.

Furthermore, there are no settled expectations surrounding the '971 Reissued Patent, which DiStefano cannot show to have been commercialized, asserted, marked, licensed, or otherwise applied in any particular technology space. *Intel Corp. v. Proxense LLC*, IPR2025-00327, Paper 12 at 2 (PTAB June 26, 2025) (setting these examples of considerations against finding of settled expectations); *Shenzen Tuozhu Tech. Co., Ltd. v. Stratasy, Inc.* IPR2025-00531, Paper 10 at 2-3 (PTAB July 17, 2025) (finding no settled expectations for a ten-year-old patent that cannot be shown to have been practiced or marked). Indeed, DiStefano makes no contrary showing.

Given the strength of the Petition and procedural circumstances—including the timing of a Final Written Decision well before trial and TikTok's *Sotera* stipulation—instituting and adjudicating these proceedings would be a worthwhile use of the Board's resources. Accordingly, TikTok respectfully requests that the Director refer the Petition to a panel of the Board for a preliminary review of the merits.

II. ARGUMENT

A. Each *Fintiv* Factor Favors Institution or Is Neutral

The *Fintiv* factors support institution. Contrary to DiStefano's assertion that the "the district court's trial date is scheduled to occur before the projected final written decision" (Paper 7 at 3), a Final Written Decision would be due more than

three months before trial in the district court litigation. Additionally, as discussed in greater detail below, the district court litigation is in the very early stages, and TikTok has submitted a *Sotera* stipulation to ensure the grounds presented in the Petition and any grounds that could have been raised therein will be litigated only in this forum. The other factors—the likelihood of a stay and the identities of the parties—are neutral. The *Fintiv* factors thus favor institution.

1. The Likelihood of a Stay Is Neutral

The “likelihood of a stay” factor is neutral. No litigation stay has been requested, and there is no objective evidence as to whether a stay in the district court litigation will be granted. As DiStefano acknowledges, the Board’s practice is not to speculate regarding how a stay motion may be decided. Paper 7 at 2 (citing *Sand Revolution II, LLC v. Cont’l Intermodal Grp. – Trucking LLC*, IPR2019-01393, Paper 24 at 7 (PTAB June 16, 2020)). DiStefano argues that “[t]he actions in the district court indicate that the case is progressing,” (Paper 7 at 2), but ignores that the district court (Judge Schroeder) is more inclined to grant stays only after a decision on institution issues. *See, e.g., Fall Line Patents, LLC v. Zoe’s Kitchen, Inc.*, 6:18-cv-00407-RWS, Dkt. 110 at 2 (E.D. Tex. Aug. 9, 2019). This factor is therefore neutral.

2. The Trial Date Favors Institution

Trial in the district court litigation is not scheduled to occur until April 19, 2027, more than 18 months from now. EX1059. By contrast, if this Petition is instituted, a Final Written Decision would be due on January 8, 2027 or earlier, more than three months before trial is scheduled to begin.

DiStefano argues that “trial will occur regardless of institution” and that “[n]o resources will be saved by having both litigation in federal court and the USPTO occurring at the same time on the same patent family.” Paper 7 at 3–4. But institution would save substantial resources. As discussed with respect to factor 4, TikTok has filed a *Sotera* stipulation, such that the validity arguments and discovery in the district court litigation as to the ’971 Reissued Patent would be drastically simplified, saving substantial party and district court resources in favor of litigating those issues more efficiently in this forum. These proceedings stand to dispose of the need to litigate the ’971 Reissued Patent at trial in the district court litigation entirely. Even if all claims are not found unpatentable, institution would narrow the issues that would remain for trial as to the ’971 Reissued Patent significantly.

Because a Final Written Decision would issue more than three months before trial is scheduled to begin in the district court litigation, this factor favors institution.

