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12 Attorneys for Plaintiff and Counterdefendant
13 DRIVECAM, INC.

14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

16 DRIVECAM, INC.,

17 Plaintiff,

18 v.

19 SMARTDRIVE SYSTEMS, INC.,

20 Defendant.

21 SMARTDRIVE SYSTEMS, INC.,

22 Counterclaimant,

23 v.

24 DRIVECAM, INC.

25 Counterdefendant.

Case No. 3:11-cv-00997-H -RBB

**AMENDED COMPLAINT FOR PATENT
INFRINGEMENT, TRADE SECRET
MISAPPROPRIATION, UNFAIR
COMPETITION AND CONVERSION**

JURY TRIAL DEMANDED

1 Plaintiff DriveCam, Inc. (“DriveCam”), a Delaware corporation, by and through its attorneys
2 states as follows:

3 **NATURE OF THE ACTION**

4 1. This is an action brought by DriveCam against SmartDrive Systems, Inc. (“SmartDrive”)
5 for infringement of U.S. Patent Nos. 6,389,340 (“the ’340 patent”), 7,804,426 (“the ’426 patent”) and
6 7,659,827 (“the ’827 patent”) (collectively, “the Asserted Patents”) as well as for trade-secret
7 misappropriation under the California Uniform Trade Secrets Act, California Civil Code §§ 3426 *et seq*
8 (“Cal. UTSA”), conversion, and unfair competition, California Business & Professions Code §§ 17200 *et*
9 *seq.*

10 **PARTIES**

11 2. Plaintiff DriveCam is a Delaware corporation with a principal place of business at 8911
12 Balboa Avenue, San Diego, CA 92123.

13 3. Defendant SmartDrive is a Delaware corporation with its principal place of business at
14 9276 Scranton Road, Suite 500, San Diego, CA 92121.

15 **JURISDICTION AND VENUE**

16 4. This is an action arising under the patent laws of the United States. Accordingly, this
17 Court has subject matter jurisdiction pursuant to 28 USC §1331 and §1338(a). In addition, SmartDrive
18 has admitted in its Answer and Counterclaims (Docket No. 7, ¶ 4) that this Court has subject matter
19 jurisdiction over DriveCam’s patent claims.

20 5. This Court has original jurisdiction over DriveCam’s claims under the California UTSA,
21 for conversion, and under the unfair competition law pursuant to 28 U.S.C. § 1338(b) because those
22 unfair competition state-law claims are related to the claims under the patent laws. Alternatively, this
23 Court has supplemental jurisdiction over the related state-law claims pursuant to 28 U.S.C. § 1367(a)
24 because those state-law claims form part of the same case or controversy and derive from a common
25 nucleus of operative fact as DriveCam’s patent claims.

26 6. This Court has personal jurisdiction over Defendant SmartDrive. Defendant’s
27 headquarters and principal place of business is in this District. In addition, on information and belief,
28 Defendant has transacted business and supplied goods and services in this District, purposely availed

1 itself of the privileges and benefits of the laws of this State, and committed acts of patent infringement
2 and trade-secret misappropriation during the course of its business in this District. Personal jurisdiction
3 and venue are therefore proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b). In addition,
4 SmartDrive has admitted in its Answer and Counterclaims (Docket No. 7, ¶ 5) that this Court has
5 personal jurisdiction over it.

6 7. DriveCam is also headquartered, and has its business operations, in this District. And
7 SmartDrive has admitted these facts in its Answer and Counterclaims (Docket No. 7, ¶ 6).

8 **FACTUAL BACKGROUND**

9 8. Each year over \$230 billion is spent on collision claims. And driving remains the leading
10 cause of death among professions and teens 16-17 years old (as tracked by the Bureau of Labor
11 Statistics). Moreover, it is estimated that commercial fleets waste some \$40 billion in fuel expenses
12 every year. The vast majority of this waste is avoidable.

