

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 99-MDL-1317-SEITZ/KLEIN

**IN RE TERAZOSIN HYDROCHLORIDE  
ANTITRUST LITIGATION**

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**THIS DOCUMENT RELATES TO:**

*Louisiana Wholesale Drug Co. Inc. v. Abbott  
Laboratories, et al.*

S.D. Fla. Case No. 98-3125

*Valley Drug Co. v. Abbott Laboratories, et al.*

S.D. Fla. Case No. 99-7143

**AFFIDAVIT OF MICHAEL F. HEIM IN SUPPORT OF  
JOINT PETITION FOR ATTORNEYS' FEES AND DISBURSEMENTS  
FILED ON BEHALF OF CONLEY ROSE, P.C.**

STATE OF TEXAS           §  
  §  
COUNTY OF HARRIS     §

Michael F. Heim, being first duly sworn, deposes and says:

1. I am a shareholder of the law firm of Conley Rose, P.C. I submit this affidavit in support of my firm's application for an award of attorneys' fees in connection with services rendered in the *In Re Terazosin Hydrochloride Antitrust Litigation*, as well as the reimbursement of expenses incurred by my firm in connection with this litigation.

2. My firm acted as counsel for Louisiana Wholesale Drug Company and similarly situated direct purchasers in this litigation. The law firm of Conley Rose, P.C. ("Firm" or "Conley Rose") specializes in Intellectual Property litigation and is one of the largest Intellectual Property boutique firms in the State of Texas. In addition to litigation in the field of Intellectual Property law, the Firm also has been intimately involved in antitrust litigation arising from the misuse of

patents, especially in the pharmaceutical industry. Because of this expertise, the Firm was responsible for investigating and analyzing the underlying patent issues that gave rise to this lawsuit. These patent issues include the settlement between Abbott Laboratories and Geneva Pharmaceuticals, Inc. (collectively "Defendants") on Abbott's '207 patent. The net effect of this settlement was that Abbott was able to extend the period of exclusivity in its Hytrin franchise. The Firm has been instrumental in developing the evidence establishing the weakness of Abbott's patent position for Hytrin.

3. The tasks undertaken by my firm can be summarized as follows:

a. **Michael Heim (shareholder).** Michael Heim was Conley Rose's lead counsel on the Hytrin litigation. Mr. Heim has extensive experience in patent litigation and in antitrust litigation arising from patent misuse. Mr. Heim's responsibilities included analyzing the patents and the pleadings from the underlying patent lawsuits. Mr. Heim participated in developing various strategies to more fully highlight the manner in which Abbott knowingly misused its patents. Mr. Heim also analyzed applicable legal standards relating to Abbott's on sale bar issue.

Mr. Heim was instrumental in establishing Abbott's antitrust liability based on its patent misuse. He assisted the group in formulating its position on the reverse-payment settlement in the underlying patent litigation, including identifying the unreasonable provisions in that settlement agreement. He also assisted in analyzing the underlying litigation between the parties on the '207 patent, and identified the weaknesses of the '207 patent that led to the settlement.

b. **Dr. Russ Chorush (associate).** Dr. Russ Chorush (associate). Dr. Russ Chorush is an associate at Conley Rose, and holds a Ph.D. in Chemistry. Dr. Chorush was instrumental in performing a detailed patent and technical analysis of Abbott's '207 patent, including an

assessment of the strength of Abbott's patent case. Throughout the lawsuit, Dr. Chorush provided general guidance to the Direct Purchaser Group regarding patent law and regulatory (Hatch-Waxman) law issues. In addition, Dr. Chorush provided assistance and analysis related to technical chemistry issues including crystalline and polymorphic structure.

During the course of the case, Dr. Chorush researched and drafted several memos for the Direct Purchaser Group, including memos on: (1) preliminary injunctions and stays pending appeal; (2) the scope of Abbott's rights in terazosin hydrochloride and (3) the generic defendants' allegations of inequitable conduct. In addition, Dr. Chorush assisted in drafting a tutorial for the Court as well as the motion for summary judgment that was recently granted by the Court.

