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8 **UNITED STATES DISTRICT COURT**  
 9 **SOUTHERN DISTRICT OF CALIFORNIA**  
 10

11 STREETSPLACE, INC., a Delaware  
 12 Corporation,

13 Plaintiff,

14 v.

15 GOOGLE INC., a Delaware Corporation,  
 ADMOB, INC., a Delaware Corporation,  
 16 APPLE INC., a California Corporation,  
 QUATTRO WIRELESS, INC., a Delaware  
 17 Corporation, NOKIA CORPORATION, a  
 foreign corporation, NOKIA INC., a  
 18 Delaware Corporation, NAVTEQ  
 CORPORATION, a Delaware Corporation,  
 19 MILLENIAL MEDIA, INC., a Delaware  
 Corporation, JUMPTAP, INC., a Delaware  
 20 Corporation, and DOES 1 through 20,  
 inclusive,

21 Defendants.  
 22

Case No. 10-CV-1757 (LAB)

**REPLY IN SUPPORT OF MOTION TO  
 TRANSFER VENUE TO THE  
 NORTHERN DISTRICT OF  
 CALIFORNIA**

Judge: Hon. Larry A. Burns  
 Hearing Date: March 14, 2010  
 Time: 11:15 AM  
 Courtroom: 9, 2nd Floor

Action Filed: August 23, 2010

1       **I.       INTRODUCTION**

2           Plaintiff does not contest in its Opposition that its sole basis for filing the present case in  
3 the Southern District of California is that Plaintiff’s attorneys are located there. But the location  
4 of Plaintiff’s attorneys is *wholly irrelevant* to the transfer inquiry. Plaintiff cannot provide a  
5 single additional reason why this case should proceed in the Southern District of California,  
6 except to state that Defendants’ allegedly-infringing products are available for purchase there.  
7 This reason is not persuasive, however, as Defendants’ allegedly-infringing products are available  
8 for purchase in every federal judicial district in the United States. Plaintiff also seeks to show  
9 that the Southern District of California is a convenient forum for Defendants by arguing that  
10 Defendants Apple and Google litigate all over the country, and Defendant Nokia has a research  
11 facility in San Diego. But Apple’s and Google’s other litigations arise from vastly divergent facts  
12 and legal issues none of which are relevant to this case, and Nokia’s accused functionality—  
13 Nokia Maps—is not developed in its San Diego facility.

14           As explained in Defendants’ Opening Motion, there are numerous legitimate reasons why  
15 the Northern District of California is a far more convenient forum in which to litigate this case—  
16 various party and non-party witnesses are located in the Northern District of California, many of  
17 the allegedly-infringing products were developed in the Northern District of California, numerous  
18 relevant documents are located in the Northern District of California<sup>1</sup>, and more than half of the  
19 named Defendants are headquartered or have offices in the Northern District of California.  
20 Accordingly, Defendants’ Motion should be granted and this case should be transferred to the  
21 Northern District of California.

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24  
25 <sup>1</sup> Plaintiff argues in its Opposition that the location of relevant documents is irrelevant to the transfer inquiry. Dkt.  
26 No. 33 at 15-16. This is simply not true. Courts in the Ninth Circuit consider the location of relevant documents in  
27 determining whether transfer is appropriate. *See In re National Consumer Mortg. LLC.*, No. SA CV 10-0159, 2010  
28 WL 2384217, at \*6 (C.D. Cal. Jun. 10, 2010) (“Because [defendant] is a resident of Nevada and *all of the relevant documents are located in Las Vegas*, litigating in the District of Nevada would be more convenient ....”) (emphasis added); *Rowsby v. Gulf Stream Coach, Inc.*, No. SA CV08-1213, 2009 WL 1154130, at \*4 (C.D. Cal. Feb. 9, 2009) (“[T]ransfer pursuant to § 1404(a) is appropriate because Gulf Stream witnesses *and documents regarding manufacture of the motor home are located in Indiana.*”) (emphasis added).

