UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO. LTD., and
SAMSUNG ELECTRONICS, AMERICA, INC.,
Petitioners,

v.

FOUR BATONS WIRELESS, LLC,
Patent Owner.

Case IPR2025-00495
Patent 8,239,671

PATENT OWNER'S RESPONSE IN OPPOSITION TO PETITIONERS' REQUEST FOR DIRECTOR REVIEW OF DECISION DENYING INSTITUTION OF *INTER PARTES* REVIEW

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EXHIBIT LIST

Exhibit	Description
EX2001	Declaration of Eric J. Enger in Support of Patent Owner's Notice of Intent to Designate Provisionally Recognized Attorney Eric J. Enger as Back-Up Counsel Under 37 C.F.R. § 42.10(c)
EX2002	*Four Batons Wireless, LLC v. Samsung Electronics Co., Ltd. et al.*, Complaint for Patent Infringement, Case No. 2:24-cv-284, Dkt. No. 1 (E.D. Tex. Filed April 26, 2024)
EX2003	*Four Batons Wireless, LLC v. Samsung Electronics Co., Ltd. et al.*, Defendants Samsung Electronics Co., Ltd.'s and Samsung Electronics America, Inc.'s Motion To Stay Proceedings Pending *Inter Partes* Review, Case No. 2:24-cv-284, Dkt. No. 62 (E.D. Tex. Filed Feb. 7, 2025)
EX2004	*Four Batons Wireless, LLC v. Samsung Electronics Co., Ltd. et al.*, Plaintiff's Opposition to Samsung's Motion To Stay Proceedings Pending *Inter Partes* Review, Case No. 2:24-cv-284, Dkt. No. 63 (E.D. Tex. Filed Feb. 21, 2025)
EX2005	*Four Batons Wireless, LLC v. Samsung Electronics Co., Ltd. et al.*, First Amended Docket Control Order, Case No. 2:24-cv-284, Dkt. No. 69 (E.D. Tex. Filed April 30, 2025)
EX2006	United States District Courts — National Judicial Caseload Profile, available from https://www.uscourts.gov/sites/default/files/2025-02/fcms_na_distprofile1231.2024.pdf (accessed May 12, 2025)
EX2007	*Four Batons Wireless, LLC v. Samsung Electronics Co., Ltd. et al.*, Plaintiff's Infringement Contentions, Case No. 2:24-cv-284 (E.D. Tex. served July 25, 2024)
EX2008	*Four Batons Wireless, LLC v. Samsung Electronics Co., Ltd. et al.*, Defendants' Invalidity Contentions, Case No. 2:24-cv-284 (E.D. Tex. served Nov. 18, 2024)
EX2009	*Four Batons Wireless, LLC v. Samsung Electronics Co., Ltd. et al.*, Samsung's Preliminary Claim Constructions And Extrinsic Evidence Pursuant To Patent Local Rule 4-2, Case No. 2:24-cv-284 (E.D. Tex. served May 5, 2025)
EX2010	*Four Batons Wireless, LLC v. Samsung Electronics Co., Ltd. et al.*, Plaintiff Four Batons Wireless, LLC's Initial Proposed

