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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VICOR CORPORATION,
Requester,

v.

SYNQOR, INC.,
Patent Owner.

Appeal 2015-004509
Reexamination Control 95/001,861
Patent 8,023,290 B2
Technology Center 3900

Before JAMES T. MOORE, STEPHEN C. SIU, and
DENISE M. POTHIER, *Administrative Patent Judges*.

SIU, *Administrative Patent Judge*

DECISION ON REMAND

The Federal Circuit remanded this matter to us for further proceedings on August 30, 2017. *Vicor Corp. v. SynQor, Inc.*, 869 F.3d 1309, 1326 (Fed. Cir. 2017).

In an earlier Decision, mailed May 2, 2016 (“Decision”), we affirmed the Examiner’s non-adoption of the following rejections:

- I. Claims 1–4, 11, and 12 under 35 U.S.C. § 103(a) over Steigerwald ’090,¹ Cobos,² and Pressman³ (Rejection I);
- II. Claims 5–10 and 13–15 under 35 U.S.C. § 103(a) over Steigerwald ’090, Cobos, Pressman, and APA⁴ (Rejection II);
- III. Claims 1–4, 11, and 12 under 35 U.S.C. § 103(a) over JP ’446,⁵ Steigerwald ’539,⁶ and Kassakian⁷ (Rejection III);

¹ U.S. Patent No. 5,377,090, issued December 27, 1994 (“Steigerwald ’090”).

² J.A. Cobos & J. Uceda, “Low Output Voltage DC/DC Conversion,” 20th International Conference on Industrial Electronics, Control, and Instrumentation 1676–1681 (1994) (“Cobos”).

³ Abraham I. Pressman, “Switching and Linear Power Supply, Power Converter Design” (1977) (“Pressman”).

⁴ Admitted Prior Art in the form of the transcript of trial testimony from the trial in the case of *SynQor, Inc. v. Arlesyn Technologies, et al.*, Case No. 2:07-CV-479, 12/14/2010, AM session (“APA”).

⁵ Japanese Patent Application Publication No. H05-64446, pub. March 12, 1993 (“JP ’446”).

⁶ U.S. Patent No. 5,274, 539, issued December 28, 1993 (“Steigerwald ’539”).

⁷ John G. Kassakian & Martin F. Schlecht, “High-Frequency High-Density Converters for Distributed Power Supply Systems,” Proc. Of the IEEE, vol. 76, no. 4, 362–376 (Apr. 1988) (“Kassakian”).

- IV. Claims 5–10 and 13–15 under 35 U.S.C. § 103(a) over JP ’446, Steigerwald ’539, Kassakian, and Cruz⁸ (Rejection IV); and
- V. Claims 1, 2, 4, 11, and 12 under 35 U.S.C. § 103(a) over Steigerwald ’090 (incorporating Steigerwald ’539) and Pressman (“Rejection V”); and
- VI. Claims 3, 5–10, and 13–15 under 35 U.S.C. § 103(a) over Steigerwald ’090 (incorporating Steigerwald ’539), Pressman, and Cruz (“Rejection VI”).

The Federal Circuit affirmed our decision “not to adopt proposed rejections I–II” but vacated and remanded our decision on proposed rejections III–VI (affirming the Examiner’s non-adoption of proposed rejections of claims 1–15) for further proceedings to address various issues, including “analy[zing] whether there is a nexus between the secondary considerations evidence and the switching regulators at issue . . . for proposed rejections V–VI” (*id.* at 1324). *See id.* at 1322–24.

In a reexamination proceeding (Control No. 95/001,702) for related U.S. Patent No. 7,072,190 (“the ’190 patent”), the Federal Circuit held that “Steigerwald ’090 incorporates by reference . . . teachings of Steigerwald ’539 that relate to its capacitance-multiplying converter 20,” and, therefore, “the combined reference teaches a single embodiment that anticipates all elements of representative claim 20 [of the ’190 patent].” *Vicor Corp. v.*

⁸ Enrique de la Cruz et al., “Analysis of Suitable PWM Topologies to Meet Very High Efficiency Requirements for On Board DC/DC Converters in Future Telecom Systems,” 15th Annual Telecommunications Energy Conference 207–214 (1993) (“Cruz”).