1 **II. ARGUMENT**

2 **A. The Location of Streetspace’s Counsel Is Irrelevant to the Transfer Inquiry.**

3 Plaintiff argues that the Southern District of California is more convenient than the  
4 Northern District of California because Plaintiff’s counsel are located in San Diego. As  
5 Defendants point out in their Opening Motion, however, the location of Plaintiff’s counsel is  
6 irrelevant to the transfer inquiry. Dkt. No. 23 at 7-8 (citing *Panetta v. SAP America, Inc.*,  
7 No. C0501696RMW, 2005 WL 1774327, at \*5 (N.D. Cal. July 26, 2005) (“[T]he location of  
8 plaintiff’s counsel is immaterial to a determination of the convenience and justice of a particular  
9 forum.”); *Soloman v. Cont. Amer.*, 472 F.2d 1043, 1047 (3d Cir. 1973) (“The convenience of  
10 counsel is not a factor to be considered.”); *In re Horseshoe Ent.*, 305 F.3d 354, 358 (5th Cir.  
11 2002) (The factor of “location of counsel” is irrelevant and improper for consideration in  
12 determining the question of transfer of venue.”); *Peacock v. Willis*, No. CV F 06-432 AWI LJO,  
13 2006 WL 3060134, at \*12 (E.D. Cal. Oct. 27, 2006) (citing *In re Volkswagen AG*, 371 F.3d 201,  
14 206 (5th Cir. 2004)) (“In the context of a 28 U.S.C. § 1404 motion, the location of a party’s  
15 attorney is generally not considered.”); *see also Zhejiang Ouhai Int’l Trade Corp. v. Southern*  
16 *Cal. Valve Equipment Co., Inc.*, No. C-09-03360, 2009 WL 4981144, at \*4 (N.D. Cal. Dec. 16,  
17 2009) (“[C]onvenience of counsel, or the need to engage new counsel in the transferee state, is  
18 not a valid consideration.”) (citing *Panetta*, 2005 WL 1774327 at \*5; *Winward v. Pfizer, Inc.*,  
19 Nos. C 07-0878 & C 07-0879, 2007 U.S. Dist. LEXIS 82885, at \*11 (N.D. Cal. 2007) (“The  
20 location of counsel and the need to retain counsel in the transferee district is of little, if any  
21 weight in considering a motion to transfer pursuant to section 1404(a)”)); *Szegedy v. Keystone*  
22 *Food Products, Inc.*, No. CV 08-5369, 2009 WL 2767683, at \*6 fn. 4 (C.D. Cal. Aug. 26, 2009)  
23 (“[T]he location of plaintiff’s counsel is immaterial to a determination of the convenience and  
24 justice of a particular forum.”) (citations and internal quotations omitted).

25 Plaintiff cites a single case in its Opposition as putative support for its argument that this  
26 Court should, notwithstanding all relevant authority to the contrary, refuse to transfer this case  
27 based on the location of Plaintiff’s counsel. Dkt. No. 33 at 12 (citing *Blumenthal v. Mgmt.*  
28 *Assistance, Inc.*, 480 F.Supp. 470, 474 (N.D. Ill. 1979)). But even if the cited 1979 Illinois

1 opinion, applying Seventh Circuit law, had any bearing on this Court’s application of Ninth  
2 Circuit law to the pending motion, that opinion still would not support Streetspace’s argument. In  
3 *Blumenthal*, the court stated that “[n]either the convenience of counsel nor the convenience of  
4 expert witnesses is a factor in determining the disposition of a 1404(a) motion.” *Id.* at 474. The  
5 court added, though, that the named plaintiffs in the case—who were individuals, not companies,  
6 as in this case—did not have counsel in the requested transferee jurisdiction and would, therefore,  
7 have to pay for new counsel and for the transportation of their existing counsel. Under those  
8 specific circumstances, this court held that the added cost of litigation for these individual  
9 plaintiffs was “a factor to consider.” *Id.*

10 Here, by contrast, all of the parties are companies, not individuals. The rationale behind  
11 the decision in *Blumenthal* is, therefore, not applicable. But if this Court were to consider the  
12 cost of litigation to each party as a “factor” in its analysis, that factor would, at best, be neutral.  
13 Defendants Apple and Quattro Wireless have retained counsel who are all located in the Northern  
14 District of California and do not have an office in the Southern District of California. Requiring  
15 Apple’s and Quattro Wireless’ attorneys to litigate a trial in the Southern District of California  
16 will be at least as expensive as requiring Streetspace’s attorneys to litigate a trial in the Northern  
17 District of California.