13 9. DriveCam has been a consistent innovator and market leader in the fields of driving safety
14 and efficiency. As far back as 1998 DriveCam pioneered the use of exception-based video to identify the
15 causes of poor driving. Exception-based video involves the use of vehicle-mounted sensors and cameras
16 to detect and record driving behavior for later analysis and coaching. Since introducing the first
17 commercially successful video-event recording devices in 1998, DriveCam has been responsible for a
18 steady stream of innovations. These innovations include the use of specialized triggering algorithms for
19 different types of vehicles, the integration of numerous technologies into its in-vehicle event recorders
20 (including Wi-Fi, CDMA, GSM and GPS), and the development of an end-to-end managed services
21 program that ensures driver improvement by melding DriveCam's proprietary technology with
22 professional event evaluation, scoring, and structured coaching.



10. DriveCam has invested tens of millions of dollars developing the technology embodied in its solution, and has received numerous patents – including the patents at issue here. The patents in suit cover foundational technologies relating to running a video-based driver management service, including the technology to obtain exception based video, to effectively review video based events, and to manage a driver risk program that includes the ranking and scoring of drivers. Taken together, the technology covered by these patents enable fleet managers to dramatically reduce costs associated with risky and inefficient driving.

11. The market has recognized the value of DriveCam’s innovations. DriveCam’s solution has been installed in more than one-hundred and fifty thousand vehicles nationwide. Its customers include some of the largest fleets in the transportation segments DriveCam serves, including solid waste, distribution, and commercial services. All told, DriveCam’s solution has been used to monitor the driving of over 3 billion miles.

12. DriveCam’s solution has also been tested and validated by the Federal Motor Carrier Safety Administration. An FMCSA funded study performed by the VirginiaTech Transportation Institute in 2008 established a 52% reduction in risky driving by drivers using DriveCam’s solution. Because of its efficacy, the DriveCam-sponsored program *Teen Safe Driving* received the National Safety Council

award in 2010. For all of these reasons and more, DriveCam is both the technology and market leader.

13. DriveCam has a responsibility to its investors, clients and employees to vigorously defend its intellectual property rights as it continues to invest in its products and services. It has been forced to bring this action to ensure that its intellectual property is not unfairly exploited.

FIRST CLAIM FOR RELIEF

[Infringement of U.S. Patent No. 6,389,340]

14. Paragraphs 1 through 13 are incorporated by reference as if fully stated herein.

15. DriveCam owns by assignment the entire right, title and interest in and to the '340 patent including the right to bring this suit for damages. The '340 patent issued on May 14, 2002 and is entitled "Vehicle Data Recorder." A true and correct copy of the '340 patent is attached as Exhibit A and incorporated herein by reference.

16. The '340 patent is valid and enforceable under the United States Patent Laws.

17. SmartDrive has directly infringed at least claim 39 of the '340 patent, in violation of 35 U.S.C. § 271 *et seq*, by importing, making, using, offering to sell and selling the SmartRecorder™ System.

18. Additionally, SmartDrive's customers and end users also directly infringe at least claim 39 of the '340 patent, in violation of 35 U.S.C. §271 *et seq*, by using the SmartRecorder™ System which is a vehicle-windshield mounted system for capturing video imagery in response to a triggering event as claimed in the '340 patent. As SmartDrive advises on its website "The SmartRecorder™ System is an innovative Event recording system, capturing comprehensive vehicle data from triggered events."¹ SmartDrive has had knowledge of the '340 patent since either 2004 or 2005 and knowledge that the SmartRecorder™ System is specially made and adapted for infringing the '340 patent, that it is not a staple article or commodity of commerce, and that it has no substantial suitable non-infringing uses. SmartDrive's ongoing importation, manufacture, use, offers to sell and sales of the SmartRecorder™ System with such knowledge therefore contribute to its users' infringement and subject SmartDrive to liability as an indirect infringer.

¹ <http://www.smartdrive.net/howitworks.aspx>

1 19. Similarly, SmartDrive, knowing of the '340 patent, encourages, provides support and
2 instructs its customers and end users to use the SmartRecorder™ System in a manner that infringes at
3 least claim 39 of the '340 patent. SmartDrive has had knowledge of the '340 patent since either 2004 or
4 2005, knowledge that its actions will induce infringement of the '340 patent, knowledge that
5 infringement of the '340 patent will take place, and, upon information and belief, intent that infringement
6 take place. SmartDrive's ongoing inducement with such knowledge and intent therefore further subjects
7 SmartDrive to liability as an indirect infringer.