Dr. Chorush also assisted with numerous discovery issues including reviewing documents, preparation of interrogatory answers and answers to requests for admission, and attendance and/or review of various depositions. Dr. Chorush also created a subset of documents relevant to the '207 Patent liability issues. In addition, Dr. Chorush reviewed and commented on various expert reports and participated in designating (and objecting to Defendants' designating) various exhibits and deposition testimony for trial.

c. **Jonathan Pierce (associate).** Mr. Pierce was responsible for analyzing and summarizing the patent cases involving Abbott's Hytrin patents. Mr. Pierce identified the key patent issues involved in the infringement lawsuits related to Hytrin. Mr. Pierce also assisted in reviewing documents produced by Abbott.

d. **Jeremy Welch (associate).** Mr. Welch conducted research on Hytrin patent coverage and possible design-arounds.

d. **Carrie Anderson (paralegal).** Ms. Carrie Anderson was primarily responsible for organizing and maintaining documents, pleadings and exhibits. Ms. Anderson also assisted in coding documents and summaries into the Summation database for all Firm attorneys.

e. **Other Firm personnel.** Other attorneys and paralegals also provided lesser assistance in researching individual issues and entering documents into the Summation database. Attorneys within the Firm also were consulted on a few occasions regarding areas of special expertise.

4. Conley Rose participated in meetings with co-counsel regarding strategies, and liability and causation issues in the case. Conley Rose has maintained a file with copies of all documents served upon them. Conley Rose has also acquired and organized a relatively complete file of pleadings filed in the underlying patent infringement cases.

5. The attorneys and paralegals in my firm prepare contemporaneous daily time records that are regularly batched and maintained by my firm. These contemporaneous time records have been used in preparing this document. Time expended in preparing this document has not been included in this request.

6. The total fees for the attorneys and paralegals in my firm are set forth below. The hourly rates are the same as the regular, current rates charged for their services in non-contingent matters and/or which have been accepted and approved in other class action litigation. An average rate has been computed to reflect the rate changes that have occurred annually since inception of the case.

<u>Name</u>	<u>Title</u>	<u>Hours</u>	<u>Average Rate</u>	<u>Total Fees</u>
Rodney B. Carroll	Shareholder	5.00	275.00	1,375.00
Russell Chorush	Attorney	304.70	252.85	77,042.50
Robert Gray	Attorney	0.25	300.00	75.00
Michael F. Heim	Shareholder	90.85	428.62	38,940.00
Jeffrey Johnson	Attorney	75.50	248.34	18,750.00
Jonathan Pierce	Attorney	233.00	299.84	69,862.50
Chris Spence	Attorney	40.75	211.47	8,617.50
Jeremy Welch	Attorney	116.80	242.23	28,293.00
Douglas Wilson	Attorney	14.50	220.34	3,195.00
Carrie Anderson	Paralegal	42.25	151.48	6,400.00
Anne Buckmaster	Paralegal	5.75	125.00	718.75
Linda Ehrlich	Paralegal	1.50	125.00	187.50
Carol Mintz	Paralegal/Patent Agent	2.00	160.00	320.00
Jaylyn White	Paralegal	<u>12.25</u>	135.00	<u>1,653.75</u>
		945.10		\$255,430.50

7. The total lodestar for my Firm is \$255,430.50, with additional expenses of \$110,494.28.

8. The total number of hours expended in this litigation by my firm is 945.10. The total amount of fees billed for my firm through February 28, 2005 is \$255,430.50, consisting of \$246,150.50 for attorneys' time, and \$9,280.00 for paralegals' time. My firm's figures are based

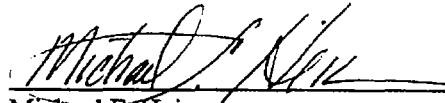
upon the firm's billing rates, which do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