18 The location of Streetspace’s counsel, therefore, does not weigh against transferring this  
19 case to the Northern District of California.

20 **B. The Northern District of California is a More Convenient Forum for All**  
21 **Identified Witnesses.**

22 Streetspace does not identify a single witness for whom that Southern District of  
23 California is a more convenient forum than the Northern District of California. Instead,  
24 Streetspace argues that the convenience of the witnesses identified by Defendants is irrelevant  
25 because (1) the non-party witnesses are within the subpoena power of the Court, (2) the party-  
26 witnesses “are available in any venue,” and (3) “Defendants have not ... specified the identity or  
27 location of any witnesses, or the content of the anticipated testimony.” Dkt No. 33 at 11-16.  
28 Each of these arguments is without merit.

1 Plaintiff is correct that non-parties *may* be compelled to travel more than 100 miles to  
2 testify, if such travel occurs within the state.<sup>2</sup> See F.R.C.P. 45(c)(3)(A)(ii). Non-party witnesses  
3 will not be compelled to travel more than 100 miles, however, when the non-party will “incur  
4 substantial expense to travel more than 100 miles to attend trial.” F.R.C.P. 45(c)(3)(B)(iii). If  
5 this case is not transferred to the Northern District of California, the identified non-party  
6 witnesses will be forced to travel approximately **500 miles** from Berkeley, California to San  
7 Diego, California to testify. This magnitude of travel will undoubtedly result in substantial  
8 expense to these non-parties. See *Heavy Petroleum Partners, LLC v. Atkins*, No. 09-1077, 2010  
9 WL 398089, at \*3 (D. Kan. Jan. 25, 2010) (holding that in-state non-party witnesses who would  
10 have to travel more than 100 miles to attend trial *weighed in favor of transfer* because they could  
11 move to quash pursuant to Rule 45(c)(3)(B)(iii)).

12 Even if these witnesses could be compelled to attend trial, it is undisputed that the  
13 Northern District of California would be significantly more convenient for the witnesses. “The  
14 convenience of witnesses is often the **most important factor** in deciding whether to transfer an  
15 action pursuant to § 1404(a).” *Cordua v. Navistar Intern. Transp. Corp.*, No. C 10-04961, 2011  
16 WL 62493, at \*4 (N.D. Cal. Jan. 7, 2011) (emphasis added) (citing *Getz v. Boeing Co.*, 547  
17 F.Supp.2d 1080, 1083 (N.D.Cal. 2008)); see also *Skyriver Technology Solutions, LLC v. OCLC*  
18 *Online Computer Library Center, Inc.*, No. C 10-03305, 2010 WL 4366127, at \*4 (N.D.Cal. Oct.  
19 28, 2010) (quoting *Saleh v. Titan Corp.*, 361 F.Supp.2d 1152, 1160 (S.D.Cal. 2005)  
20 (“Importantly, while the convenience of party witnesses is a factor to be considered, the  
21 convenience of non-party witnesses is the more important factor.”)). Plaintiff does not and  
22 cannot dispute that it would be exceedingly inconvenient for the numerous identified party and  
23 non-party witnesses who live and work in the Northern District of California to travel  
24 approximately **500 miles** to testify at a trial held in the Southern District of California.

25 Finally, Plaintiff’s argument that “Defendants have not ... specified the identity or  
26 location of any witnesses, or the content of the anticipated testimony” suggests that Plaintiff has

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28 <sup>2</sup> Defendants inadvertently misstated this rule in their Opening Motion, contending that non-parties could not be compelled to travel more than 100 miles to testify. Dkt. No. 23 at 12.

