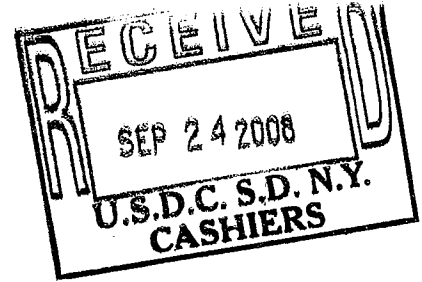


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08 CV 8206

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Attorneys for Plaintiff  
Oyster Optics, Inc.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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OYSTER OPTICS, INC.  
Plaintiff,

08 Civ. \_\_\_\_\_

v.

ECF CASE

FUJITSU NETWORK  
COMMUNICATIONS, INC.

Defendant; and

FUJITSU LIMITED

Defendant  
-----X

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Oyster Optics, Inc. ("Oyster"), by its attorneys Davidson, Davidson & Kappel, LLC, as and for its complaint against Defendants Fujitsu Network Communications, Inc. ("FNC") and Fujitsu Limited ("FL"), alleges as follows:

**PARTIES AND JURISDICTION**

1. Oyster is a Delaware registered corporation having a place of business at 7801 Ellis Road, West Melbourne, Florida 32904.
2. On information and belief, FNC is a corporation organized and existing under the laws of California and having an office at 2 Blue Hill Plaza, Pearl River, New York 10965-3103 and is doing business in this District and elsewhere in the State of New York. FNC has a registered agent, CT Corporation System, at 111 Eighth Avenue, New York, New York 10011.
3. On information and belief, FL is a Japanese corporation having its corporate headquarters at 1-5-2 Higashi-Shimbashi, Minato-ku, Tokyo 105-7123, Japan, and having an office at 733 Third Avenue, New York, New York 10017 and is doing business in this District and elsewhere in the State of New York.
4. This action alleges patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.
5. This action further alleges breach of contract, misappropriation of trade secrets, unfair competition, and conversion.
6. FNC and FL are subject to personal jurisdiction in this District.
7. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332(a), 1338(a) and (b) and 1367(a).
8. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b).

**BACKGROUND**

9. On January 17, 2001, the chief technology officer of Oyster, Peter Snawerdt, filed United States Patent Application Number 09/765,153 (the “‘153 Application”) for a “SECURE FIBER OPTIC TELECOMMUNICATIONS SYSTEM AND METHOD.” Mr. Snawerdt assigned the ‘153 Application to Oyster.

10. On May 24, 2001, Mr. Snawerdt filed United States Patent Application Number 09/865,173 (the “‘173 Application”) for a “PHASE-MODULATED FIBER OPTIC TELECOMMUNICATIONS SYSTEM.” Mr. Snawerdt assigned the ‘173 Application to Oyster.

11. On November 26, 2001, Mr. Snawerdt filed United States Patent Application Number 09/994,248 (the “‘248 Application”) for a “PHASE-MODULATED FIBER OPTIC TELECOMMUNICATIONS SYSTEM.” Mr. Snawerdt assigned the ‘248 Application to Oyster.

12. In the second half of 2001, FL evaluated information about Oyster phase-modulation technology, and suggested that FNC further evaluate Oyster phase-modulation technology.

13. In December 2001, FNC stated that Oyster technology may be “very essential” to FNC, but wanted more details of Oyster phase-modulation technology.

14. In January 2002, Oyster and FNC met in Richardson, Texas at offices of FNC to discuss Oyster phase-modulation technology.

15. After the January 2002 meeting, FNC consulted with FL about Oyster phase-modulation technology to obtain FL’s opinion on the Oyster phase-modulation technology.

16. In February 2002, after discussions with FL and within FNC, FNC requested that Oyster and FNC proceed with a confidential non-disclosure agreement.

17. In March 2002, Oyster and FNC signed a Mutual Nondisclosure Agreement (“MNA”), attached hereto as Exhibit A.

18. The MNA was a valid contract as of March 2002.

19. The MNA remained in effect for three years from March 2002, and FNC never sent Oyster written notice terminating the MNA.

20. The obligations of the recipients of confidential information under the MNA remained in effect through the end of February 2008.