Appeal 2015-004509
Reexamination Control 95/001,861
Patent 8,023,290 B2

SynQor, Inc., 603 F. App'x 969, 974–975 (Fed. Cir. 2015). Claim 20 of the '190 patent, held to be unpatentable by the Federal Circuit, reads as follows:

20. A power converter system comprising:
a DC power source;
a non-regulating isolation stage comprising:
a primary transformer winding circuit having at least one primary winding connected to the source; and
a secondary transformer winding circuit having at least one secondary winding coupled to the at least one primary winding and having plural controlled rectifiers, each having a parallel uncontrolled rectifier and each connected to a secondary winding, each controlled rectifier being turned on and off in synchronization with the voltage waveform across a primary winding to provide an output; and
a plurality of non-isolating regulation stages, each receiving the output of the isolation stage and regulating a regulation stage output.

Claim 1 of the '290 patent reads as follows:

1. A DC-DC power converter system providing plural regulated DC outputs, each having a regulated voltage, comprising:
a DC input;
a non-regulating isolation converter comprising:
a primary transformer winding circuit having at least one primary winding that receives power from the DC input; and
a secondary transformer winding circuit having at least one secondary winding coupled to the at least one primary winding and having plural controlled rectifiers, each having a parallel uncontrolled rectifier and each in circuit with a secondary winding, each controlled rectifier

being turned on and off in synchronization with the voltage waveform of the at least one primary winding to provide a non-regulated, isolated DC output; and

plural non-isolating switching regulators, each receiving power from the non-regulated, isolated DC output of the non-regulating isolating converter and each providing one of the regulated DC outputs having a regulated voltage.

Rejections III-IV

In accordance with instructions from the Federal Circuit, we first re-evaluate Rejections III–IV. As noted above, the Federal Circuit has held that Steigerwald '090 incorporates by reference Steigerwald '539 and the combined (single) reference anticipates claim 20 of the related '190 patent. As we previously stated,

The Examiner found that JP '446 described “an efficient and low noise power supply system” including a transformer connected to a DC power supply 1. Req. 38. The transformer was found to include a primary winding and a secondary winding, and a rectifier circuit including a plurality of rectifying diodes connected to the secondary winding of the transformer. *Id.* The Examiner further found that the output of the rectifier circuit 7 is connected to respective DC/DC converters which are non-isolating regulators. *Id.* at 39.

Steigerwald '539 was found to describe that synchronous rectifiers driven by the voltage waveform on the primary winding of the transformer may be substituted for diode rectifiers in a non-regulating, isolating power converters. *Id.* 40. The Examiner then concluded it would have been obvious to substitute the synchronous rectifiers for the diodes in JP '446.

Kassakian was found to describe that down-converting non-isolating switching regulators were well known in the art. *Id.* 41. The Examiner then concluded it would have been obvious to implement the non-isolating regulators of JP '446 as the non-isolating regulators of Kassakian. *Id.*

During prosecution in this proceeding, the Patent Owner urged that JP '446 cannot be combined with Steigerwald '539. PO Resp. 25. The reason urged was that the modification to JP '446 would cause current to flow in the reverse direction for a period of the duty cycle. *Id.* More specifically, Patent Owner urged that Steigerwald's controlled rectifiers are driven by waveforms derived from a voltage on the primary side of the power converter. *Id.* (citing Steigerwald '539, 4:58–55:42). Patent Owner urged that this drive scheme, if used for controlled rectifiers replacing the diode rectifiers in JP '446 would cause current to flow in the reverse direction, or fail to operate correctly. *Id.* at 25–26.

Decision 13–14.

As indicated above, Patent Owner argues that JP '446 discloses “a diode rectifier that does not allow current to flow in the reverse direction . . . [and] Steigerwald '539 teaches controlled rectifiers . . . [that] would **cause** current to flow in the reverse direction.” Synqor, Inc.'s Response to Non-Final Office Action, dated May 2, 2012 (“PO Resp.”), 25. In other words, Patent Owner argues that it would not have been obvious to one of ordinary skill in the art to have combined the teachings of JP '446 and Steigerwald '539 because modifying JP '446's “diode rectifiers” with Steigerwald '539's “controlled rectifiers” would render the combination inoperable. We are not persuaded by Patent Owner's argument.