1 not thoroughly reviewed Defendants’ Motion. Defendants set forth clearly in their Motion the  
2 locations of the anticipated witnesses and the content of their testimony:

- 3 • All of the Apple employees who have responsibilities for the design and  
4 development of the accused Apple/Quattro product, the iAd Network, are in  
5 *Cupertino*. These witnesses will provide *testimony relevant to Streetspace’s*  
6 *infringement allegations against Apple and Quattro*. Similarly, all of the Apple  
7 employees who have responsibilities relating to iAd Network marketing and sales  
8 are also in *Cupertino*. These witnesses will provide *testimony relevant to*  
9 *Streetspace’s allegations of damages caused by Apple and Quattro*. Dkt. No. 23  
10 at 10 (emphasis added).
- 11 • All of the Google and AdMob employees who have responsibilities for the design  
12 and development of the accused Google/AdMob products, AdWords, AdSense,  
13 Google Mobile Ads, and Android, are in *Mountain View*. These witnesses will  
14 provide *testimony relevant to Streetspace’s infringement allegations Google and*  
15 *AdMob*. Dkt. No. 23 at 10 (emphasis added).
- 16 • Defendants will seek *testimony from non-party witnesses with information about*  
17 *Streetspace’s “Street Linc” implementation*. Specifically, Defendants have  
18 identified the following companies who were involved in this implementation and  
19 are, therefore, likely to have information relevant to this case: Amoeba Music—  
20 located in *Berkeley, California*; Bear’s Lair—located in *Berkeley, California*;  
21 Royal Grounds Café—located in *Berkeley, California*; Smart Alec’s Restaurant—  
22 located in *Berkeley, California* Dkt. No. 23 at 11 (emphasis added).

23 Defendants also adequately identify the anticipated witnesses for purposes of the transfer motion  
24 as “Apple employees who have responsibilities for the design and development of the accused  
25 Apple/Quattro product, the iAd Network,” “Apple employees who have responsibilities relating  
26 to iAd Network marketing and sales,” “Google and AdMob employees who have responsibilities  
27 for the design and development of the accused Google/AdMob products, AdWords, AdSense,  
28 Google Mobile Ads, and Android,” and 30(b)(6) witnesses from Amoeba Music, the Bear’s Lair,  
Royal Grounds Café, and Smart Alec’s Restaurant. Dkt. No. 23 at 10-11. Because this case is  
still in its very early stages, it is not possible for Defendants to identify these anticipated  
witnesses by name—for example, the non-party 30(b)(6) witnesses will be named by the  
corporations identified above in response to subpoenas that have not yet been served. These  
witnesses, however, will necessarily fall within the categories of persons described above, all of  
whom live and work in the Northern District of California.

1           **C. Defendants’ Other Litigation Is Irrelevant to the Transfer Inquiry.**

2           Plaintiff relies heavily on the fact that Defendants Google and Apple litigate cases in  
3 forums around the country to oppose Defendants’ Motion. Dkt. No. 33 at 12-13. But Plaintiff  
4 makes no effort to explain how any of these other litigations is relevant to the allegations  
5 underlying the present action. *Id.* Apple and Google are large companies that develop and  
6 market numerous technologies all over the country and internationally. The various litigations in  
7 which they are involved, thus, arise from vastly divergent facts and legal issues. The transfer  
8 inquiry, to the contrary, is heavily dependent on the facts of the present case. *See Atkins v. Magic*  
9 *Sliders, L.P.*, No. 10-cv-1533, 2010 WL 5174539, at \*2 (S.D. Cal. Dec. 15, 2010) (citing *Jones v.*  
10 *GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000)) (“A motion for transfer pursuant to  
11 §1404(a) lies within the discretion of the district court, and *its outcome depends on the facts of*  
12 *each case.*”) (emphasis added); *Gonzales v. Palo Alto Labs, Inc.*, No. C 10-2456, 2010 WL  
13 3930440, at \*7 (N.D. Cal. Oct. 6, 2010) (citing *Jones*, 211 F.3d at 498) (“In the Ninth Circuit, the  
14 decision to transfer pursuant to § 1404(a) lies within the discretion of the district court and  
15 *depends on the facts of each particular case.*”) (emphasis added). That Apple and Google are  
16 involved in other cases in other parts of the country involving completely different facts and legal  
17 issues has no bearing on a determination of which forum is the most convenient in which to  
18 litigate this case.