21. FL was an Affiliate to FNC, as the term Affiliate was defined by the MNA.

22. In April 2002, Oyster and FNC had a meeting in Richardson, Texas at offices of FNC. At the meeting, Oyster disclosed to FNC confidential information under the terms of the MNA related both to its phase-modulated fiber optic telecommunications system, as well as other technology, business and marketing plans for secure optical data transmission.

23. In addition to Oyster confidential information that later published in Oyster patents and patent applications, Oyster confidential information disclosed to FNC under the terms of the MNA at the April 2002 meeting included confidential Oyster trade secrets. These trade secrets included, but were in no way limited to, details of a confidential technology known to Oyster as BER monitoring, and to marketing and sales strategies for emphasizing certain advantages of phase-modulation technology.

24. A presentation given to FNC at the April 2002 meeting clearly identified in writing that the Oyster confidential information was proprietary and confidential to Oyster.

25. After the April 2002 meeting, Oyster continued to disclose Oyster confidential information to FNC.

26. On information and belief, FNC disclosed Oyster confidential information to FL under the terms of the MNA.

27. In June 2002, Oyster met with both FNC and FL in Atlanta, Georgia and disclosed Oyster confidential information to both FNC and FL under the terms of the MNA.

28. In July 2002, FL provided Oyster with Flashwave marketing materials to have Oyster modify them for FNC and FL's potential use.

29. In July 2002, Oyster provided FL a detailed presentation related to the possible marketing of Oyster technology with FNC and FL's products.

30. In late July 2002, FL declined to further pursue a business relationship with Oyster.

31. On September 4, 2002, Oyster informed FNC and FL that two of its patent applications had received Notices of Allowance from the United States Patent and Trademark Office and that Oyster expected to receive significant patent protection in the near future. Oyster attached a copy of the European patent application EP 1225716 A3 related to the '153, '173 and '248 Applications.

32. On October 22, 2002, the United States Patent and Trademark Office duly and lawfully issued U.S. Patent Number 6,469,816 (the "'816 Patent") for a "PHASE-MODULATED FIBER OPTIC TELECOMMUNICATIONS SYSTEM" based on the '173 Application. A true copy of the '816 Patent is attached hereto as Exhibit B.

33. Oyster owns all right, title, and interest in the '816 Patent, and has standing to sue for past and future infringement of the '816 Patent.

34. On November 5, 2002, the United States Patent and Trademark Office duly and lawfully issued U.S. Patent Number 6,476,952 (the "'952 Patent") for a "PHASE-MODULATED FIBER OPTIC TELECOMMUNICATIONS SYSTEM" based on the '248 Application. A true copy of the '952 Patent is attached hereto as Exhibit C.

35. Oyster owns all right, title, and interest in the '952 Patent, and has standing to sue for past and future infringement of the '952 Patent.

36. On July 15, 2003, the United States Patent and Trademark Office duly and lawfully issued U.S. Patent Number 6,594,055 (the "'055 Patent") for a "SECURE FIBER OPTIC TELECOMMUNICATIONS SYSTEM AND METHOD" based on the '153 Application. A true copy of the '055 Patent is attached hereto as Exhibit D.

37. Oyster owns all right, title, and interest in the '055 Patent, and has standing to sue for past and future infringement of the '055 Patent.

38. On information and belief, by at least 2005, FL in Japan was developing a phase-modulation technology known as DQPSK for its Flashwave 7500 product line.

39. On information and belief, by at least 2005, at least one FNC employee present at the January 2002 meeting with Oyster in Richardson, Texas transferred to FL in Japan and was integral in developing phase-modulation technology for FL.

40. On information and belief, developers of the FL phase-modulation technology in Yokohama received and were familiar with Oyster confidential information.

41. Neither FL nor FNC contacted Oyster after September 2002 to inform Oyster that FL and FNC were proceeding with phase-modulation technology.

42. In 2005, 2006 and 2007, FL filed patent applications worldwide with various patent offices describing their purported work on phase-modulation technology. These applications later published.

43. In 2007, FNC and FL began selling Flashwave 7500 products incorporating phase-modulation technology throughout the world.