	Constructions, Case No. 2:24-cv-284 (E.D. Tex. served May 5, 2025)
EX2011	Correspondence between Samsung and Four Batons
EX2012	Comparison of Abobav3 vs. Abobav5, available at https://author- tools.ietf.org/iddiff?url1=draft-ietf-eap-keying-03&url2=draft-ietf- eap-keying-05&difftype=--hwdiff (accessed May 7, 2025)
EX2013	*iRhythm Technologies, Inc. v. Welch Allyn, Inc.*, IPR2025-00363, Paper 10 (P.T.A.B. June 6, 2025) (highlighting added)
EX2014	Office Action from Samsung's Patent Application No. 12/152,354 (dated September 10, 2012) (highlighting added)
EX2015	Google Patents listing for U.S. Patent No. 8,239,671, available at https://patents.google.com/patent/US8239671B2/ en?oq=8%2c239%2c671 (accessed June 16, 2025) (highlighting added)
EX2016	Google Translate for "삼성전자주식회사," available at https://translate.google.com/?sl=auto&tl=en&text= 삼성전자주식회사&op=translate (accessed June 16, 2025)
EX2017	Extensible Authentication Protocol (EAP) Key Management Framework, IETF Internet-Draft, draft-ietf-eap-keying-09, January 8, 2006
EX2018	Extensible Authentication Protocol (EAP) Key Management Framework, IETF Internet-Draft, draft-ietf-eap-keying-12 (April 13, 2006)
EX2019	*Four Batons Wireless, LLC v. Samsung Electronics Co., Ltd. et al.*, The Parties' P.R. 4-3 Joint Claim Construction and Pre-Hearing Statement, Case No. 2:24-cv-284, Dkt. No. 77 (E.D. Tex. Filed May 30, 2025)
EX2020	Excerpts from ANSI/IEEE Standard 802.11-1999, Information Technology – Telecommunications and Information Exchange Between Systems – Local and Metropolitan Area Networks—Specific Requirements – Part 11: Wireless LAN Medium Access Control (MAC) and Physical Layer (PHY) Specifications (1999)
EX2021	Expert Declaration of Dr. Aviel D. Rubin on Petition for Inter Partes Review of U.S. Patent No. 8,239,671
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I. Introduction

Patent Owner Four Batons Wireless, LLC ("PO") respectfully requests that Samsung Electronics Co., Ltd. and Samsung Electronics, America, Inc.'s (collectively, "Petitioner") Request for Director Review of the Decision Denying Institution be denied. *See* Paper 15 (the "Request"). The Request fails to identify any abuse of discretion, important issues of law or policy, erroneous findings of material fact, erroneous conclusions of law, or any other topic for which Director Review would be appropriate.[1] Instead, Samsung attempts to manufacture error ostensibly based on the rescission of the "Vidal Memo"—guidance that, by its own terms, was interim and subject to future change.[2] But Samsung's arguments are premised on a misunderstanding of due process, the APA, and the memo, itself. Samsung both ignores that the Vidal Memo was not the result of formal rule making and glosses over the fact that Samsung did not attempt to follow the procedures and guidance of the Vidal Memo until after the Memo was rescinded, mooting any complaints based on the rescission of the Memo itself. Samsung's remaining arguments are similarly

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[1] *See* https://www.uspto.gov/patents/ptab/decisions/director-review-process at 2.B, accessed on August 27, 2025 (limiting the scope of Director Review).

[2] https://www.uspto.gov/sites/default/files/documents/interim_proc_discretionary_denials_aia_parallel_district_court_litigation_memo_20220621_.pdf.

deficient, and amount to no more than a request that the Director discard the USPTO's discretionary denial guidance in favor of instituting wholly duplicative IPR proceedings. Samsung fails to demonstrate that Director Review would be proper on any topics in its Request, and the Request should therefore be denied.

II. Background

Samsung filed its Petition on January 24, 2025. Pet. at 77. Its Petition argued that the *Fintiv* discretionary denial factors favored institution. *Id*. at 71-74. But, the Petition did not include a *Sotera* stipulation (or any other stipulation), nor did it address any potential stipulation under *Fintiv* Factor 4. *Id*. at 74.

On March 26, 2025, Acting Director Stewart rescinded the Vidal Memo.[3] Despite the rescission, Samsung waited until April 18, 2025 to offer a limited stipulation preserving its rights to pursue combinations based on other invalidity references and unpublished system prior art in the District Court regardless of whether the Petition was instituted. EX1023 at 1. PO filed its discretionary denial brief on May 21, 2025, Paper 10 ("PO's DD Brief"), and Petitioner filed its discretionary denial response on June 23, 2025, Paper 13 ("Petitioner's DD Brief"). The USPTO Denied Institution on July 17, 2025, Paper 14 (the "Decision").