3. Lack of Investment in the Litigation Favors Institution

The parties' investment in the district court litigation is minimal. Discovery has only just opened, and a *Markman* hearing is not scheduled to occur for another year, until October 2026, with fact discovery closing thereafter. EX1059. *Crowdstrike, Inc. v. Webroot, Inc.*, IPR2023-00126, Paper 9 at 10 (PTAB May 5, 2023) (early-stage investment, including in a *Markman* hearing and the early stages of fact discovery, does not amount to substantial investment that would favor discretionary denial). DiStefano's argument that early case disclosures, such as infringement contentions and invalidity and ineligibility contentions, amount to "substantial work" that weighs against institution would weigh against nearly every petition. *eClinicalWorks, LLC v. Decapolis LLC*, IPR2022-00229, Paper 10 at 9–11 (PTAB Apr. 13, 2022) (finding, even where invalidity contentions had already been served and claim construction briefing was complete, *Fintiv* factor 3 weighed against discretionary denial); *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 10 (PTAB Mar. 20, 2020) ("If, at the time of the institution decision, the district court has not issued orders related to the patent at issue in the petition, this fact weighs against exercising discretion to deny institution under *NHK [Spring Co. v. Intrix-Plex Techs., Inc.]*, IPR2018-00752, Paper 8 (PTAB Sept. 12, 2018) (precedential)].").

The vast majority of the investment required for the '971 Reissued Patent in the district court litigation lies ahead. This factor therefore favors institution.

4. Lack of Overlap Between Cases Favors Institution

The Petition challenges all claims (1–29) of the '971 Reissued Patent, whereas DiStefano asserts only that TikTok infringes claims 4, 8-9, and 12-13 in the district court litigation. The validity of claims 1-3, 5-7, 10-11, and 14-29 is therefore not within the scope of the district court litigation.

Additionally, TikTok has stipulated that it would not “challenge the validity of the '971 Reissued Patent in the EDTX Action based on either: (i) the specific grounds raised in IPR2025-01224 or (ii) any other ground that could have reasonably been raised before the Board in this proceeding (i.e., any other ground that could have reasonably been raised under 35 U.S.C. §§ 102 or 103 on the basis of prior art patents or printed publications).” EX1058. TikTok’s stipulation fully disclaims the grounds upon which TikTok is permitted to bring an IPR (including the grounds actually brought), so there will be no overlap between an instituted IPR and the district court litigation. 35 U.S.C. §§ 311, 315(e); *Ingenico Inc. v. IOENGINE, LLC*, 136 F.4th 1354, 1365–67 (Fed. Cir. 2025).

DiStefano argues this stipulation is “meaningless” because TikTok’s invalidity contentions are due on October 20, 2025, before the December 23, 2025 deadline for an institution decision. Paper 7 at 5–6. DiStefano’s argument is illogical, and DiStefano cites no authority to support it. If institution is granted, the invalidity case in the district court litigation will not overlap with this proceeding.

That TikTok must—to preserve its ability to challenge the validity of the '971 Reissued Patent over prior art patent documents and printed publications if institution is denied—provide contentions disclosing such prior art in its forthcoming invalidity contentions before receiving the institution decision does not mean that there will in fact be overlap in the proceedings. DiStefano cites no precedent requiring a petitioner to raise the stakes by agreeing to forego such invalidity challenges in a district court litigation *even if institution is denied*. Indeed, even where invalidity contentions with grounds that would be covered by a *Sotera* stipulation have already been served, such stipulations have been found to be effective and to weigh against discretionary denial. *TCL Elecs. Holdings Ltd. v. Maxell, Ltd.*, IPR2025-00135, Paper 9 at 18 (PTAB May 20, 2025) (stating, even where the art included in the petitioned grounds was included in invalidity contentions, that “we view Petitioner’s stipulation as significantly mitigating potential conflict given the likelihood that the court would hold Petitioner (and its privies) to Petitioner’s representations [in the *Sotera* stipulation] made here”); *Micron Tech., Inc. v. Sonrai Memory Ltd.*, IPR2023-00904, Paper 7 at 6–7 (PTAB Nov. 29, 2023).

Thus, if proceedings are instituted here, there will be no overlap between the invalidity grounds raised in the Petition and the invalidity arguments challenging the '971 Reissued Patent in the district court litigation.

5. The Parties’ Identities Are Neutral Relative to Institution

The Board routinely grants institution where parties are the same between the district court litigation and the IPR.¹ *See, e.g., Tesla, Inc. v. Intell. Ventures II LLC*, IPR2025-00217, Paper 11 (PTAB June 26, 2017). The Director’s discretionary review process has continued this practice. *See, e.g., Savant Techs. LLC v. Feit Elec. Co.*, IPR2025-00260, Paper 16 at 2–3 (PTAB June 12, 2025). DiStefano has not pointed to any other factor related to the identity of the parties, such as a prior jury verdict of no invalidity, that would weigh against institution—indeed, it cannot. *Fintiv*, IPR2020-00019, Paper 11 at 14 n.27 (*citing Stryker Corp. v. KFx Med., LLC*, IPR2019-00817, Paper 10 at 27–28 (PTAB Sept. 16, 2019)).