19           The irrelevance of other litigation to the present action is highlighted by the Motion to  
20 Transfer Venue from the Eastern District of Virginia to the Southern District of California in *SPH*  
21 *America v. Acer, Inc., et al.*, Case No. 1:09-cv-740 (E.D. Va.), which was joined by Apple (a  
22 defendant in that action) and is referenced no less than three times in Plaintiff’s Opposition. Dkt.  
23 No. 33 at 1-2, 4, 13. The specific circumstances surrounding the *SPH America* case—none of  
24 which exist in the present case—made the Southern District of California a dramatically more  
25 convenient forum in which to litigate that case.<sup>3</sup> First, an earlier action filed by SPH America

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27 <sup>3</sup> The same is true with respect to Apple’s oppositions to motions to transfer in *Apple, Inc. v. HTC*, Case No. C.A.  
28 No. 10-544 (D. Del.) and *Apple v. Unova*, Case No. No. Civ.A. 03-101 (D. Del.), both cited by Plaintiff in its  
Opposition. Dkt. No. 33 at 12-13. In *HTC*, another case involving the same legal issues was already pending in the  
Delaware court. In *Unova*, three of the four named defendants were Delaware corporations. In this case, to the

1 involving many of the same facts and legal issues had already been transferred to and was  
2 pending in Southern District of California. Second, the accused technology was found primarily  
3 in Qualcomm chips, and Qualcomm is based in the Southern District of California. Third,  
4 Qualcomm was not a party to the case, so critical non-party Qualcomm witnesses were outside  
5 the subpoena power of the Eastern District of Virginia. In this case, to the contrary, Apple's  
6 relevant technology is developed in the Northern District of California, and all identified third  
7 party witnesses live and work in the Northern District of California. The Northern District of  
8 California is, thus, the more convenient forum.

9 **D. The Public Interest Factors Are Neutral.**

10 Plaintiff incorrectly accuses Defendants of “ignor[ing]” relevant public interest factors in  
11 their analysis. Dkt. No. 33 at 16-18. Defendants, however, analyzed all factors considered  
12 relevant by the Ninth Circuit in *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99 (9th Cir.  
13 2000), as well as numerous district courts in the Ninth Circuit. *See Cordua v. Navistar Int'l*  
14 *Transportation Corp.*, No. C 10-04961, 2011 WL 62493 (N.D. Cal. Jan. 7, 2011) (in deciding a  
15 motion to transfer, the court did not consider in the public interest factors cited by Plaintiff);  
16 *Johansson v. Central Garden & Pet Co.*, No. C 10-03771, 2010 WL 4977725 (N.D. Cal. Dec. 2,  
17 2010) (same); *Ansel Adams Pub. Rights Trust v. PRS Media Partners, LLC*, No. C 10-03740,  
18 2010 WL 4974114 (N.D. Cal. Dec. 01, 2010) (same); *Barnstormers, Inc. v. Wing Walkers, LLC*,  
19 No. 09-cv-2367, 2010 WL 2754249 (S.D. Cal. Jul. 09, 2010) (same). To the extent that  
20 Plaintiff's additional public interest factors are relevant to the transfer inquiry, these factors are at  
21 most neutral.

22 The public interest factors cited by Streetspace in its Opposition include “relative degrees  
23 of court congestion, the local interest in deciding local controversies, the burden on citizens of an  
24 unrelated forum with jury duty, and potential conflicts of law issues.” Dkt. No. 33 at 16. To  
25 show that the Northern District of California is more congested than the Southern District of  
26 California, Streetspace relies only on the total number of civil cases currently pending in each

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contrary, there is no related litigation pending in any forum, and Streetspace is a foreign corporation with its principal  
place of business in Malaysia.



1 jurisdiction. Dkt. No. 33 at 16. This measure does not take into account the complexity of these  
2 cases, however, or their relative times to trial. In a recent article authored by Stanford Professor  
3 Mark Lemley, Professor Lemley assessed the time to trial for patent cases brought in the Northern  
4 and Southern Districts of California at 2.92 and 2.48 years, respectively. Huffsmith Decl., Ex. D  
5 at Table 6. Thus, the difference in time to trial between the two forums is insignificant, rendering  
6 this factor neutral. With respect to the remaining three public interest factors, Streetspace  
7 acknowledges in its Opposition that they are neutral. Dkt. No. 33 at 17 (“Because Defendants’  
8 products are available nationwide ... this Court has as much interest in deciding this case as any  
9 other .... Further, there can be no conflict of laws between courts in the same district.”)  
10 Accordingly, these factors do not weigh against transfer.