44. On information and belief, the Flashwave 7500 products incorporating phase-modulation technology were at least until June 2008 manufactured in Japan by FL.

45. FNC sells Flashwave 7500 products incorporating phase-modulation technology in the United States.

46. On information and belief, FL designed Flashwave 7500 products incorporating phase-modulation technology specifically for the United States market, and has imported and/or imports into the United States Flashwave 7500 products incorporating phase-modulation technology.

47. On information and belief, FL has offered, and continues to offer, to sell in the United States Flashwave 7500 products incorporating phase-modulation technology.

48. Flashwave 7500 products incorporating phase-modulation technology include optical power monitoring components.

49. The Flashwave 7500 products incorporating phase-modulation technology include phase compensation components.

50. On information and belief, the Flashwave 7500 products incorporating phase-modulation technology include bit error rate monitoring components.

51. On information and belief, FNC and FL used Oyster confidential information in developing their phase-modulation technology and FNC and FL used Oyster confidential information to market and sell the Flashwave 7500 product incorporating phase-modulation technology.

52. On information and belief, FNC and FL described Oyster trade secrets in FNC and FL's patent applications, which were filed with various patent offices and published.

53. On information and belief, FL has developed or co-developed phase-modulation technologies other than DQPSK after its receipt of Oyster confidential information.

54. In May 2004, Cisco Systems Inc. ("Cisco") released its CRS-1 router with amplitude-modulation.

55. In December 2004, FL and Cisco agreed to co-develop Cisco IOS-XR software and hardware for the CRS-1 router.

56. During the co-marketing of the CRS-1 router, a Cisco high-speed module called IOC768-POS-SR developed by Cisco and using amplitude-modulation was subject to bit error rate problems.

57. On information and belief, Cisco and FL jointly developed and released a high speed module operating at the same speed as the IOC768-POS-SR called the IOC768-DPSK/C.

58. The IOC768-DPSK/C module incorporated a phase-modulation technology known as DPSK.



59. Cisco and FL jointly developed the software related to this module and released the software supporting the IOC768-DPSK/C in June 2008.

60. On information and belief, FL and FNC continue to develop further phase-modulation products, including products incorporating a phase-modulation technology known as adaptive-DPSK.

61. On information and belief, FL and FNC improperly disclosed Oyster trade secrets in breach of the terms of the MNA to third parties within the States of New York and Texas, including at the offices of FNC in Pearl River, New York and Richardson, Texas and to FNC customers in New York and Texas of the Flashwave 7500 products incorporating phase-modulation technology.

**COUNT I**  
**INFRINGEMENT OF THE '816 PATENT**

62. Oyster repeats the allegations of paragraphs 1 through 60 of this Complaint as though alleged herein.

63. The '816 Patent is presumed to be valid pursuant to 35 U.S.C. § 282. The '816 Patent is, in fact, valid.

64. FNC and FL have infringed, directly and/or through acts of contributory infringement or inducement, and continue to infringe, one or more claims of the '816 Patent, in violation of 35 U.S.C. § 271, by making, using, selling, and/or offering for sale in the United States, and/or importing into the United States, products, including its Flashwave 7500 products incorporating phase-modulation technology ("the '816 Infringing Products").

65. On information and belief, the '816 Infringing Products are known by FNC and FL to be especially made or adapted for use in infringement of the '816 Patent and are not staple articles or commodities of commerce suitable for substantial non-infringing uses.

66. Oyster has been irreparably damaged by FNC and FL's infringing acts and will continue to be irreparably damaged unless FNC and FL are enjoined from further acts of infringement of the '816 Patent.

67. Oyster is entitled to recover damages adequate to compensate it for FNC and FL's acts of infringement of the '816 Patent.

68. By virtue of Oyster's communication on September 4, 2002 to FNC and FL, FNC and FL knew or should have known of the '816 Patent.

69. On information and belief, FNC and FL infringed the '816 Patent despite an objectively high likelihood that their actions constituted infringement of the '816 Patent.

70. On information and belief, this risk was either known or so obvious that it should have been known to FNC and FL.

71. On information and belief, FNC and FL's infringement of the '816 Patent has been willful. This is also an exceptional case pursuant to 35 U.S.C. § 285.