DiStefano’s only argument for this factor is that it believes the issues to be litigated are “the same as, or substantially similar to, those already or about to be litigated,” (Paper 7 at 6–7), but as discussed above, TikTok has filed a *Sotera* stipulation, so the issues to be litigated will not be the same.

This factor is therefore neutral relative to institution.

6. Other Circumstances Favor Institution

The only “other circumstance” DiStefano identifies relates to the merits of TikTok’s Petition, but DiStefano declines to make any argument about why the

¹ Petitioner TikTok Inc. is a distinct entity from, but is affiliated with, the entities named as defendants in the district court litigation, Bytedance Ltd., Bytedance Pte. Ltd., TikTok Ltd., and Heliophilia Pte. Ltd.

merits favor discretionary denial other than referring to its yet-to-be-filed Patent Owner Preliminary Response (“POPR”). Paper 7 at 7. DiStefano has thus raised no arguments on the merits for TikTok to respond to in this brief. DiStefano’s arguments in its forthcoming POPR should therefore be given no weight with respect to the question of discretionary denial.

As is evident from the Petition itself, TikTok’s Petition presents a strong showing that all Challenged Claims of the ’971 Reissued Patent are invalid.

B. The Lack of Settled Expectations of the Parties Favors Institution

The parties have no settled expectations in a patent that has been in force for years but has not been commercialized, asserted, marked, licensed, or otherwise applied in a petitioner’s particular technology space. *Intel Corp. v. Proxense LLC*, IPR2025-00327, Paper 12 at 2 (PTAB June 26, 2025) (setting these examples of considerations against finding of settled expectations). While the ’971 Reissued Patent issued nine years ago, Patent Owner has not presented any evidence or argument that it has commercialized, asserted, marked, licensed, or otherwise applied the patent in Petitioner’s particular technology space, *i.e.*, video-sharing platform. *Shenzen Tuozhu Tech. Co., Ltd. v. Stratasys, Inc.* IPR2025-00531, Paper 10 at 2-3 (PTAB July 17, 2025) (finding no settled expectations for a ten-year-old patent that cannot be shown to have been practiced or marked); *Home Depot U.S.A., Inc. v. H2 Intellect LLC* (IPR2025-00480, Paper 11 at 2-3 (PTAB September 4,

2025) (finding no settled expectations where a twelve-year-old patent has not been asserted in the petitioner’s technology space). Furthermore, Patent Owner waited until 13 years after the alleged constructive notice of the ’971 Reissued Patent and only two years away from expiration to first assert it against anyone. *Apple Inc. v. Ferid Allani*, IPR2025-00856, Paper 11 at 3 (finding any settled expectations is overcome by the fact that Patent Owner waited until 11 years after any notice and past the expiration date of the asserted patent to assert).

In sum, the total lack of practice, marking, assertion, and diligent enforcement of the ’971 Reissued Patent defeats any claimed “settled expectations.” *Proxense*, IPR2025-00327, Paper 12 at 2.

Relying on an incorrect reading of *Dabico*, DiStefano argues that Petitioner had “11 years from when the application was published and constructive notice of the patent family for thirteen years.” Paper 7 at 11–12. DiStefano’s calculated times are incorrect, and appear to be a copy/paste error from a brief filed in another case. *See* IPR2025-01061, Paper 7 at 11. But, in any event, the length of time in which the ’971 Reissued Patent has gone wholly unused in Petitioner’s technology space shows that there are no settled expectations surrounding the ’971 patent, except that it is irrelevant to this technology. For nearly the entirety of twenty-five years since the applicant filed the original application (EX1001 at [64]), Patent Owner did not practice, mark, assert, or otherwise enforce the ’971 Reissued Patent in this space,

asserting this patent for the first time just two years before its expiration. This further defeats any claimed “settled expectations” as further clarified by the *Apple* decision, which issued after *Dabico*.