8 20. SmartDrive has admitted to being aware of the '340 patent since either 2004 or 2005 and
9 has acted with that knowledge, despite an objectively high likelihood that its actions constituted
10 infringement of the '340 patent. SmartDrive's infringement of the '340 patent is willful and deliberate,
11 justifying an increase of damages of up to three times under 35 U.S.C. § 284.

12 21. DriveCam has been and will continue to be irreparably damaged by SmartDrive's
13 infringement of the '340 patent.

14 22. SmartDrive's infringement will continue unless enjoined by this Court.

15 **SECOND CLAIM FOR RELIEF**

16 **[Infringement of U.S. Patent No. 7,804,426]**

17 23. Paragraphs 1 through 22 are incorporated by reference as if fully stated herein.

18 24. DriveCam owns by assignment the entire right, title and interest in and to the '426 patent
19 including the right to bring this suit for damages. The '426 patent issued on September 28, 2010 and is
20 entitled "System and Method for Selective Review of Event Data." A true and correct copy of the '426
21 patent is attached as Exhibit B and incorporated herein by reference.

22 25. The '426 patent is valid and enforceable under the United States Patent Laws.

23 26. SmartDrive has directly infringed at least claim 18 of the '426 patent, in violation of 35
24 U.S.C. §271 *et seq*, by importing, making, using, offering to sell and selling the SmartRecorder™
25 System, the SmartDrive Response Center, SmartDrive Expert Review, and the SmartDrive Event Player
26 (the "Accused Instrumentalities").

27 27. Additionally, SmartDrive's customers and end users also directly infringe at least claim 18
28 of the '426 patent, in violation of 35 U.S.C. §271 *et seq*, by using the Accused Instrumentalities, which

1 allow for the selective reviewing of driving event data captured at an event detector as claimed in the
 2 '426 patent. As SmartDrive advises on its website "SmartDrive makes it easy for fleet, risk, and safety
 3 managers to respond with instant, online access to video clips, interactive reports, easy coaching tools,
 4 and more, through the SmartDrive Response Center™ ... Managers can easily retrieve individual driver
 5 history and video Events to replay and discuss, resulting in objective and prescriptive coaching
 6 sessions."² Upon service of this complaint, if not earlier, SmartDrive will have knowledge of the '426
 7 patent and knowledge that the Accused Instrumentalities are specially made and adapted for infringing
 8 the '426 patent, that they are not staple articles or commodities of commerce, and that they have no
 9 substantial suitable non-infringing uses. SmartDrive's ongoing importation, manufacture, use, offers to
 10 sell and sales of the Accused Instrumentalities with such knowledge therefore contribute to its users'
 11 infringement and subject SmartDrive to liability as an indirect infringer.

12 28. Similarly, SmartDrive encourages, provides support and instructs its customers and end
 13 users to use the Accused Instrumentalities in a manner that infringes at least claim 18 of the '426 patent.
 14 Upon service of this complaint, if not earlier, SmartDrive will have knowledge of the '426 patent,
 15 knowledge that its actions will induce infringement of the '426 patent, knowledge that infringement of
 16 the '426 patent will take place, and, upon information and belief, intent that infringement take place.
 17 SmartDrive's ongoing inducement with such knowledge and intent therefore further subjects SmartDrive
 18 to liability as an indirect infringer.

19 29. DriveCam has been and will continue to be irreparably damaged by SmartDrive's
 20 infringement of the '426 patent.

21 30. SmartDrive's infringement will continue unless enjoined by this Court.

THIRD CLAIM FOR RELIEF

[Infringement of U.S. Patent No. 7,659,827]

24 31. Paragraphs 1 through 30 are incorporated by reference as if fully stated herein.

25 32. DriveCam owns by assignment the entire right, title and interest in and to the '827 patent
 26 including the right to bring this suit for damages. The '827 patent issued on February 9, 2010 and is
 27

28 ² <http://www.smartdrive.net/howitworks.aspx>

1 entitled “System and Method for Taking Risk out of Driving.” A true and correct copy of the ’827 patent
2 is attached as Exhibit C and incorporated herein by reference.

3 33. The ’827 patent is valid and enforceable under the United States Patent Laws.