9. My firm has incurred a total of \$110,494.28 in non-reimbursed expenses in connection with the prosecution of this litigation. The Firm's expenses have been correlated into the following categories: (1) travel/hotel/meals; (2) photocopying; (3) postage/courier; (4) telephone/telecopier; (5) computer research; (6) other research costs; (7) litigation fund contributions; (8) court/transcript costs; (9) temporary services; and (10) office supplies. The amount of money incurred in each of these categories was:

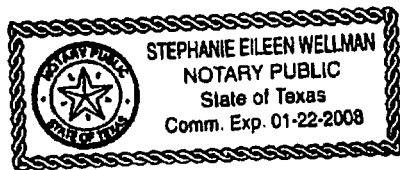
(1)	travel/hotel/meals	\$3,233.66
(2)	photocopying	\$1,565.60
(3)	postage/courier	\$580.04
(4)	telephone/telecopier	\$386.01
(5)	computer research	\$4,728.97
(6)	other research costs	\$0.00
(7)	litigation fund contributions	\$100,000.00
(8)	court/transcript costs	\$0.00
(9)	temporary services	\$0.00
(10)	office supplies	\$0.00

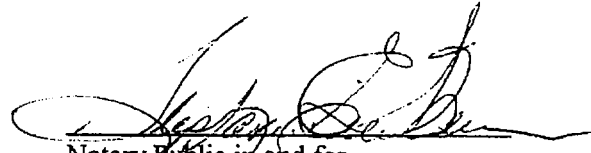
10. The expenses incurred in this action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate recordation of the expenses incurred.

11. With respect to the standing of counsel in this case, attached hereto as Exhibit 1 is a brief biography of my firm and attorneys in my firm who were principally involved in this litigation.

  
Michael F. Heim

Sworn to before me this 5<sup>th</sup> day of April, 2005.



  
Notary Public in and for  
The State of Texas

# EXHIBIT 1

## THE FIRM'S PRACTICE

The Firm's intellectual property practice includes the following areas:

- Trial and appellate work
- Prosecution of applications for patents, trademarks, and copyrights
- Intellectual property and e-commerce transactions
- Counseling regarding the protection, enforcement, and leveraging of intellectual property rights

### TRIAL AND APPELLATE PRACTICE

The Firm's trial and appellate practice includes the prosecution and defense of lawsuits in state and federal courts at both the trial and appellate levels, as well as the representation of clients in arbitration, mediation, and other alternative dispute resolution procedures. The Firm has participated in a number of nationally recognized intellectual property lawsuits at both the trial and appellate court level.

### PROSECUTION PRACTICE

The Firm's professionals include attorneys, patent agents, and technical advisors with advanced degrees in the areas of electrical, chemical and mechanical engineering, and chemistry. The Firm has special expertise in high technology electrical prosecution, especially that relating to computer and microprocessor architecture, and in the areas of chemical and biochemical prosecution, and has for years been recognized for its expertise in oilfield technology. The Firm also includes practitioners with skills in the protection of medical innovations including medical devices and pharmaceutical compositions. The firm obtains hundreds of patents for its clients each year and is particularly skilled at handling high volume prosecution.

### TRANSACTION PRACTICE

The Firm provides services in structuring, drafting, and negotiating intellectual property and e-commerce transactions. Attorneys in the transaction practice assist clients with intellectual property licensing, technology transfer agreements, service agreements, software licensing, marketing and distribution arrangements, franchise agreements, and advertising and entertainment arrangements. In addition, the transaction practice has substantial experience with e-commerce and internet-related transactions, including agreements for web site development and hosting, co-branding, Internet-based services, and content licensing.

### COUNSELING

Counseling clients concerning intellectual property rights is another part of the Firm's practice. Such counseling includes rendering opinions on patent validity and infringement and on trademark and service mark infringement and registration. The Firm also provides advice on the selection and use of trademarks and service marks, and recommendations on the protection of inventions, trade secrets, and copyrightable subject matter.