Finally, DiStefano argues that TikTok had “[a]ctual [n]otice” of the ’061 Patent and “the family application prior to the issuance” of the ’971 Reissued Patent based on communications in November 2022. Paper 7 at 12. But DiStefano has not articulated how these communications allegedly regarding ’061 Patent is related to the settled expectation of the separate ’971 Reissued Patent.

Thus, there are no settled expectations that weigh against institution.

C. DiStefano’s Arguments Based on “Other Considerations” Do Not Favor Discretionary Denial

Under the rubric of “[o]ther considerations” related to the Board’s Memorandum on Interim Processes for PTAB Workload Management, DiStefano makes three arguments, some of which merely repeat its assertions regarding the *Fintiv* factors. Paper 7 at 8–10. None supports discretionary denial.

1. Institution Would Reduce the Number of Issues for the District Court Litigation

DiStefano repeats the conclusory argument from its *Fintiv* analysis that institution would not narrow issues in the district court litigation, stating that “Petitioners have not represented or indicated that the litigation involving the five patents would be simplified by having this IPR instituted.” Paper 7 at 8. If instituted,

however, this proceeding could eliminate the '971 Reissued Patent from the district court litigation entirely, vastly simplifying trial in that case. At a minimum, institution would simplify the invalidity issues as to the '971 Reissued Patent in light of TikTok's *Sotera* stipulation.

2. DiStefano's "Additional Party" Argument Does Not Support Discretionary Denial

DiStefano argues that "a party that has yet to be named that may have actual knowledge of the '971 Reissued Patent" may be added if TikTok is sold to a "non-Chinese-owned company," and that as a result "an instituted IPR may have to be dismissed." Paper 7 at 9. DiStefano's vague speculation has no evidentiary support and no identified legal reason for a potential need to dismiss an IPR if instituted. Namely, DiStefano identifies no plausible set of circumstances that would require the hypothesized dismissal, let alone any evidence that such circumstances are likely to actually occur. The Board's policy is not to engage in speculation as a basis for discretionary denial. *Samsung Elecs. Co., Ltd. v. Mojo Mobility Inc.*, IPR2023-01094, Paper 11 at 6–7 (PTAB Feb. 9, 2024) (Board should not speculate as to whether a district court will grant a stay); *Shure Inc. v. Clearone, Inc.*, PGR2020-00079, paper at 14–16 (PTAB Feb. 16, 2021) (Board should not speculate regarding potential trial dates). This argument should therefore be rejected, and does not counsel against institution.

3. This Petition Represents a Worthwhile Use of the Board's Resources

DiStefano also contends the Director should deny institution to allocate resources to *ex parte* appeals. Paper 7 at 9–10. But ensuring patent quality by providing for Patent Office review of patents in an efficient, well-equipped forum such as this one is an important objective of the AIA. *See* 35 U.S.C. § 311; H.R. Rep. No. 112-98, pt. 1, at 48 (2011) (noting role of IPR in providing “a quick and cost effective alternative[] to litigation”). Particularly given the strong merits of TikTok’s Petition, the fact that a Final Written Decision would issue well in advance of a trial on the merits, and the applicant’s attempts to broaden its claims in an application filed 13 years after the provisional application was filed, review of the instant Petition would reflect a worthwhile use of the PTAB’s resources.

II. CONCLUSION

For the foregoing reasons, TikTok respectfully requests that the Director refer the Petition to a panel of the Board for a preliminary review of the merits.

Dated: October 17, 2025

Respectfully Submitted,

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CERTIFICATION UNDER 37 C.F.R. § 42.24(d)

Under the provisions of 37 C.F.R. § 42.24(d), the undersigned attorney hereby certifies that the page count of the foregoing Opposition to Patent Owner's Brief in Support of Discretionary Denial is 13 pages (fewer than the 20-page limit), in compliance with the type-volume limits set forth in Director Stewart's August 22, 2025 guidance regarding Interim Director Discretionary Process Section III.C.iii.

Dated: October 17, 2025

Respectfully Submitted,

/s/ Yar Chaikovsky
Yar Chaikovsky

Counsel for Petitioner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6, the undersigned certifies that on October 17, 2025, true and correct copies of the foregoing Opposition to Patent Owner's Brief in Support of Discretionary Denial and Exhibit EX1059 were served electronically on Petitioner's lead and backup counsel at the following addresses:

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Dated: October 17, 2025

Respectfully Submitted,

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