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[3] https://www.uspto.gov/sites/default/files/documents/InterimProcesses-PTABWorkloadMgmt-20250326.pdf (the "March 26, 2025 Memo")

Petitioner's DD Brief made only generic objections that the new process violated the Administrative Procedures Act ("APA"), and did not assert any objections based on a due process violation. *See* Petitioner's DD Brief at 24-25. Thus, those arguments were waived. Even if they were not waived, Petitioner's newfound assertion that its rights were violated because it relied on the *Sotera* stipulation guidance in the Vidal Memo is easily rebutted by the fact that it never attempted to follow that guidance from that memo until after it had been rescinded.

III. Argument

A. Petitioner's Due Process Rights Were Not Violated

As discussed above, Petitioner waived its argument that its due process rights were violated by not making the argument in its discretionary denial response brief. Even if it had not waived the argument, it is wholly without merit and should be rejected.

First, the Federal Circuit has already rejected this argument in *Mylan Labs. Ltd. v. Janssen Pharmaceutica, N.V.*, 989 F.3d 1375, 1383 (Fed. Cir. 2021). There, Mylan had argued that it was a violation of its constitutional and due process rights to apply *Fintiv* and deny institution based on a parallel district court litigation. *Id*. at 1378. The Federal Circuit disagreed, finding that "no petitioner has a right to [] institution," and the decision to institute "is a matter committed to the Patent Office's

discretion." *Id*. at 1382-83 (internal quotation omitted). Petitioner did not attempt to address or distinguish the *Mylan* case because it cannot.

Second, even if Petitioner had identified a colorable right that was violated, Petitioner cannot plausibly assert that it was relying on the Vidal Memo when it filed its Petition. As discussed above, Petitioner chose not to offer any stipulation (*Sotera* or otherwise) with its Petition. Only ***after*** the Vidal Memo was rescinded did it submit a stipulation. Petitioner could not have been relying on guidance from the Vidal Memo when it did not even follow that guidance in the first place.

Third, Petitioner incorrectly asserts that the new rules were enforced "retroactively." Request at 4-5. However, at the time the Vidal Memo was rescinded the Petition had not been considered (nor had any briefing beyond the Petition been filed). Petitioner received a full opportunity to address the guidance in effect at the time the institution decision was made when it submitted Petitioner's DD Brief. Nothing was done retroactively.

Petitioner's reliance on *Landgraf v. USI Film Prods.*, 511 U.S. 244, 269–70 (1994) is misplaced. Request at 5. In *Landgraf*, there was a substantive change in the law after the case at issue had already been tried and was on appeal. *Landgraf*, 511 U.S. at 249. The Supreme Court noted that under its rules of statutory interpretation "a court is to apply the law in effect ***at the time it renders its decision***." *Id*. at 264 (emphasis added) (internal quotes and citations omitted). The USPTO's

actions were consistent with that approach—it applied the guidance in effect at the time it made the Decision.

The Supreme Court further explained that "[a] statute does not operate 'retrospectively' merely because it is applied in a case arising from conduct antedating the statute's enactment … or upsets expectations based in prior law. **[]** Rather, the court must ask whether the new provision attaches new legal consequences to events ***completed*** before its enactment." *Id.* at 269-70 (emphasis added). Petitioner had not even offered its stipulation at the time that the Vidal Memo was revoked, and no decisions had been completed on any briefing. The very case that Petitioner relies on squarely rejects its legal theory that applying the rules and laws as they exist at the time of a decision is a retroactive application.

Fourth, Petitioner not only received warning of the change, it received a full opportunity to submit new arguments and evidence addressing it. *See* Request at 5. Furthermore, Petitioner was on notice that the Vidal Memo was expected to be rescinded. The memo itself notes that its guidance is merely "interim" and that "[t]he Office expects to replace this interim guidance with rules after it has completed formal rulemaking." Vidal Memo at 9. Thus, Petitioner was fully on notice that the guidance it supposedly "relied on" was expected to change and it was given a full opportunity to address that change.

