

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

M2M SOLUTIONS LLC,
a Delaware limited liability company,

Plaintiff,

v.

AMAZON.COM, INC.,
a Delaware corporation,

Defendant.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff M2M Solutions LLC (“M2M Solutions”) brings this action for patent infringement under the laws of the United States relating to patents, 35 U.S.C. §§ 1 *et seq.*, against Defendant Amazon.com, Inc. (“Amazon.com”), hereby alleging as follows:

THE PARTIES

1. Plaintiff M2M Solutions is a limited liability company organized and existing under the laws of the State of Delaware, having a principal place of business at 4878 Kearneysville Pike, Shepherdstown, West Virginia 25443-4861.

2. Upon information and belief, Defendant Amazon.com is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 410 Terry Avenue North, Seattle, Washington 98109-5210. Upon information and belief, Amazon.com has appointed Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808 as its registered agent for service of process.

JURISDICTION AND VENUE

3. This Court has exclusive subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States.

4. Amazon.com has elected, upon information and belief, to incorporate under Delaware law and it has thereby acquiesced to personal jurisdiction in the courts of the State of Delaware. Upon further information and belief, Amazon.com has also submitted to the personal jurisdiction of this Court by committing the acts described below that establish its legal presence within the State of Delaware, including by purposefully directing the supply of services to Delaware residents, and/or contracting to do the same, wherein the provision of such services has involved and necessitated Amazon.com's unauthorized and infringing practicing and use of the claimed inventions of the Patents-in-Suit. Moreover, upon information and belief, in conjunction with it selling or otherwise causing digital e-reader devices and e-reader software applications to be made available to Delaware residents, Amazon.com has actively and knowingly induced Delaware residents to make unauthorized and infringing use of the claimed inventive systems of the Patents-in-Suit, and/or it has knowingly contributed to the same, by disseminating or making available within this judicial district promotional and marketing materials, instructional materials, product user's guides, and technical materials and assistance that illustrate and advocate such infringing use. By virtue of its above-described actions, while engaging in the unauthorized and infringing practicing and use of the claimed inventions of the Patents-in-Suit, Amazon.com has transacted business, performed services, contracted to supply services, caused tortious injury, regularly done or solicited business, and/or engaged in a persistent course of conduct within the State of Delaware, and it has additionally derived substantial revenues from or as the result of products, digital content, and infringing services used or consumed in Delaware. In light of Amazon.com's aforementioned contacts with the State of Delaware and its

purposeful availment of the rights and benefits of Delaware law, maintenance of this suit would not offend traditional notions of fair play and substantial justice.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), (c), and (d) and 1400(b) because, *inter alia*, a substantial part of the events or omissions giving rise to the claim occurred in this judicial district, Amazon.com is subject to personal jurisdiction in and therefore resides in this judicial district, and Amazon.com has committed acts of patent infringement and has a regular presence in this judicial district.

THE PATENTS-IN-SUIT

6. On August 6, 2013, United States Patent No. 8,504,007 (the “’007 Patent”), entitled “System And Method For Remote Asset Management,” was duly and legally issued by the United States Patent and Trademark Office to inventor Philip Bernard Wesby. M2M Solutions is the sole owner by assignment of the entire rights, title, and interest in and to the ’007 Patent, including the rights to sue on and recover damages for any past, current, or future infringements thereof. A true and correct copy of the ’007 Patent is attached hereto as Exhibit A.

7. On November 5, 2013, United States Patent No. 8,577,358 (the “’358 Patent”), entitled “System And Method For Remote Asset Management,” was duly and legally issued by the United States Patent and Trademark Office to inventor Philip Bernard Wesby. M2M Solutions is the sole owner by assignment of the entire rights, title, and interest in and to the ’358 Patent, including the rights to sue on and recover damages for any past, current, or future infringements thereof. A true and correct copy of the ’358 Patent is attached hereto as Exhibit B.

8. On November 5, 2013, United States Patent No. 8,577,359 (the “’359 Patent” and collectively with the ’007 and ’358 Patents, the “Patents-in-Suit”), entitled “System And Method For Remote Asset Management,” was duly and legally issued by the United States Patent and Trademark Office to inventor Philip Bernard Wesby. M2M Solutions is the sole owner by

assignment of the entire rights, title, and interest in and to the '359 Patent, including the rights to sue on and recover damages for any past, current, or future infringements thereof. A true and correct copy of the '359 Patent is attached hereto as Exhibit C .