First, one of skill in the art would have understood that a “rectifier” allows current flow in only one direction. As Requester states, “MOSFETs

configured as synchronous rectifiers prevent reverse current flow” and that “by definition, a synchronous rectifier (or any other rectifier) allows current to flow in essentially only one direction.” Third Party Requester Comments Per 35 U.S.C. §§ 314(b)(2) and 37 C.F.R. 1.951 (b), filed May 23, 2012 (“3PR Comments”), 36–37. For at least this reason, we are not persuaded by Patent Owner that replacing the rectifier of JP ’446 (that, by definition, allows current flow in only one direction) with another rectifier of Steigerwald ’539 (that, by definition, also allows current flow in only one direction) would somehow result in the rectifier of Steigerwald ’539 permitting current flow in the *other* direction, contrary to the known function of a “rectifier” of allowing current flow in only one direction.

Second, as previously discussed, the Federal Circuit has determined that the combination reference of Steigerwald ’539 (incorporated by reference by Steigerwald ’090) discloses an embodiment in which diode rectifiers are replaced with controlled rectifiers. *See Vicor Corp.*, 603 F. App’x at 974–975. Patent Owner does not explain persuasively how the use of controlled rectifiers in the (single) combined reference of Steigerwald ’090 and Steigerwald ’539 would somehow conduct current in one direction (as expected) but that the use of controlled rectifiers in the combination of JP ’446 and Steigerwald ’539 (incorporated by Steigerwald ’090) would somehow result in current flow in the opposite result (i.e., current conducted in the reverse direction).

Patent Owner argues that it would not have been obvious to combine Steigerwald ’539 with JP ’446 because “evidence of secondary considerations has a legally sufficient nexus to *both* the infringing

Appeal 2015-004509
Reexamination Control 95/001,861
Patent 8,023,290 B2

Unregulated Bus Converters and the infringing Unregulated IBA systems.” PO Resp. 30; *see also* PO Resp. 31–33. Patent Owner’s expert (Martin F. Schlecht, Sc.D.) testifies that “[u]nregulated IBA” experienced “commercial success,” that “unregulated bus converters correspond to the ‘non-regulating isolation stage’ in the asserted claims,” that there was testimony of “sales of millions of unregulated bus converters,” that “people in the industry were skeptical” of “IBA power supply systems,” that there was “widespread adoption of the claimed [IBA] architecture in the industry,” and that the IBA technology “was praised as an advance” by the industry. Declaration of Martin F. Schlecht, Sc.D. Per Rule 1.132, filed June 5, 2009 (“Schlecht Decl.” or “Schlecht Declaration”) ¶¶ 59, 61, 63, 109, 112, 114. In other words, Patent Owner argues that various objective indicia of non-obviousness, including, for example, commercial success, skepticism, widespread adoption, and praise in the industry, were due to the claimed feature of “IBA” technology, which “correspond[s] to the ‘non-regulating isolation stage’ in the asserted claims.” Schlecht Decl. ¶ 61.

However, as previously indicated, the Federal Circuit has held that Steigerwald ’539 (incorporated by reference into Steigerwald ’090) discloses (and anticipates) the claimed “IBA” technology, which Patent Owner relies on as a “nexus” between the claimed invention and each of the alleged objective indicia of non-obviousness. It also would not make logical sense to conclude that an “IBA” system disclosed by Steigerwald ’090/’539 was somehow *not* disclosed by Steigerwald ’090/’539 because Patent Owner’s *subsequent* “IBA” system allegedly enjoyed commercial success, praise, or widespread use in the industry. In any event, all evidence of secondary

Appeal 2015-004509
Reexamination Control 95/001,861
Patent 8,023,290 B2

considerations stem from what was known in the prior art (i.e., Steigerwald '090/'539) so that there can be no nexus. *See Tokai Corp. v. Easton Enters., Inc.*, 632 F.3d 1358, 1369 (Fed. Cir. 2011).