Fifth, Petitioner's argument that it "had a protected interest in the fees and costs it expended preparing and filing the Petition" cannot save its deeply flawed theories. Request at 5. Petitioner's assertion that it had a "reasonable expectation that pairing an IPR petition with a *Sotera* stipulation" would result in a specific outcome falls flat at least because it declined to even attempt that pairing until after that guidance had been rescinded. Nor did Petitioner have a right to have its Petition considered on the merits, at least because the Director always retains discretion as to whether to consider a petition. *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 273 (2016); *see also Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005) ("a benefit is not a protected entitlement if government officials may grant or deny it in their discretion."); *Bloch v. Powell*, 348 F.3d 1060, 1069 (D.C. Cir. 2003). The Vidal Memo did not purport to bind the Director, but merely clarified "the PTAB's current application of *Fintiv*." Vidal Memo at 2-3; *see Apple Inc. v. Vidal*, 63 F.4th 1, 7 (Fed. Cir. 2023) ("We have also made clear that any institution decision made by the Board as delegatee of the Director is subject to reversal by the Director.").

Notably, Petitioner did not assert that the rescission of the Vidal Memo would have altered its decision to incur those fees and costs. The fact that Petitioner

continues to file IPR challenges even after the Decision issued in this proceeding[4] demonstrates that it would have incurred those same fees and costs regardless of whether the Memo was rescinded.

B. Rescission of the Vidal Memo Did Not Violate the APA

First, Petitioner asserts that that the rescission of the Vidal Memo was ineffective because it was not done through notice-and-comment rulemaking. Request at 6. However, the Vidal Memo was not installed through notice-and-comment rulemaking in the first place. *See, e.g., Apple*, 63 F.4th at 17 n.7 (noting that the June 2022 Vidal Memo was "not put in place through notice-and-comment rulemaking"); Vidal Memo at 2 ("[T]he Office is planning to soon explore potential rulemaking on proposed approaches through an Advanced Notice of Proposed Rulemaking. In the meantime…."), 9 ("The Office expects to replace this interim guidance with rules after it has completed formal rulemaking"). If Petitioner is correct and updating the USPTO's discretionary denial guidance always requires notice-and-comment rulemaking, then it also would have been a violation of the APA to apply the Vidal Memo which was not installed via that process. Either way, Petitioner loses.

[4] *See, e.g.,* IPR2025-01249 to -01254, -01376 to -01378, -01187, -01190, -01350, -01307.

Furthermore, "[n]ot all 'rules' must be issued through the notice-and-comment process. Section 4(b)(A) of the APA provides that, unless another statute states otherwise, the notice-and-comment requirement 'does not apply' to 'interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'" *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 96 (2015) (quoting 5 U.S.C. § 553). Petitioner failed to demonstrate that the Vidal Memo and subsequent guidance would not fall under the category of "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice."

Second, Petitioner asserts that "rescission of the Vidal Memo further violates the APA because of its retroactive effect." Request at 7. However, as discussed previously, there was no retroactive application or effect. No decision was rendered until after the Vidal Memo was revoked, and Petitioner was given a full opportunity to address the post-rescission guidance. Contrary to Petitioner's assertion, the "Boalick Memo" never announced a "retroactive effect." *Id*.

Third, even assuming the rescission of the Vidal Memo represented a change of policy as Petitioner asserts, the USPTO provided a reasoned explanation for the change. For example, the March 26, 2025 Memo fully explained the requirement of balancing the need to meet statutory obligations for "*ex parte* appeals" with "statutory deadlines for AIA proceedings, and other workload needs," as well as

"promote consistent application of discretionary considerations in the institution of AIA proceedings." March 26, 2025 Memo at 1-3.

C. The USPTO Applied the *Fintiv* Factors Holistically and According to Precedent

The Request asserts that the Decision applied Fintiv factors 1 and 2 "contrary to binding precedent and longstanding Board practice." Request at 8-10. The Request also asserts that the Decision failed to apply the Fintiv Factors holistically (despite acknowledging that the Decision itself directly addresses and rejects that point). *Id.* As discussed below, neither assertion can support a request for Director Review.