**COUNT II**  
**INFRINGEMENT OF THE '952 PATENT**

72. Oyster repeats the allegations of paragraphs 1 through 71 of this Complaint as though alleged herein.

73. The '952 Patent is presumed to be valid pursuant to 35 U.S.C. § 282. The '952 Patent is, in fact, valid.

74. FNC and FL have infringed, directly and/or through acts of contributory infringement or inducement, and continue to infringe, one or more claims of the '952 Patent, in violation of 35 U.S.C. § 271, by making, using, selling, and/or offering for sale in the United States, and/or importing into the United States, products, including its Flashwave 7500 products incorporating phase-modulation technology ("the '952 Infringing Products").

75. On information and belief, the '952 Infringing Products also are known by FNC and FL to be especially made or adapted for use in infringement of the '952 Patent and are not staple articles or commodities of commerce suitable for substantial non-infringing uses.

76. Oyster has been irreparably damaged by FNC and FL's infringing acts and will continue to be irreparably damaged unless FNC and FL are enjoined from further acts of infringement of the '952 Patent.

77. Oyster is entitled to recover damages adequate to compensate it for FNC's acts of infringement of the '952 Patent.

78. By virtue of Oyster's communication on September 4, 2002 to FNC and FL, FNC and FL knew or should have known of the '952 Patent.

79. On information and belief, FNC and FL infringed the '952 Patent despite an objectively high likelihood that their actions constituted infringement of the '952 Patent.

80. On information and belief, this risk was either known or so obvious that it should have been known to FNC and FL.

81. On information and belief, FNC and FL's infringement of the '816 Patent has been willful. This is also an exceptional case pursuant to 35 U.S.C. § 285.

**COUNT III**  
**INFRINGEMENT OF THE '055 PATENT**

82. Oyster repeats the allegations of paragraphs 1 through 81 of this Complaint as though alleged herein.

83. The '055 Patent is presumed to be valid pursuant to 35 U.S.C. § 282. The '055 Patent is, in fact, valid.

84. FNC and FL have infringed, directly and/or through acts of contributory infringement or inducement, and continue to infringe, one or more claims of the '055 Patent, in violation of 35 U.S.C. § 271, by making, using, selling, and/or offering for sale in the United States, and/or importing into the United States, products, including its Flashwave 7500 products.

85. Oyster has been irreparably damaged by FNC and FL's infringing acts and will continue to be irreparably damaged unless FNC and FL are enjoined from further acts of infringement of the '055 Patent.

86. Oyster is entitled to recover damages adequate to compensate it for FNC and FL's acts of infringement of the '055 Patent.

**COUNT IV**  
**BREACH OF CONTRACT**

87. Oyster repeats the allegations of paragraphs 1 through 86 of this Complaint as though alleged herein.

88. As set forth above Oyster and FNC executed the MNA in March of 2002.

89. Among other things, the terms of the MNA provide that the recipient may use the confidential information solely for the purpose stated in the MNA and will not disclose confidential information to a third party.

90. Oyster provided FNC and FL Oyster confidential information including Oyster trade secrets under terms of the MNA.

91. FNC and FL disclosed Oyster confidential information including Oyster trade secrets to third parties other than Affiliates prior to March 2008, including to patent offices, knowing the confidential information would be published.

92. On information and belief, FNC and FL disclosed Oyster confidential information including Oyster trade secrets to buyers and potential buyers of the Flashwave 7500 products prior to March 2008.

93. On information and belief, FNC and FL did not know of the Oyster confidential information including Oyster trade secrets before receipt from Oyster.

94. On information and belief, Oyster confidential information including Oyster trade secrets not intentionally disclosed by Oyster, for example in Oyster patent applications, did not become generally available to the public, except through the fault or negligence of FNC and/or FL.

95. On information and belief, neither FNC nor FL received information similar to the Oyster confidential information from any other source other than Oyster.

96. On information and belief, FNC and FL developed the Flashwave 7500 product incorporating Oyster confidential information and filed patent applications incorporating Oyster confidential information with the use of Oyster confidential information.

97. FNC, alone and/or through actions of its Affiliate FL, breached the terms of the MNA by using Oyster confidential information including Oyster trade secrets for a purpose other than the stated purpose of the MNA while terms of the MNA were still in effect.