9. The Patents-in-Suit are each continuation patents within M2M Solutions' Remote Asset Management patent family that share a common patent specification and a common priority date of May 21, 2002. By way of background, this Remote Asset Management family is comprised of a series of seminal patents issued in the wireless machine-to-machine ("M2M") communications space that collectively have thus far been forwardly cited more than 500 times in other patents and published applications prosecuted in related fields of art before the United States Patent and Trademark Office. In general, wireless M2M applications have historically involved systems in which various types of technical equipment wirelessly connected to communications networks have been monitored, and to varying degrees managed, by remote computer server platforms. More recently, wireless M2M systems have come to be known in common parlance as "Internet of Things" applications.

10. The shared specification of the Patents-in-Suit discloses a multitude of different inventions consisting in part of novel and improved types of wireless M2M systems which, among other things, operate with greater efficiency than had the predecessor systems previously known in the prior art. Such increased efficiency is attributable in part to better utilization of the telecommunications network infrastructure that had then been recently implemented at the time of the patent priority date by newly orienting M2M systems around certain advantageous types of wireless packet switched data messaging communications. Moreover, such increased efficiency is also partly the result of according a relatively greater degree of autonomy to M2M systems that could now perform their operations automatically and in accordance with pre-

programmed conditions rather than requiring the contemporaneous involvement of a human being to direct those operations to occur. As such, any need for contemporaneous communications or interactions between a human being and components of the M2M system could either be eliminated or significantly decreased.

11. The claims of the Patents-in-Suit as asserted herein are directed to one particular variant of the novel and improved wireless M2M systems described above in which additional technological modifications and improvements have been made to the claimed system so as to provide it with the unconventional capability of serving as a consumer services platform for delivering valuable technology-based services to owners of consumer device assets. Indeed, these claimed technological enhancements supply a new and useful application for wireless M2M systems in which they can function for the first time as consumer services platforms for consumer device assets, thereby effecting a transformation in the previously known conventional capacity of wireless M2M systems that was limited to remotely monitoring and sometimes managing technical equipment (*i.e.*, “industrial assets”). As a person of ordinary skill in the art would appreciate, such an application is *new* in the sense that it is achieved through recitation in the asserted claims of a specific, non-generic ordered combination of steps or elements that had never formerly existed in the prior art. Moreover, a person of ordinary skill in the art would further appreciate that such an application is also *new* in the additional sense that it involves a unique deployment of wireless M2M systems to achieve entirely new purposes and ends.

12. The asserted claims of the Patents-in-Suit are narrowly drawn and circumscribed to cover one specific type of wireless M2M system capable of serving as a consumer services platform for consumer device assets while principally operating autonomously and utilizing wireless packet switched data messaging communications. For example, as recited in

representative claims 10 and 27 from each of the Patents-in-Suit, the claimed system utilizes a remote computer server platform for remotely monitoring and managing only one particular type of consumer device assets wirelessly connected to communications networks -- viz., assets having operating system and application software, nonvolatile memory for storing files of data content for display to a consumer user of the device, and a display apparatus for displaying the stored data content. Within the claimed system, the computer server platform provides only one specific type of technology-based consumer service which consists of causing the stored data content files of one or more of the consumer device assets to be automatically modified in a manner that would be desirable or beneficial to their consumer users. Moreover, the claimed system features further specific technological modifications and improvements that enable its computer server platform to provide this consumer service in one discrete manner that includes two different recited operations. First, the computer server platform is able to remotely receive and process consumer usage information indicative of how consumers have made use of the assets, and on that basis to generate wireless management instructions for causing the above-described automatic modifications to be made to those assets, thereby transforming their state. Second, the computer server platform is capable of storing and processing consumer preference information indicative of preferences that consumers have for particular data content files, and on that additional basis to likewise effectuate such automatic modifications.