4 34. SmartDrive has directly infringed at least claim 1 of the ’827 patent, in violation of 35
5 U.S.C. §271 *et seq*, by importing, making, using, offering to sell and selling the SmartRecorder™
6 System, the SmartDrive Response Center, SmartDrive Expert Review and the SmartDrive Event Player
7 (the “Accused Instrumentalities”).

8 35. Additionally, SmartDrive’s customers and end users also directly infringe at least claim 1
9 of the ’827 patent, in violation of 35 U.S.C. §271 *et seq*, by using the Accused Instrumentalities which
10 use driving events captured at a vehicle-based event detector to calculate a driving score as called for in
11 the ’827 patent. Indeed, marketing collateral on SmartDrive’s website shows the calculation and display
12 of driving scores based on captured events.³ Upon service of this complaint, if not earlier, SmartDrive
13 will have knowledge of the ’827 patent and knowledge that the Accused Instrumentalities are specially
14 made and adapted for infringing the ’827 patent, that they are not staple articles or commodities of
15 commerce, and that they have no substantial suitable non-infringing uses. SmartDrive’s ongoing
16 importation, manufacture, use, offers to sell and sales of the Accused Instrumentalities with such
17 knowledge therefore contribute to its users’ infringement and subject SmartDrive to liability as an
18 indirect infringer.

19 36. Similarly, SmartDrive encourages, provides support and instructs its customers and end
20 users to use the Accused Instrumentalities in a manner that infringes at least claim 1 of the ’827 patent.
21 Upon service of this complaint, if not earlier, SmartDrive will have knowledge of the ’827 patent,
22 knowledge that its actions will induce infringement of the ’827 patent, knowledge that infringement of
23 the ’827 patent will take place, and, upon information and belief, intent that infringement take place.
24 SmartDrive’s ongoing inducement with such knowledge and intent therefore further subjects SmartDrive
25 to liability as an indirect infringer.

26 37. DriveCam has been and will continue to be irreparably damaged by SmartDrive’s
27

28 ³ http://www.smartdrive.net/documents/smartdrive%20safety%20data%20sheet_us.pdf at pp.2 and 3.

1 infringement of the '827 patent.

2 38. SmartDrive's infringement will continue unless enjoined by this Court.

3 **FOURTH CLAIM FOR RELIEF**

4 **[Trade Secret Misappropriation]**

5 39. Paragraphs 1 through 38 are incorporated by reference as if fully stated herein.

6 40. As noted previously, as a leading innovator in its market, DriveCam has a long history of
7 technical and business innovation. As a result, DriveCam has (and has had) a large amount of
8 confidential, proprietary and trade-secret information concerning both its business and its technology.

9 41. DriveCam takes reasonable efforts to protect this trade-secret information including both
10 physical security measures, such as maintaining a secure office with sign-in and sign-out procedures, and
11 contractual measures, such as having its employees sign confidentiality agreements as a condition of their
12 employment and not disclosing trade-secret information to third parties without non-disclosure
13 agreements.

14 42. DriveCam's trade secret information derives independent economic value from not being
15 generally known to the public or to other persons who can obtain economic value from its use. For
16 example, DriveCam and SmartDrive compete in offering professional review services, which is where a
17 team of professionals review, score, and annotate recorded driving events. DriveCam trains its reviewers
18 in this highly specialized skill and in DriveCam's proprietary review process which involves not only the
19 review of captured video but also complex analysis of waveform and other captured data. DriveCam's
20 training materials and review processes are highly confidential trade-secrets, which provide a valuable
21 source of competitive differentiation for DriveCam—*i.e.*, by ensuring high quality review services.
22 DriveCam derives substantial economic value from the fact that this information is not generally known
23 to the public or to people (like the employees of SmartDrive) who could obtain economic value from its
24 use. Were DriveCam's competitors to obtain this information, it would enable them to unfairly compete
25 with, and take business away from, DriveCam.

26 43. DriveCam has at all times prominently labeled its proprietary trade secret information—
27 including its training materials and review processes—so as to identify them clearly as confidential and
28 proprietary.