Therefore, we reverse the Examiner's non-adoption of the rejection of claims 1–4, 11, and 12 under 35 U.S.C. § 103(a) over JP '446, Steigerwald '539 (incorporated by reference by Steigerwald '090), and Kassakian (Rejection III) and claims 5–10 and 13–15 under 35 U.S.C. § 103(a) over JP '446, Steigerwald '539 (incorporated by reference by Steigerwald '090), Kassakian, and Cruz (Rejection IV).

Rejections V-VI

In further accordance with instructions from the Federal Circuit, we proceed to re-evaluate the Examiner's non-adoption of the rejection of claims 1, 2, 4, 11, and 12 under 35 U.S.C. § 103(a) over Steigerwald '090 (incorporating Steigerwald '539) and Pressman ("Rejection V") and claims 3, 5–10, and 13–15 under 35 U.S.C. § 103(a) over Steigerwald '090 (incorporating Steigerwald '539), Pressman, and Cruz ("Rejection VI"). As we previously stated,

The Examiner then withdrew the rejections involving the combination of Steigerwald and Pressman. RAN 11.

On appeal, Requester urges that the Examiner erred in withdrawing the rejections because inductors in the output path would not have prevented the combination of Steigerwald with Pressman. App. Br. 38. The Appellant relies upon the testimony of Dr. Steigerwald that one of ordinary skill in the art would have understood that the non-pulsed voltages in Steigerwald '090 can be implemented with or without inductors in the current path. App. Br. 39–40.

Patent Owner disagrees, observing that including inductors in the current path would frustrate the principal purpose of Steigerwald. Patent Owner also challenges Dr. Steigerwald's memory and lack of experience building a converter.

Decision 20 (citation omitted).

As indicated above, Patent Owner argues that Steigerwald '090/'539 and Pressman are "technical[ly] incompatib[le]" because "inductors in the conduction path in Steigerwald '090 . . . would impede current pulses [and therefore frustrate] the basic purpose of Steigerwald '090" and that Requester's reliance on "the Steigerwald Deposition" to demonstrate that "an output path of a non-pulsed voltage in Steigerwald '090 can be implemented with or without inductors in the output path" is presumably incorrect because of "[t]he suspect nature of Dr. Steigerwald's memory and his lack of first-hand knowledge." Respondent Brief Under 37 C.F.R. § 41.68, filed April 14, 2014 ("PO Resp. Br."), 8. Upon reconsideration pursuant to instructions from the Federal Circuit, we are not persuaded by Patent Owner's argument.

Patent Owner argues that "inductors in the conduction path in Steigerwald '090" would supposedly "frustrat[e] the basic purpose of Steigerwald '090" but provides insufficient evidence that "inductors" in the "conduction path in Steigerwald '090" would, in fact, "frustrate" Steigerwald '090 (which incorporates by reference Steigerwald '539). Patent Owner states that Requester's expert Dr. Steigerwald testifies that "an output path . . . in Steigerwald '090 can be implemented with or without inductors in the output path." PO Resp. Br. 8. Patent Owner does not

explain sufficiently how including “inductors” in a “conduction path” in a system that “can be implemented with or without inductors in the output path” would somehow “frustrate the basic purpose.” *Id.* One of skill in the art would have understood that including “inductors” in a “conduction path” of a system that can be implemented *with* such “inductors” in the “conduction path” (or not) would not frustrate the basic purpose of the system at least because the system would have been known to operate with or without the inductors.

Patent Owner argues that Dr. Steigerwald’s testimony is incorrect because of an alleged “suspect nature of Dr. Steigerwald’s memory and his lack of first-hand knowledge.” PO Resp. Br. 8. We are not persuaded by Patent Owner’s argument of the supposed unreliability of Dr. Steigerwald’s testimony at least because of insufficient evidence on the record of specific problems with Dr. Steigerwald’s “memory” or “first-hand knowledge” with respect to the presence or absence of “inductors” in a “conduction path” of Dr. Steigerwald’s invention. For example, the noted passages of Dr. Steigerwald’s deposition (Deposition of Robert L. Steigerwald (October 28, 2013) (“Steigerwald Deposition”)) indicate (1) his memory was “vague” related to what he “did . . . as opposed to his co-authors” related to the ’539 and ’090 patents (Steigerwald Deposition 121, *noted in* PO Resp. Br. 6) and (2) he never built the circuit described in the ’090 patent (Steigerwald Deposition 190, *noted in* PO Resp. Br. 6) but not that he has no knowledge related to inductors in a conduction path.