13. With regard to representative claim 27 in particular from each of the Patents-in-Suit, the claimed wireless M2M system features an additional technological modification and improvement whereby the remote computer server platform has been enabled to send special purpose wireless SMS data messages to one or more of the consumer device assets for causing said assets to power up from a powered down state, thereby facilitating the exchange of further

communications between the computer server platform and the assets relevant to providing the claimed type of technology-based consumer services.

14. Upon information and belief, Amazon.com has had actual and/or constructive knowledge of the existence of each of the Patents-in-Suit since a date as yet unknown prior to the filing of this Complaint. In addition, Amazon.com will receive further confirmatory notice as to the existence of each of the Patents-in-Suit upon the service of this Complaint by M2M Solutions at one or more of the addresses referenced herein, contemporaneous with this filing.

**AMAZON.COM'S INFRINGING OPERATION OF
ITS KINDLE E-READER ECOSYSTEM**

15. Amazon.com operates an infringing wireless M2M system that serves as a consumer services platform (called "Whispernet") for providing technology-based services to users of consumer device assets consisting of Kindle e-reader devices, Fire tablets running preloaded Kindle reading applications software, and/or other non-Amazon smart phones, tablets, and computers running Kindle reading applications software (collectively, "Kindle e-reader devices"). Hereinafter, this infringing system shall be referred to as Amazon.com's "Kindle e-reader ecosystem." The Kindle e-reader ecosystem comprises a remote computer server platform that Amazon.com operates so as to remotely monitor and manage the Kindle e-reader devices which are wirelessly connected to a cellular mobile telecommunications network and/or to the Internet. For all relevant purposes, the Kindle e-reader ecosystem operates in an autonomous fashion and relies upon wireless packet switched data message as its principal form of communications between the remote computer server platform and the Kindle e-reader devices.

16. Within the Kindle e-reader ecosystem, Amazon.com's remote computer server platform receives and monitors consumer usage information indicative of how consumers have

made use of their Kindle e-reader devices. Such information includes data relating to the “Annotations” (*e.g.*, notes, highlights, bookmarks); “Last Page Read” (including analogous data for voice, videos, and gaming); “Cloud Collections;” “Popular Highlights;” and/or the “About This Book” features of the Kindle e-reader devices. On the basis of processing some or all of this information in accordance with its so-called “Whispersync” functionality, the computer server platform generates wireless management instructions that cause automatic modifications deemed desirable and beneficial to consumer users to be made to the display data content files stored in nonvolatile memory on one or more of the Kindle e-reader devices. The computer server platform also stores consumer preference information that includes data reflecting consumer subscriptions to periodicals and blogs; follower designations relative to other Kindle users; digital content purchase, review and reading histories; and/or favorite genres and ratings histories. On the further basis of processing some or all of such information, the computer server platform generates additional wireless management instructions that cause other automatic modifications deemed desirable and beneficial to consumers to be made to the display data content files stored in nonvolatile memory on one or more of the Kindle e-reader devices, including modifications relevant to the “Public Notes” and/or to the “About This Book” features of those devices.

17. When operating as part of the Kindle e-reader ecosystem, Amazon.com’s remote computer server platform is capable of sending special purpose wireless SMS data messages to those Kindle e-reader devices having cellular wireless connectivity for causing them to awaken and power up from a suspended sleep state, thereby facilitating an exchange of further communications that will allow for the computer server platform to cause the types of automatic

modifications recited in the Patents-in-Suit to be made to the display data content files stored in nonvolatile memory on one or more of the Kindles.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 8,504,007

18. M2M Solutions realleges and incorporates by reference each and every allegation of Paragraphs 1-17 above as if fully set forth herein.

19. Amazon.com has directly infringed, and continues to directly infringe, one or more claims of the '007 Patent under 35 U.S.C. § 271(a), either literally and/or under the doctrine of equivalents, by without authority making, using, offering for sale, and/or selling within the United States, and/or importing into the United States, its Kindle e-reader ecosystem which embodies and/or practices the inventions of one or more claims of the '007 Patent. In the alternative and upon information and belief, Amazon.com is vicariously liable for such direct infringement by exercising control or direction over an as yet unknown third party pursuant to a principal-agent relationship, a contractual relationship, a joint enterprise, or other like arrangement wherein that third party has without authority engaged in making, using, offering for sale, and/or selling within the United States, and/or importing into the United States, said Kindle e-reader ecosystem which embodies and/or practices the inventions of one or more claims of the '007 Patent.