### HOUSTON OFFICE

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Suite 7100  
Houston, Texas 77002-2912

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### DALLAS OFFICE

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WE ARE THE LARGEST FIRM IN TEXAS FOCUSING EXCLUSIVELY ON INTELLECTUAL PROPERTY MATTERS

# HOUSTON



**MICHAEL F. HEIM**  
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## EDUCATION

J.D., Honors, 1986

The George Washington University Law School

B.S., Electrical Engineering, 1983

University of Missouri

*Honors: National Merit Scholar, University Scholar,  
Member of Tau Beta Pi and Eta Kappa Nu*

## MEMBERSHIPS

- American Bar Association
- American Intellectual Property Law Association
- Texas Intellectual Property Law Section  
(President, 2001-2002)
- Houston Intellectual Property Law Association  
(President, 1998-1999)
- Federal Circuit Bar Association

Mr. Heim served three years as a Patent Examiner at the U.S. Patent and Trademark Office, specializing in electrical communications and computer software and hardware.

Mr. Heim specializes in intellectual property and technology-related litigation, in high-tech electronics prosecution, and in the licensing of intellectual property on an industry-wide basis. Mr. Heim is admitted to practice before the U.S. Patent and Trademark Office, the United States District Courts for the Northern, Southern and Western Districts of Texas, the U.S. Courts of Appeals for the Federal Circuit and Texas State Courts.

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Mr. Heim also has been involved in several class-action antitrust lawsuits focusing on the manner in which pharmaceutical companies use their intellectual property to maintain exclusive rights in their brand-name products. Mr. Heim has been named as a member of the Executive Committee in such class action antitrust actions brought on behalf of direct purchasers. Mr. Heim was instrumental in the *In re Buspar* multi-district litigation against Bristol-Myers Squibb, which the Direct Purchaser class settled for \$220 million.\* This case involved over-charges that occurred by virtue of Bristol-Myers preventing generic companies from entering the Buspirone market. Mr. Heim also was involved in the *In re Cardizem* multi-district antitrust litigation brought against HMRI, which the Direct Purchaser class settled for approximately \$110 million. Like Buspar, the Cardizem settlement compensated the direct purchasers of the Cardizem drug for overcharges that occurred based on agreements between the brand and generics to prevent generic entry. He also is engaged in several other multi-district lawsuits involving brand-name drugs. In those cases, Mr. Heim has been responsible for investigating and managing all patent issues underlying the antitrust claims.

Mr. Heim has been the subject of many articles, including an article by THE TEXAS LAWYER on attorneys who represent high-tech Texas.

\* PAST PERFORMANCE IS NO GUARANTEE OF FUTURE RESULTS

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## EDUCATION

J.D., Honors, 1994

University of Texas School of Law in Austin

B.S., Chemical Engineering, *cum laude*, 1990

University of Arkansas in Fayetteville

## MEMBERSHIPS

- State Bars of Texas and Delaware
- Admitted to practice before the U.S. Patent and Trademark Office and the U.S. District Courts of Delaware and the N.D. and E.D. of Texas
- American Intellectual Property Law Association
- Cherokee Nation of Oklahoma, tribal member

Rodney Carroll practices in all areas of intellectual property law, including patent and trade secret litigation, U.S. and foreign patent preparation and prosecution, and business transactions such as technology transfers and licensing, merger and acquisition due diligence, and research & development agreements. His experience spans such diverse arts as petroleum exploration and refining; organic and polymer compositions, catalysts, and processing, including pharmaceuticals and cosmetics; mechanical devices, including automotive and watercraft components, medical devices and lasers; analog and digital printing technology; telecommunications electronics; computer

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software, frameworks and methods, including object technology; and business methods

Prior to joining the Firm, Mr. Carroll served as in-house patent counsel for Conoco, Inc. and its former parent company, DuPont, as well as Atlantic Richfield Company. Mr. Carroll was also a patent litigation associate for the firm of Morris, Nichols, Arsht & Tunnell in Wilmington, Delaware

Mr. Carroll is admitted to practice before the U.S. Patent and Trademark Office, the U.S. District Courts of Delaware and the Northern and Eastern Districts of Texas, and Texas State Courts.