Patent Owner argues that the switching regulators of Pressman would have included inductance and that claim 1 of Steigerwald ’090/’539 recites

one embodiment of a power system that does not include “an inductor in its conduction path . . . in which limitation (1), (d), (e), (h), (j), and (k) each specifically recites a ‘path lacking inductors’” (PO Resp. Br. 8). However, Patent Owner does not sufficiently demonstrate that Steigerwald ’090/’539 also discloses that the presence of inductance in an output path would somehow “frustrate” the system. In fact, claim 1 of Steigerwald ’539 (incorporated by reference into Steigerwald ’090) does *not* recite an absence of inductors.

Also, in actuality, Steigerwald ’539 (incorporated by reference into Steigerwald ’090) explicitly discloses that prior art power systems include an “energy-storage capacitor C_{out} , having an equivalent series resistance ESR and an equivalent series inductance ESL associated therewith.” Steigerwald ’539 2:49–52. Hence, Steigerwald ’539 (incorporated by reference into Steigerwald ’090) discloses the *presence* of “inductance” in prior art systems and does not disclose the preclusion of all inductance in its conduction path, as Patent Owner appears to contend.

Additionally, Steigerwald ’539 (incorporated by reference by Steigerwald ’090) discloses an embodiment in which an output path includes an “energy-storage capacitance” and “ESL [i.e., series inductance] of the energy-storage capacitor C_e .” Steigerwald ’539 3:50, 61–62. Here again we note that, contrary to Patent Owner’s argument, Steigerwald ’539 does not disclose the absence of inductance or that the presence of any inductance would have somehow “frustrated” the power system. On the contrary, Steigerwald ’539 discloses the *presence* of inductance and does *not* disclose frustrating the system based on the presence of the inductance.

We also note that Pressman discloses a switching regulator that operates at a frequency range such that “inductors . . . are small.” Pressman 289. Patent Owner does not demonstrate sufficiently that the “small” inductor of Pressman is large enough to, in fact, “frustrate” the system of Steigerwald ’090/’539 that itself includes inductance. Given the evidence, one of skill in the art would have understood that the “small” inductor of Pressman would have been sufficiently “small” to avoid any problems of “frustration” in Steigerwald ’090/’539, especially because Steigerwald ’090/’539 explicitly discloses embodiments that includes the presence of inductance without “frustration.”

Upon reconsideration of this issue based at least on the fact that (a) Steigerwald ’539 (i) discloses the presence of inductance in the output path that does not “frustrate” the system and (ii) does not recite in its claims a limitation of the absence of inductance and (b) Dr. Steigerwald’s testimony that the system may or may not include inductors in an output path, we conclude that the “basic purpose” of the power system of Steigerwald ’090/’539 would not be “frustrated” by the presence of inductance in the output path (even assuming that switching regulators of Pressman would have somehow included inductance, as Patent Owner alleges). Thus, we agree that it would have been obvious to one of ordinary skill in the art to have combined a known DC power system using a known regulator (Steigerwald ’090/’539) with Pressman’s teaching of a known switching regulator (of Pressman), which is known to be used in known dc power systems, to achieve the predictable and expected result of a known dc power system performing its known function with a known switching regulator.

The Federal Circuit further instructs us to provide “analysis of whether there is a nexus between the secondary considerations evidence and the switching regulators at issue . . . for proposed rejections V-VI.” *Vicor Corp.*, 869 F.3d at 1324. This issue was previously discussed above in reference to Rejections III–IV. For example, as noted above, Patent Owner argues that the “IBA” architecture, as recited in the disputed claims, is the reason for each of the alleged objective indicia of non-obviousness – e.g., commercial success, praise in the industry, etc. However, as also explained above, the Federal Circuit has held that the “IBA” architecture (i.e., the alleged “nexus” between the claimed invention and the cited objective indicia of non-obviousness) is anticipated by the combined (single) Steigerwald ’090/’539 reference. It would not make logical sense to conclude that an “IBA” system disclosed by Steigerwald ’090/’539 was somehow *not* disclosed by Steigerwald ’090/’539 because Patent Owner’s *subsequent* “IBA” system allegedly enjoyed commercial success, praise, or widespread use in the industry. All evidence of secondary considerations stem from what was known in the prior art (i.e., Steigerwald ’090/’539) so that there can be no nexus. *See Tokai Corp.*, 632 F.3d at 1369.