20. Amazon.com has had actual and/or constructive knowledge of the existence of the '007 Patent since not later than the date upon which it received service of this Complaint or, upon information and belief, since an even earlier date as yet unknown. With knowledge of the '007 Patent, Amazon.com has indirectly infringed, and continues to indirectly infringe, one or more claims thereof under 35 U.S.C. § 271(b) through the active inducement of direct infringement by intending to encourage, and in fact encouraging, its customers to without

authority make and/or use the Kindle e-reader ecosystem within the United States in an infringing manner. Amazon.com has actively induced such direct infringement by, *inter alia*, (i) selling or otherwise causing Kindle e-reader devices, Fire tablets, and/or Kindle e-reader software applications to be made available to its customers; (ii) making available the use of its Kindle e-reader ecosystem to its customers; and (iii) disseminating or making available to its customers promotional and marketing materials, instructional materials, product user's guides, and technical materials and assistance that illustrate and advocate infringing uses of the Kindle e-reader ecosystem. Upon information and belief, Amazon.com has performed the acts that constitute inducement of infringement with the knowledge or willful blindness that the acts induced thereby would constitute direct infringement by its customers.

21. Amazon.com has also indirectly infringed, and continues to indirectly infringe, one or more claims of the '007 Patent under 35 U.S.C. § 271(c) by making, selling, offering for sale, using, making available for use, and/or importing its Kindle e-reader ecosystem, and/or the ecosystem's component remote computer server platform, and/or the ecosystem's component Kindle e-reader devices, Fire tablets, and/or Kindle e-reader software applications, within or into the United States knowing that those products, apparatuses, or systems are especially made or especially adapted for use in direct infringements of the '007 Patent by its customers, and knowing that those items are not a staple article or commodity of commerce suitable for substantial non-infringing use.

22. Upon information and belief, Amazon.com's acts of infringing the '007 Patent have been willful and undertaken in knowing and deliberate disregard of M2M Solutions' patent rights.

23. M2M Solutions has been and continues to be damaged by Amazon.com's infringements of the '007 Patent in an amount to be determined at trial.

24. M2M Solutions has suffered irreparable injury for which there is no adequate remedy at law, and will continue to suffer such irreparable injury, unless Amazon.com's infringements of the '007 Patent are enjoined by this Court.

25. Upon information and belief, Amazon.com's willful infringements, together with its other potential conduct in this action, have or will render this case exceptional under 35 U.S.C. § 285 and thereby entitle M2M Solutions to recovery of its attorneys' fees and costs incurred in prosecuting this action.

COUNT II
INFRINGEMENT OF U.S. PATENT NO. 8,577,358

26. M2M Solutions realleges and incorporates by reference each and every allegation of Paragraphs 1-25 above as if fully set forth herein.

27. Amazon.com has directly infringed, and continues to directly infringe, one or more claims of the '358 Patent under 35 U.S.C. § 271(a), either literally and/or under the doctrine equivalents, by without authority using its Kindle e-reader ecosystem, and/or using the remote computer server platform component of that ecosystem, in an infringing manner that practices the inventions of one or more claims of the '358 Patent. In the alternative and upon information and belief, Amazon.com is vicariously liable for such direct infringement by exercising control or direction over the practicing, in whole or in part, of the inventions of one or more claims of the '358 Patent through the infringing use of its Kindle e-reader ecosystem, and/or the infringing use of the remote computer server platform component of that ecosystem, by an as yet unknown third party pursuant to a principal-agent relationship, a contractual relationship, a joint enterprise, or other like arrangement.