First, regarding likelihood of a stay, Petitioner's new position is without merit. Petitioner already conceded—in both the Petition and in its discretionary denial response—that *Fintiv* factor 1 was, at best, neutral. Pet. at 71; Petitioner's DD Brief at 2. Petitioner cannot now argue that this factor favors institution. Moreover, Petitioner misinterprets *Fintiv*. As the Board explained, whether the Court's denial of a motion to stay without prejudice is given any weight depends on "proximity of the court's trial date and investment of time." *Apple, Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 7 (P.T.A.B. Mar. 20, 2020) (precedential). As explained in PO's DD Brief, there was strong evidence that Petitioner's motion for a stay would not be granted, PO's DD Brief at 4-5, and the proximity to trial and investment of time further support a finding that the factor favors discretionary denial, *id.* at 5-10.

To the extent Petitioner now asserts that a speculative new motion would be more successful, that assertion is incorrect. Petitioner already conceded that the only way that a stay might occur would be if "all asserted claims of all asserted patents are challenged in [] ***instituted*** IPRs." Petitioner's DD Brief at 2 (emphasis added). As Petitioner notes, a renewed motion would likely not even be considered unless this IPR and ***also*** each of "IPR2025-00493, IPR2025-00494, and IPR2025-00496" were all instituted. *Id.* There is no evidence in the record that there was any likelihood of this occurring, therefore this factor was analyzed correctly.

Second, regarding likely trial date, Petitioner relies on new evidence (submitted without authorization in violation of 37 CFR § 42.75(c)(3)) that purportedly shows that "average[[5]] time to trial in the Eastern District of Texas has been steadily increasing over the last year." Request at 9-10. Unfortunately for Petitioner, even the improperly submitted new statistics it relies on still show that trial will occur well in advance of any final written decision (at least 3 months in advance even using Petitioner's calculations). *Id.* Petitioner cites several non-precedential cases in support of its assertion that its new showing would alter the

[5] The newly submitted evidence in Exhibits 1033-1035 appears to address median time to trial, rather than average. Regardless, Petitioner's untimely evidence and theories still fail to change the outcome for this *Fintiv* factor.

analysis, but Petitioner ignores binding guidance from *Fintiv* which holds that an earlier trial date supports discretionary denial at *Fintiv* factor 2 regardless of whether it is by 3 months or 7 months. *Fintiv*, Paper 11 at 9 (precedential); *Fintiv*, Paper 15 at 12-13 (P.T.A.B. May 13, 2020) (informative) (finding a two month earlier trial date favored discretionary denial).

Third, regarding the *Fintiv* Factors as a whole, the Decision applied the factors holistically and properly found that discretionary denial was merited. Decision at 2-3. Factor 1 favors denial as explained in PO's briefing (and Petitioner's own briefing conceded that it was neutral at best). PO's DD Brief at 4-5. Under Factor 2 it is undisputed that trial in the District Court is projected to occur before any final written decision (even based on Petitioner's newly submitted evidence), thus the factor weighs in favor of discretionary denial under any precedential guidance (past or present). *Id.* at 5-8. Factor 3 favors denial as discussed in PO's DD Brief. *Id*. at 8-10. Even the revised Markman hearing date Petitioner points to in its Request still falls before the projected institution decision deadline. *See* Request at 11. Factor 4 favors denial even in light of Petitioner's belated stipulation due to Petitioner's delay in offering the stipulation and the fact that the stipulation reserved the right to allege invalidity in the District Court Proceeding based on unpublished system prior art—either by itself or in combination with other prior art not asserted in the IPR. *See* PO's DD Brief at 10-13. Even if Petitioner's stipulation alleviates *some* concerns of

overlap, this factor cannot outweigh the overwhelming support for discretionary denial provided by the other factors. Factor 5 favors denial under binding precedent because the parties are the same (as discussed in PO's briefing). *Id*. at 13. Factor 6 also favors denial at least because the Petition grounds were weak (as addressed in PO's preliminary response), and Petitioner delayed filing its challenge for more than three years. *Id*. at 13-15. Furthermore, additional considerations including Petitioner's extensive reliance on an expert declaration and the settled expectations of the parties further support discretionary denial. *Id*. at 15-17. Thus, a holistic analysis of the *Fintiv* factors overwhelmingly supports discretionary denial.