98. FNC, alone and/or through actions of its Affiliate FL, breached the terms of the MNA by disclosing Oyster confidential information including Oyster trade secrets to third parties, including but not limited to patent offices and buyers of the Flashwave 7500 products while terms of the MNA were still in effect.

99. As a result of FNC's breach of the terms of the MNA, Oyster has been damaged in an amount yet to be determined and to be proven at trial. The damages include but are by no means limited to the value of the BER monitoring trade secret to Oyster and the monetary advantages gained by FNC and FL in breaching the terms of the MNA. In addition, as compensation for the damage Oyster has suffered, any FNC or FL patent applications or patents incorporating Oyster confidential information in breach of the terms of the MNA should be assigned to Oyster.

**COUNT V**  
**MISAPPROPRIATION OF TRADE SECRETS**

100. Oyster repeats the allegations of paragraphs 1 through 99 of this Complaint as though alleged herein.

101. Oyster phase-modulation technology and all confidential information relating to it, including marketing and business strategies, which were not disclosed by Oyster to the public, for example through published patent applications, constitute Oyster trade secrets.

102. Oyster trade secrets included formulas, patterns, devices or compilations of information for use in the business of Oyster, and gave Oyster an opportunity to obtain an advantage over competitors who did not know or use the Oyster trade secrets.

103. Oyster safeguarded Oyster trade secrets by developing them in secret and disclosing them solely under provisions of confidentiality.

104. Oyster expended significant time, money and skill in developing and protecting the trade secrets.

105. Oyster provided FNC and FL Oyster trade secrets under the protection of the terms of the MNA.

106. FNC breached the terms of the MNA and FL breached the terms of the MNA or a confidential relationship with Oyster and/or FNC.

107. FNC and FL used Oyster trade secrets without authorization from Oyster, at a minimum by disclosing Oyster trade secrets to third parties and by marketing and selling the Flashwave 7500 product based upon and incorporating Oyster trade secrets.

108. As a result of the misappropriation of Oyster trade secrets, FNC and FL have been unjustly enriched and Oyster has been damaged. As a result, Oyster is entitled to actual and exemplary damages. The damages include but are by no means limited to the value of the BER monitoring trade secret to Oyster and the monetary advantages gained by FNC and FL in misappropriating Oyster trade secrets. In addition, as compensation for the damage Oyster has suffered, any FNC or FL patent applications or patents incorporating misappropriated Oyster confidential information should be assigned to Oyster.

**COUNT VI**  
**UNFAIR COMPETITION**

109. Oyster repeats the allegations of paragraphs 1 through 108 of this Complaint as though alleged herein.

110. Through the trade secrets and the proprietary information taken from Oyster and their continuing use of that information to compete with Oyster, FNC and FL have unfairly and illegally misappropriated the time, labor, skill and money Oyster invested in that information.

111. The patented technology, trade secrets and the proprietary information were developed by Oyster through the substantial expenditure of time, labor, skill and money, and constitute a unique pecuniary interest of Oyster.

112. FNC and FL procured the above information by improper and illegal means. FNC and FL breached the confidence placed in them by Oyster, including by breaching the terms of the MNA or other obligations of confidentiality, and by having Oyster spend time and money developing phase-modulation marketing materials for use by FL and FNC.

113. FNC and FL now use the Oyster confidential information, including using the information in competition with Oyster, to obtain a special advantage. FNC and FL experienced lower time, labor, skill-development and expenses as a result of the misappropriation of Oyster confidential information.

114. FNC and FL's use of the Oyster confidential information interfered with Oyster's ability to conduct its business.



115. As a result of FNC and FL's unfair competition, FNC and FL have been unjustly enriched and Oyster has been damaged. As a result, Oyster is entitled to actual and exemplary damages. The damages include but are by no means limited to the value of the BER monitoring trade secret to Oyster and the monetary advantages gained by FNC and FL in competing unfairly. In addition, as compensation for the damage Oyster has suffered, any FNC or FL patent applications or patents incorporating unfairly gained Oyster confidential information should be assigned to Oyster.