28. Amazon.com has had actual and/or constructive knowledge of the existence of the '358 Patent since not later than the date upon which it received service of this Complaint or, upon information and belief, since an even earlier date as yet unknown. With knowledge of the '358 Patent, Amazon.com has indirectly infringed, and continues to indirectly infringe, one or more claims thereof under 35 U.S.C. § 271(b) through the active inducement of direct infringement by intending to encourage, and in fact encouraging, an as yet unknown third party to without authority use its Kindle e-reader ecosystem, and/or use the remote computer server platform component of that ecosystem, within the United States in an infringing manner that practices the inventions of one or more claims of the '358 Patent. Amazon.com has actively induced direct infringement by, *inter alia*, (i) selling or otherwise causing to be made available Kindle e-reader devices, Fire tablets, and/or Kindle e-reader software applications; (ii) making available the use of its Kindle e-reader ecosystem and/or the remote computer server platform of that ecosystem; and (ii) disseminating or making available promotional and marketing materials, instructional materials, product user's guides, and technical materials and assistance that illustrate and advocate infringing uses of the Kindle e-reader ecosystem and/or the remote computer server platform component of that ecosystem. Upon information and belief, Amazon.com has performed the acts that constitute inducement of infringement with the knowledge or willful blindness that the acts induced thereby would constitute direct infringement by its customers.

29. Amazon.com has also indirectly infringed, and continues to indirectly infringe, one or more claims of the '358 Patent under 35 U.S.C. § 271(c) by making, selling, offering for sale, using, making available for use, and/or importing its Kindle e-reader ecosystem, and/or the ecosystem's component remote computer server platform, and/or the ecosystem's component

Kindle e-reader devices, Fire tablets, and/or Kindle e-reader software applications, within or into the United States knowing that those products, apparatuses, or systems are especially made or especially adapted for use in direct infringements of the '358 Patent by as yet unknown third parties, and knowing that those items are not a staple article or commodity of commerce suitable for substantial non-infringing use.

30. Upon information and belief, Amazon.com's acts of infringing the '358 Patent have been willful and undertaken in knowing and deliberate disregard of M2M Solutions' patent rights.

31. M2M Solutions has been and continues to be damaged by Amazon.com's infringements of the '358 Patent in an amount to be determined at trial.

32. M2M Solutions has suffered irreparable injury for which there is no adequate remedy at law, and will continue to suffer such irreparable injury, unless Amazon.com's infringements of the '358 Patent are enjoined by this Court.

33. Upon information and belief, Amazon.com's willful infringements, together with its other potential conduct in this action, have or will render this case exceptional under 35 U.S.C. § 285 and thereby entitle M2M Solutions to recovery of its attorneys' fees and costs incurred in prosecuting this action.

COUNT III
INFRINGEMENT OF U.S. PATENT NO. 8,577,359

34. M2M Solutions realleges and incorporates by reference each and every allegation of Paragraphs 1-33 above as if fully set forth herein.

35. Amazon.com has directly infringed, and continues to directly infringe, one or more claims of the '359 Patent under 35 U.S.C. § 271(a), either literally and/or under the doctrine of equivalents, by without authority making, using, offering for sale, and/or selling

within the United States, and/or importing into the United States, the remote computer server platform component of its Kindle e-reader ecosystem which embodies and/or practices the inventions of one or more claims of the '359 Patent. In the alternative and upon information and belief, Amazon.com is vicariously liable for such direct infringement by exercising control or direction over an as yet unknown third party pursuant to a principal-agent relationship, a contractual relationship, a joint enterprise, or other like arrangement wherein that third party has without authority engaged in making, using, offering for sale, and/or selling within the United States, and/or importing into the United States, the remote computer server platform component of said Kindle e-reader ecosystem which embodies and/or practices the inventions of one or more claims of the '359 Patent.

36. Amazon.com has had actual and/or constructive knowledge of the existence of the '359 Patent since not later than the date upon which it received service of this Complaint or, upon information and belief, since an even earlier date as yet unknown. With knowledge of the '359 Patent, Amazon.com has indirectly infringed, and continues to indirectly infringe, one or more claims thereof under 35 U.S.C. § 271(b) through the active inducement of direct infringement by intending to encourage, and in fact encouraging, an as yet unknown third party to without authority make and/or use the remote computer sever platform component of it Kindle e-reader ecosystem within the United States, or to import said platform into the United States, in an infringing manner. Amazon.com has actively induced such direct infringement by, *inter alia*, (i) selling or otherwise causing to be made available Kindle e-reader devices, Fire tablets, and/or Kindle e-reader software applications; (ii) making available the use of its Kindle e-reader ecosystem and/or the remote computer server platform of that ecosystem; and (ii) disseminating or making available promotional and marketing materials, instructional materials, product user's

guides, and technical materials and assistance that illustrate and advocate infringing uses of the remote computer server platform component of its Kindle e-reader ecosystem. Upon information and belief, Amazon.com has performed the acts that constitute inducement of infringement with the knowledge or willful blindness that the acts induced thereby would constitute direct infringement by its customers.