Therefore, we reverse the Examiner’s non-adoption of the rejection of claims 1, 2, 4, 11, and 12 under 35 U.S.C. § 103(a) over Steigerwald ’090 (incorporating Steigerwald ’539) and Pressman (“Rejection V”) and claims 3, 5–10, and 13–15 under 35 U.S.C. § 103(a) over Steigerwald ’090 (incorporating Steigerwald ’539), Pressman, and Cruz (“Rejection VI”).

Rejections I-II

The above discussion addresses all the claims on appeal and are dispositive, rendering it unnecessary to reach the propriety of any remaining contentions. *See Beloit Corp. v. Valmet Oy*, 742 F.2d 1421, 1423 (Fed. Cir. 1984); *see also Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999); *In re Gleave*, 560 F.3d 1331, 1338 (Fed. Cir. 2009).

DECISION

We reverse the Examiner's non-adoption of the rejection of claims 1–4, 11, and 12 under 35 U.S.C. § 103(a) over JP '446, Steigerwald '539, and Kassakian (Rejection III); claims 5–10 and 13–15 under 35 U.S.C. § 103(a) over JP '446, Steigerwald '539, Kassakian, and Cruz (Rejection IV); claims 1, 2, 4, 11, and 12 under 35 U.S.C. § 103(a) over Steigerwald '090 (incorporating Steigerwald '539) and Pressman (Rejection V); and claims 3, 5–10, and 13–15 under 35 U.S.C. § 103(a) over Steigerwald '090 (incorporating Steigerwald '539), Pressman, and Cruz (Rejection VI).

Pursuant to 37 C.F.R. § 41.77(a), the above-noted reversal constitutes a new ground of rejection. Section § 41.77(b) provides that “[a] new ground of rejection . . . shall not be considered final for judicial review.” That section also provides that Patent Owner, **WITHIN ONE MONTH FROM THE DATE OF THE DECISION**, must exercise one of the following two options with respect to the new grounds of rejection to avoid termination of the appeal proceeding as to the rejected claims:

- (1) *Reopen prosecution*. The owner may file a response requesting reopening of prosecution before the examiner. Such a response must be either an amendment of the claims so

rejected or new evidence relating to the claims so rejected, or both.

(2) *Request rehearing.* The owner may request that the proceeding be reheard under § 41.79 by the Board upon the same record. The request for rehearing must address any new ground of rejection and state with particularity the points believed to have been misapprehended or overlooked in entering the new ground of rejection and also state all other grounds upon which rehearing is sought.

In accordance with 37 C.F.R. § 41.79(a)(1), the “[p]arties to the appeal may file a request for rehearing of the decision within one month of the date of: . . . [t]he original decision of the Board under § 41.77(a).” A request for rehearing must be in compliance with 37 C.F.R. § 41.79(b). Comments in opposition to the request and additional requests for rehearing must be in accordance with 37 C.F.R. § 41.79(c)–(d), respectively. Under 37 C.F.R. § 41.79(e), the times for requesting rehearing under paragraph (a) of this section, for requesting further rehearing under paragraph (c) of this section, and for submitting comments under paragraph (b) of this section may not be extended.

An appeal to the United States Court of Appeals for the Federal Circuit under 35 U.S.C. §§ 141–144 and 315 and 37 C.F.R. § 1.983 for an *inter partes* reexamination proceeding “commenced” on or after November 2, 2002, may not be taken “until all parties’ rights to request rehearing have been exhausted, at which time the decision of the Board is final and appealable by any party to the appeal to the Board.” 37 C.F.R. § 41.81. *See also* MPEP § 2682 (8th ed., Rev. 8, July 2010).

Appeal 2015-004509
Reexamination Control 95/001,861
Patent 8,023,290 B2

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

Requests for extensions of time in this *inter partes* reexamination proceeding are governed by 37 C.F.R. § 1.956. *See* 37 C.F.R. § 41.79.

REVERSED
37 C.F.R. § 41.77(b)

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