1 44. On Tuesday, July 12, 2011, after DriveCam initiated this action, DriveCam received a
2 submission through its website, a true and correct copy of which is attached hereto as Exhibit D. The
3 submission purported to be from Jason Palmer, the President of SmartDrive. The submission contained
4 the following message:

5 you have a valid concern about your patent being infringed. All the
6 drivecam employees especially Mark Freitas brought your product literature
7 and other DriveCam technology information and openly shared it within the
8 company. You should get interviews with Greg Drew, Dick Davidson,
9 Audley Dean, Brandie Marone, Matt Brunelle, Stephen Chang, Slaven
10 Slivar, Christine Rochefort, Freisas Ballesterias, as a minimum. [sic]

11 45. The primary person named in the tip, Mark Freitas, was the former Director of Product
12 Management at DriveCam. While employed at DriveCam he had access to all of DriveCam's
13 confidential and trade-secret materials relating to development of new products, including customer lists,
14 sales pipelines, product roadmaps and confidential technical information. As a condition of his
15 employment, DriveCam required him to sign a confidentiality agreement that prevented him from
16 divulging DriveCam's confidential and trade-secret information to third parties, including SmartDrive.

17 46. DriveCam has since learned, and alleges on information and belief, that when Mr. Freitas
18 left DriveCam in January 2008 he did, in fact, take DriveCam's confidential and trade-secret materials
19 with him—including at least DriveCam's training materials and information about its review process—
20 and provided them to SmartDrive. DriveCam only provides those training and review materials to
21 customers and subcontractors who have agreed to be bound by confidentiality obligations.

22 47. On information and belief, SmartDrive also obtained DriveCam confidential and trade-
23 secret information from other sources, including David Mitchell, who SmartDrive hired after he left
24 DriveCam in February 2008. As part of his work as a technical support manager and field engineer, Mr.
25 Mitchell had access to DriveCam's confidential and trade secret-materials. Like all DriveCam
26 employees, he also signed an agreement preventing him from disclosing that information to third-parties,
27 including but not limited to SmartDrive. DriveCam has recently learned, and alleges on information and
28 belief, that before he left DriveCam, Mr. Mitchell downloaded a substantial amount of electronic
information that was available to him and took it with him. The information that was available to Mr.
Mitchell would have included customer lists, customer pricing and technical support documents. On

1 information and belief, Mr. Mitchell did in fact take DriveCam trade-secret materials and information
2 with him when he left and provided some of that information to SmartDrive during his employment.

3 48. On information and belief, SmartDrive's efforts to obtain proprietary information about
4 DriveCam's business have even led it to go so far as to schedule meetings with potential customers at
5 around the same time as DriveCam's meetings with the same potential customer and try to glean
6 information from DriveCam's presentations by hiding outside the meeting room and peering through the
7 windows to view DriveCam's presentation.

8 49. DriveCam has further reason to believe that SmartDrive has misused proprietary
9 DriveCam information it obtained from Mr. Freitas, Mr. Mitchell and other sources. SmartDrive has
10 recently incorporated at least one new feature into its products which DriveCam had in development at
11 the time Messrs. Freitas and Mitchell were still employed at DriveCam. Mr. Freitas was a member of an
12 internal DriveCam group that discussed future product improvements and features. Notes from meetings
13 Mr. Freitas attended show several features that DriveCam had been discussing internally, including the
14 addition of fleet tracking and geofencing features. After Mr. Freitas went to work for SmartDrive, they
15 beat DriveCam in bringing fleet tracking and geofencing features to market. DriveCam only recently
16 released those features in its products this year.

17 50. On information and belief, at the time SmartDrive acquired the foregoing materials and
18 information it either knew or had reason to know that it was acquiring DriveCam's trade-secret
19 information by improper means. In particular, on information and belief, SmartDrive is, and at all
20 relevant times was, aware that (a) companies in this industry generally, and DriveCam in particular,
21 require their employees to sign confidentiality agreements as a condition of their employment and (b)
22 documents like training manuals and review processes are highly confidential materials that contain
23 trade-secret information and which companies in general (and DriveCam in particular) do not share with
24 third-parties absent an NDA or other confidentiality agreement.