37. Amazon.com has also indirectly infringed, and continues to indirectly infringe, one or more claims of the '359 Patent under 35 U.S.C. § 271(c) by making, selling, offering for sale, using, making available for use, and/or importing its Kindle e-reader ecosystem, and/or the ecosystem's component remote computer server platform, and/or the ecosystem's component Kindle e-reader devices, Fire tablets, and/or Kindle e-reader software applications, within or into the United States knowing that those products, apparatuses, or systems are especially made or especially adapted for use in direct infringements of the '359 Patent by as yet unknown third parties, and knowing that those items are not a staple article or commodity of commerce suitable for substantial non-infringing use.

38. Upon information and belief, Amazon.com's acts of infringing the '359 Patent have been willful and undertaken in knowing and deliberate disregard of M2M Solutions' patent rights.

39. M2M Solutions has been and continues to be damaged by Amazon.com's infringements of the '359 Patent in an amount to be determined at trial.

40. M2M Solutions has suffered irreparable injury for which there is no adequate remedy at law, and will continue to suffer such irreparable injury, unless Amazon.com's infringements of the '359 Patent are enjoined by this Court.

41. Upon information and belief, Amazon.com's willful infringements, together with its other potential conduct in this action, have or will render this case exceptional under 35 U.S.C. § 285 and thereby entitle M2M Solutions to recovery of its attorneys' fees and costs incurred in prosecuting this action.

PRAYER FOR RELIEF

WHEREFORE, M2M Solutions respectfully requests that this Court enter a judgment in its favor and against Amazon.com as follows:

(a) Declaring that Amazon.com has directly infringed, induced others to infringe, and/or committed acts of contributory infringement with regard to one or more claims of the Patents-in-Suit;

(b) Awarding damages adequate to fully compensate M2M Solutions within the meaning of 35 U.S.C. § 284 for the past acts of infringement committed by Amazon.com, as well as any applicable prejudgment and post-judgment interest thereon at the maximum rates allowed by law;

(c) Awarding an accounting and supplemental damages adequate to fully compensate M2M Solutions within the meaning of 35 U.S.C. § 284 for any continuing or future acts of infringement committed by Amazon.com subsequent to the discovery cut-off date in this action, as well as any applicable prejudgment and post-judgment interest thereon at the maximum rates allowed by law;

(d) Awarding treble or otherwise enhanced damages to M2M Solutions pursuant to 35 U.S.C. § 284 for the acts of willful infringement committed by Amazon.com, as well as any applicable prejudgment and post-judgment interest thereon at the maximum rates allowed by law;

(e) Declaring that this action is exceptional within the meaning of 35 U.S.C. § 285, and concomitantly awarding M2M Solutions its attorneys' fees as the prevailing party in this action, as well as any applicable prejudgment and post-judgment interest thereon at the maximum rates allowed by law;

(f) Awarding M2M Solutions its costs and expenses incurred in this action;

(g) Ordering that Amazon.com and its parents, subsidiaries, affiliates, successors, predecessors, assigns, and the officers, directors, agents, servants and employees of each of the foregoing, customers and/or licensees, and those persons acting in concert or participation with any of them, be preliminarily and permanently enjoined and restrained from continued infringement, including but not limited to using, making, offering for sale, and/or selling within the United States, and/or importing into the United States, any system or apparatus intended to, or reasonably capable of being used in a manner that would, embody and/or practice the inventions of one or more claims of Patents-in-Suit, and from contributing to and/or inducing the infringement by others of the Patents-in-Suit, at all times prior to their respective expirations, including any extensions thereof; and

(h) Awarding any further relief to M2M Solutions that this Court deems just and proper.

DEMAND FOR JURY TRIAL

M2M Solutions demands a jury trial as to all issues arising in this action that are so triable.

February 28, 2017

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