D. The Decision's Analysis of "Settled Expectations" Was Factually Correct and Not An Abuse of Discretion

Petitioner asserts that it was an abuse of discretion to analyze settled expectations as part of discretionary denial analysis because the patent "may not have been commercialized, asserted, marked, licensed, or otherwise applied in a petitioner's particular technology space, if at all." Request at 12 (internal quotes and citations omitted). Petitioner cites no evidence in support of its claim, and the evidence of record shows that there were efforts to commercialize the '671 Patent at least as early as June 2021. EX1037[6] at 5 (June 2021 assignment of patent to Four

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[6] To the extent that Petitioner's improperly submitted new exhibits are expunged, the assignment can be found in USPTO records at reel/frame 056614/0544.

Batons); *see also* EX2011 at 2 (showing 2021 licensing discussions between Four Batons and Samsung). Petitioner asserts (without citation) that PO had the burden to come forward with evidence of settled expectations. Regardless, such evidence is found throughout the record, including the length of time the patent was in force (as shown on the face of the patent) along with the evidence of licensing negotiations. EX1001 at (45); *see generally* EX2011.

Petitioner asserts that "[w]hat is legally relevant are PO's expectations for its 2021 investment, not the prior owner's expectations between 2012 and the sale." Request at 13. However, the Director has previously found that a patent purchaser had strong settled expectations under similar facts. *See, e.g., SAP America, Inc. v. Valtrus Innovations Ltd.,* IPR2025-00415, Paper 9 at 11 (P.T.A.B. June 9, 2025) (Petitioner asserting that the patent owner did not have settled expectations because the "PO did not acquire the challenged patent until 2021"); *Id.*, Paper 10 at 2 (P.T.A.B. July 10, 2025) (Director Decision finding settled expectations for the patent). Even if Petitioner's assertion was accurate, the "whole right, title, and interest" of the prior patent owner were assigned to Four Batons, EX1037 at 4, and its expectations were justifiably settled based on that assignment. Thus, Four Batons was entitled to the same expectations as the prior owner.

Furthermore, Samsung's assertion that it believed it was licensed to the patent is disingenuous. As shown in Exhibit 2011, Four Batons quickly dispelled that

assertion, which from the email chain appears to have simply been an attempt to delay good faith negotiations. *See, e.g.,* EX2011 at 21-23. Notably, despite violating USPTO rules and submitting other exhibits with its Request, Samsung submitted no license agreement or other evidence supporting its assertion that it believed it had a license. Ultimately, Samsung's argument that it thought it had a license is a red herring for which Samsung has no support.

E. The USPTO Complied with 35 U.S.C. § 314

Petitioner asserts that 35 U.S.C. § 314(c) requires the Director to issue a written decision under 35 U.S.C. § 314(a) as to whether there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition. Request at 14-15. However, Petitioner's analysis ignores the plain language of the statute as well as Supreme Court precedent interpreting the statute.

By its plain language, § 314(a) states what the Director **may not** do (rather than what the Director **must** do as Petitioner asserts):

> The Director **may not** authorize an inter partes review to be instituted unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.

§ 314(a) (emphasis added).

As the Supreme Court has explained, this statute is discretionary—there is "no mandate to institute review" and "the agency's decision to deny a petition is a matter committed to the Patent Office's discretion." *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 273 (2016). Section 314(c) instructs that **if** the Director makes a determination on the information presented in the Petition, then the Director shall notify the parties of that determination. It does not alter the discretionary nature of § 314(a).

IV. Conclusion

Patent Owner respectfully requests that the USPTO refuse to grant Director Review of the Decision for the foregoing reasons.

Dated: August 29, 2025 Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that pursuant to 37 C.F.R. § 42.6(e), a copy of the foregoing was served via email to lead and backup counsel of record for Petitioner as follows:

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