25 51. On information and belief, after it acquired DriveCam's confidential and trade-secret
26 materials, SmartDrive used these materials in order to compete with DriveCam, and SmartDrive
27 disclosed DriveCam's materials to other people within SmartDrive for that purpose. On information and
28 belief, at the time of this disclosure and use, SmartDrive knew or should have known that the DriveCam

1 information and materials came to it from people (such as Mr. Freitas and Mr. Mitchell) who had used
2 improper means (including downloading and otherwise taking the information from DriveCam without
3 permission) to acquire it, who obtained those materials under circumstances (employment pursuant to a
4 signed confidentiality agreement) giving rise to a duty to maintain the secrecy of those materials and who
5 (because of those signed contracts) affirmatively owed a duty to DriveCam to maintain the secrecy of
6 those materials.

7 52. On information and belief, by receiving, using and further disclosing the foregoing trade-
8 secret materials and information, SmartDrive misappropriated DriveCam's trade-secrets in violation of
9 California Civil Code § 3426.1(b) and § 3426.3.

10 53. In addition, on information and belief, SmartDrive's misappropriation was not accidental
11 or inadvertent and instead has been willful and malicious under California Civil Code § 3426.4. This
12 willfulness is demonstrated, for example, by the repeated nature of SmartDrive's misappropriation, and,
13 on information and belief, will further be shown by the volume of trade-secret information that
14 SmartDrive misappropriated.

15 54. On information and belief, SmartDrive continues to misuse the DriveCam trade secrets,
16 and continues to enjoy the benefits of its prior misuse, and will continue to do so unless enjoined by this
17 Court.

18 **FIFTH CLAIM FOR RELIEF**

19 **[Conversion]**

20 55. Paragraphs 1 through 54 are incorporated by reference as if fully stated herein.

21 56. DriveCam is, and at all relevant times was, the rightful owner of various pieces of
22 property including, without limitation, refurbished units of its DriveCam in-vehicle recording devices.

23 57. On information and belief, when they left DriveCam, Mark Freitas, David Mitchell and/or
24 other currently unknown individuals intentionally took one or more of DriveCam's in-vehicle recording
25 devices and gave them to SmartDrive which, on information and belief, intentionally took possession of
26 the stolen items and used them to compete with DriveCam. To this day, SmartDrive has not returned
27 these stolen items to DriveCam.

28 58. DriveCam did not consent to this conversion and was harmed through the loss of its

1 tangible property. Moreover, on information and belief, SmartDrive's conduct in receiving, possessing
2 and using these stolen items for its own purposes was a substantial factor in causing DriveCam's harm.

3 **SIXTH CLAIM FOR RELIEF**

4 **[Unfair Competition Law]**

5 59. Paragraphs 1 through 58 are incorporated by reference as if fully stated herein.

6 60. Based on the forgoing facts, SmartDrive has engaged in unfair competition by, for
7 example, using DriveCam property, such as in-vehicle recording devices, which it obtained unlawfully
8 and without DriveCam's consent and further used to compete with DriveCam.

9 61. By these acts, and other acts described herein, SmartDrive has engaged in unlawful and
10 unfair business practices that have injured and will continue to injure DriveCam in its business and
11 property, in violation of California Business and Professions Code §§ 17200, *et seq.*

12 62. As a direct and proximate result of SmartDrive's acts as alleged above, DriveCam has
13 incurred damages in an amount to be proven at trial.

14 **REQUEST FOR RELIEF**

15 Wherefore DriveCam request the following relief:

- 16 (a) Enter a judgment that SmartDrive has infringed and is infringing each and every
17 one of the Asserted Patents;
- 18 (b) Enter a judgment that the Asserted Patents are valid and enforceable;
- 19 (c) Enter a judgment that SmartDrive has misappropriated DriveCam's trade secrets;
- 20 (d) Enter a judgment that SmartDrive has unlawfully converted DriveCam's tangible
21 property;
- 22 (e) Enter a judgment that SmartDrive has unfairly competed;
- 23 (f) Enter an order enjoining SmartDrive, its officers, agents, employees, and those
24 persons in active concert or participation with any of them, and SmartDrive's successors and assigns,
25 from infringing each and every one of the Asserted Patents;
- 26 (g) Award DriveCam its damages resulting from SmartDrive's patent infringement
27 pursuant to 35 U.S.C. § 284;
- 28 (h) Find that SmartDrive's infringement has been willful and increase the damages

CERTIFICATE OF SERVICE

I certify that all counsel of record is being served on October 20, 2011 with a copy of this document via the Court's CM/ECF system.

/s/ Daralyn J. Durie

Daralyn J. Durie

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