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**RUSSELL A. CHORUSH**  
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## EDUCATION

*J.D., summa cum laude, 2001*

University of Houston Law Center

*Valedictorian of class of 2001 at the University of  
Houston Law Center; top scorer on the July 2001*

*Texas Bar Examination*

Masters and Ph.D., Chemistry

Cornell University

B.S., Chemistry, Honors

University of Texas at Austin

Dr. Chorush specializes primarily in patent prosecution and litigation in the Firm's Houston office. Prior to enrolling in law school, Dr. Chorush was employed by Texas Instruments, Inc. and Air Liquide Electronics as a manager in a research and development laboratory. Dr. Chorush is a named inventor on three United States patents, all of which are assigned to Texas Instruments, Inc. In addition, Dr. Chorush is an author of six published articles in peer-reviewed journals including the Journal of the American Chemical Society, Analytical Chemistry and the Journal of Mass Spectrometry.

Dr. Chorush is admitted to practice before the Texas State Courts

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## EDUCATION

J.D., University of Texas School of Law, 1996

B.S., Electrical Engineering, 1991  
University of Michigan

Since joining the Firm, Mr. Gray has been involved in litigation from inception through trial, as well as appellate practice. Mr. Gray also takes a hands-on role in patent prosecution in a broad array of technologies, both foreign and domestic, and has counseled clients on a wide array of challenges.

Mr. Gray's experience in litigation includes cases at the State, Federal, and Appellate Court levels. Lawsuits he has worked on closely include both prosecution and defense of patent infringement actions, as well as disputes related to contractual interpretation, interference with contractual relations and antitrust claims arising from an illegal extension of patent term. Mr. Gray also worked closely with co-counsel in a successful appeal to the Court of Appeals for the Federal Circuit on a case that was brought to Conley Rose, P.C. after the client originally lost at the district court level.

In addition to his litigation work, Mr. Gray writes and prosecutes patent applications before various patent offices around the world. Drawing on his experience as a patent examiner in the United States Patent and Trademark Office, Mr. Gray prosecutes applications

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in the mechanical and electrical arts. Technologies prosecuted by Mr. Gray include computer design, acoustical, electrical and nuclear tools and drill bits used in the search for oil, various stages of ultrasonic meters, gas chromatographs, and systems for efficient financial transactions.

Mr. Gray also provides counseling to clients. For example, Mr. Gray advises clients with regard to licensing and protecting their patent rights once it has been obtained. Mr. Gray's counseling also includes providing patent infringement and validity opinions, and review of various types of contracts and agreements.

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## EDUCATION

J.D., *cum laude*, 2000  
University of Houston

Ph.D., Organic Chemistry/Mechanical Engineering, 1995  
Texas A&M University

B.S., Chemistry, 1991  
East Texas Baptist University

*Research focus was in materials science, specifically  
electrical conducting organic polymers*

## MEMBERSHIPS

- American Bar Association
- Houston Bar Association
- Houston Intellectual Property Law Association
- Houston Young Lawyers Association
- American Intellectual Property Lawyers Association

## RECENT PUBLICATIONS

Co-authored numerous published technical reports to the funding agencies including: Department of Defense, NASA, NIH, NSF, and EPA.

Dr. Johnson worked three years at Lynntech, Inc., a firm specializing in innovative research. Dr. Johnson's research areas from 1989 to 1996 included: various aspects of organic chemistry, polymer chemistry (synthesis, characterization and testing), electrochemistry,

continued from front

ozone generation, environmental remediation of soil and water using ozone and electrical field technology, and various biotechnology areas.