**COUNT VII**  
**CONVERSION**

116. Oyster repeats the allegations of paragraphs 1 through 115 of this Complaint as though alleged herein.

117. Oyster trade secrets are the property of Oyster.

118. FNC and FL, without authorization, wrongfully assumed and exercised dominion and control over the Oyster trade secrets to the exclusion of and inconsistently with Oyster's rights, by among other things, using and publishing the Oyster trade secrets in breach of the terms of the MNA. FNC and FL have so seriously interfered with Oyster's right of control of Oyster trade secrets that FNC and FL may justly be required to pay Oyster the full value of Oyster trade secrets which FNC and FL converted.

119. As a result of FNC and FL's conversion, Oyster is entitled to actual and exemplary damages. The damages include but are by no means limited to the value of the BER monitoring trade secret to Oyster and the monetary advantages gained by FNC and FL in the conversion of the property of Oyster. In addition, as compensation for the damage Oyster

has suffered, any FNC or FL patent applications or patents incorporating converted Oyster confidential information should be assigned to Oyster.

**PRAYER FOR RELIEF**

WHEREFORE, Oyster respectfully requests that this Court enter judgment in its favor and against FNC and FL and grant the following relief:

- A. An injunction prohibiting further infringement, inducement, or contributory infringement of the '816 Patent by FNC and FL;
- B. A declaration that FNC and FL have infringed the '816 Patent in violation of 35 U.S.C. § 271;
- C. An order, pursuant to 35 U.S.C. § 284, awarding Oyster damages adequate to compensate for FNC and FL's infringement together with prejudgment interest from the date infringement of the '816 Patent began;
- D. An order, pursuant to 35 U.S.C. § 284, awarding treble damages with respect to damages for infringement of the '816 Patent;
- E. An injunction prohibiting further infringement, inducement, or contributory infringement of the '952 Patent by FNC and FL;
- F. A declaration that FNC and FL have infringed the '952 Patent in violation of 35 U.S.C. § 271;

G. An order, pursuant to 35 U.S.C. § 284, awarding Oyster damages adequate to compensate for FNC and FL's infringement together with prejudgment interest from the date infringement of the '952 Patent began;

H. An order, pursuant to 35 U.S.C. § 284, awarding treble damages with respect to damages for infringement of the '952 Patent;

I. An injunction prohibiting further infringement, inducement, or contributory infringement of the '055 Patent by FNC and FL;

J. A declaration that FNC and FL have infringed the '055 Patent in violation of 35 U.S.C. § 271;

K. An order, pursuant to 35 U.S.C. § 284, awarding Oyster damages adequate to compensate for FNC and FL's infringement together with prejudgment interest from the date infringement of the '055 Patent began;

L. A finding that this is an exceptional case pursuant to 35 U.S.C. § 285, and accordingly award Oyster its reasonable attorneys' fees and costs;

M. An order, pursuant to 35 U.S.C. § 284, awarding all other damages permitted;

N. An order awarding damages from FNC to compensate Oyster for breach of the MNA, and an order for FNC and FL to assign to Oyster any FNC or FL patent applications or patents incorporating Oyster confidential information in breach of the terms of the MNA;

O. An order awarding damages from FNC and FL to compensate Oyster for misappropriation of Oyster trade secrets and an order for FNC and FL to assign to Oyster any FNC or FL patent applications or patents incorporating misappropriated Oyster confidential information;

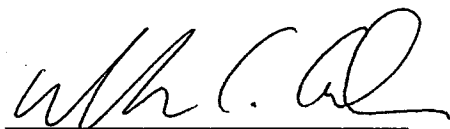
P. An order awarding damages from FNC and FL to compensate Oyster for FNC and FL's unfair competition and an order for FNC and FL to assign to Oyster any FNC or FL patent applications or patents incorporating unfairly gained Oyster confidential information;

Q. An order awarding damages from FNC and FL to compensate Oyster for FNC and FL's conversion and an order for FNC and FL to assign to Oyster any FNC or FL patent applications or patents incorporating converted Oyster confidential information; and

R. Any and all such other and further relief as this Court may deem just and proper.

OYSTER DEMANDS A TRIAL BY JURY.

New York, New York  
Dated: September 24, 2008



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