11 **E. The Other Factors Relied On By Streetspace Are, At Best, Neutral.**

12 Plaintiff argues that the Southern District of California is a convenient forum because  
13 Defendants’ products are available for purchase there. But as Plaintiff acknowledges in its  
14 Opposition, Defendants’ products are available for purchase nationwide. Dkt. No. 33 at 17. This  
15 factor is, thus, neutral to the transfer inquiry. The fact that many of the accused products are  
16 developed in the Northern District of California, however, weighs in favor of transfer. Dkt. No.  
17 23 at 9-10.

18 Plaintiff’s argument that its choice of forum should be given substantial weight is wrong  
19 as a matter of law. Plaintiff does not even attempt to respond to or distinguish the case law cited  
20 in Defendants’ Opening Motion, all of which makes clear that Plaintiff’s choice of forum is  
21 entitled to minimal deference where, as here, “plaintiff initiates an action in a state in which he or  
22 she is not a resident,” and “the transactions giving rise to the action lack a significant connection  
23 to the plaintiff’s chosen forum.” Dkt. No. 23 at 7 (citing *Panetta v. SAP America, Inc.*,  
24 No. C0501696RMW, 2005 WL 1774327, at \*5 (N.D. Cal. July 26, 2005); *Callaway Golf Co. v.*  
25 *Corporate Trade Inc.*, No. 09-cv-384, 2010 WL 743829, at \*5 (S.D. Cal. Mar. 1, 2010)). Instead,  
26 Plaintiff relies on a host of other cases, none of which support its position. Dkt. No. 33 at 7  
27 (citing *Safarian v. Maserati North America, Inc.*, 559 F. Supp. 2d 1068, 1072 (C.D. Cal. 2008)  
28 (considering plaintiff’s choice of forum when determining whether to transfer venue from the

1 Southern to Western Division of the Central District of California, which are located only a  
2 “modest distance” apart); *Florens Container v. Cho Yang Shipping*, 245 F. Supp. 2d 1086, 1092  
3 (N.D. Cal. 2002) (considering plaintiff’s choice of forum where plaintiff’s principal place of  
4 business was located in that forum); *E. & J. Gallo Winery v. F. & P.S.p.A.*, 899 F. Supp. 465, 467  
5 (E.D. Cal. 1994) (considering plaintiff’s chosen forum where plaintiff’s “headquarters, witnesses,  
6 and documents” were located in that forum); *Accentra, Inc. v. Staples, Inc.*, Case No. CV 07-  
7 5862, 2008 U.S. Dist. LEXIS 112183, at \*15 (C.D. Cal. Feb 27, 2008) (considering plaintiffs’  
8 choice of forum where one plaintiff’s “day-to-day operations” occurred in the forum and “several  
9 of its key personnel live[d]” in the forum,” and the other plaintiff “claim[ed] significant contacts  
10 with” the forum); *Continental Cas. Co. v. American Home Assurance Co.*, 61 F. Supp. 2d 128,  
11 131 (D. Del. 1999) (stating explicitly that “the transfer of a case will generally be regarded as less  
12 inconvenient to a plaintiff *if the plaintiff has not chosen its home turf* or a forum where the  
13 alleged wrongful activity occurred.”) (emphasis added).)

14 Finally, Plaintiff relies on the fact that Nokia has a research facility in the Southern  
15 District of California to argue that the Southern District of California is a more convenient forum.  
16 Dkt. No. 33 at 14. But as with its arguments regarding Apple’s and Google’s other litigations,  
17 Plaintiff makes no effort to link this facility to the allegations underlying the present action. And,  
18 in fact, Nokia has confirmed that the accused functionality—Nokia Maps—is not developed in its  
19 San Diego facility. Thus, the existence of this facility should have no bearing on the transfer  
20 inquiry.

### 21 **III. CONCLUSION**

22 For the foregoing reasons, Defendants respectfully request that their Motion to Transfer  
23 Venue to the Northern District of California be granted.

1 Dated: March 7, 2011

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