While in law school Dr. Johnson served as the Publications Editor for the *Houston Journal of International Law*. Dr. Johnson was a judicial intern for U.S. District Judge Lynn N. Hughes in the Southern District of Texas.

Dr. Johnson is an associate in the Houston office where he specializes in intellectual property with an emphasis on patent litigation and infringement opinions in the chemical arts. Dr. Johnson also handles chemical and mechanical prosecution, and validity and patentability opinions. Dr. Johnson is a Research Adjunct Professor of Law at the University of Houston Law Center. Dr. Johnson is the Editor in Chief of *patstats.org*, an ongoing issue oriented publication that reviews all of the published patent law decisions from the Federal Circuit and federal district courts.

Dr. Johnson is admitted to practice before the United States Patent and Trademark Office, the United States Courts of Appeals for the Federal and Fifth Circuits, and the United States District Courts for the Southern and Western Districts of Texas.

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## EDUCATION

J.D., 1996

Louisiana State University

*Member of the National Moot Court Team (1995)*

*Member of the Appellate Advocacy Board (1995-96)*

B.S., Aerospace Engineering, 1992

Boston University

## MEMBERSHIPS

• State Bars of Texas and Louisiana

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Mr. Pierce specializes in patent and trademark law. His patent practice focuses on infringement litigation, mechanical patent prosecution (both domestic and foreign), infringement opinions, and patentability opinions, while his trademark practice focuses on selection and use counseling, registrability opinions, domestic and foreign prosecution, inter partes proceedings, and infringement litigation.

Mr. Pierce is admitted to practice before the United States Patent and Trademark Office, the United States Courts of Appeals for the Federal and Fifth Circuits, and the United States District Courts for the Western, Middle, and Eastern Districts of Louisiana, and for the Western and Southern Districts of Texas.

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### EDUCATION

J.D., Honors, 2003

University of Texas School of Law

*Member of Texas Intellectual Property Law Journal*

B.S., Mechanical Engineering, *cum laude*, 1991

Texas A&M University

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Mr. Spence practices in various aspects of intellectual property law, including patent prosecution and litigation. Prior to joining the Firm, Mr. Spence worked as a Senior Engineer for Celanese Chemicals, specializing in the reliability of pumps, turbines, and compressors.

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### EDUCATION

J.D. , *cum laude*, 2000

University of Houston Law Center

*Order of the Barons, Dean's Scholarship*

B.A. , Chemical Engineering, Economics, 1996

Rice University

*Dow Chemical Outstanding Technical Student*

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Mr. Welch is admitted to practice in Texas and in front of the Federal Circuit, the Fifth Circuit, the Southern District of Texas, and the Patent and Trademark Office. Mr. Welch's practice focuses on litigation and patent prosecution in the chemical, chemical engineering, and mechanical arts.

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## EDUCATION

J.D., Honors, 2002  
University of Texas School of Law  
*Order of the Coif*

B.S., Chemical Engineering, *summa cum laude*, 1995  
Lamar University  
*Received several scholarships as an undergraduate and graduate, including the Presidential Scholarship in Law*

## RECENT PUBLICATIONS

Co-authored an article with Mr. Helm entitled  
*"Patent Validity Opinions: The Last Bastion of Defense"*,  
published in the August 2002 issue of IP Litigator.

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Mr. Wilson specializes in litigation and patent prosecution in the chemical, chemical engineering, and mechanical arts.

Mr. Wilson worked for four years with Fina Oil and Chemical Company's Port Arthur Refinery as a project and process engineer prior to attending law school.

He was also Editor-in-Chief of the Texas Review of Law & Politics. Mr. Wilson was offered and has accepted a clerkship with Judge Richard Linn of the United States Court of Appeals for the Federal Circuit.

Mr. Wilson is admitted to practice in Texas and in the Patent and Trademark Office.

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