

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ADVANCED MICRO DEVICES, INC.,

Petitioner,

v.

ADVANCED CLUSTER SYSTEMS, INC.,

Patent Owner.

IPR2025-00862

U.S. Patent No. 10,333,768

**PETITIONER'S REQUEST FOR REHEARING UNDER
37 C.F.R. § 42.71(d)**

I. INTRODUCTION

Petitioner Advanced Micro Devices, Inc. (“AMD”) respectfully requests rehearing under 37 C.F.R. § 42.71(d) of the now-Deputy Director’s September 3, 2025, Decision Denying Institution of *Inter Partes* Review (Paper 14) (“Decision”). In the Decision, the Deputy Director rejected AMD’s arguments regarding national security and vital U.S. Government interests in the AMD products accused of infringing the challenged patent in the parallel litigation, stating that “Petitioner’s arguments are not narrowly-tailored towards particular products, and Petitioner does not sufficiently explain how national security interests warrant review of the specific patents challenged in these proceedings.” Decision, 3. AMD submits that the Deputy Director overlooked or misapprehended AMD’s evidence and arguments that were directed at the specific AMD products accused of infringing and that set forth in detail why the U.S. Government’s interests warrant review of the challenged patent. As such, and for the reasons explained herein, AMD requests reconsideration of the Decision.

II. STANDARDS FOR REQUESTING REHEARING

The Interim Director Discretionary Process at V.C states that “[i]f the Director exercises discretion to deny institution, then a party may file a request for rehearing or Director Review within 30 days of the Director’s decision. If the party is requesting Director review, the party shall file its request under the procedures

set forth in 37 C.F.R. § 42.75(c) and submit the fee as set forth in 37 C.F.R. § 42.15(f).” See <https://www.uspto.gov/patents/ptab/interim-director-discretionary-process>. And 37 C.F.R. § 42.71(d) explains that a request for rehearing must “specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, a reply, or a sur-reply.”

III. ARGUMENT

A. AMD's Accused Products Are Critical to U.S. Government Interests and the Decision Overlooks or Misapprehends the Evidence Proving This

First, AMD established that Patent Owner in parallel litigation is accusing AMD's “INSTINCT™” line of products of infringing, *inter alia*, the challenged patent (U.S. Patent No. 10,333,768). See Petitioner's Opposition to Patent Owner's Request for Discretionary Denial (“AMD Opp.,” Paper 11) at 2-3, n. 1 (*citing* EX-1019, ACS complaint against AMD at 15-16, 29). The Complaint states as follows:

- “[B]y September 21, 2021, AMD was making, using, and testing commercial products incorporating its infringing technology, including at least its MI250 and MI250X Accelerators.”

- “[A]round March 22, 2022, AMD was making, using, testing, and/or offering for sale commercial products incorporating its infringing technology that included its MI210 Accelerator.”¹
- “AMD has made, used, offered to sell, and/or sold within the United States, and/or has imported into the United States server and workstation products that utilize AMD’s MI300X Accelerators, including at least AMD’s INSTINCT™ MI300X Platform, and all products including or related to AMD’s INSTINCT™ MI300X Platform and all products including or related to AMD INSTINCT™ Accelerator Qualified Servers incorporating any of the Accused AMD Accelerator Products.”
- “AMD has made, used, offered to sell, and/or sold within the United States, and/or has imported into the United States accelerator products especially adapted for use in server and workstation products, including AMD’s MI210, MI250, MI250X, MI300X, and MI300A, as well as any

¹ The Complaint cites to AMD’s website, wherein the MI210, MI250, and MI250X are identified as part of AMD’s INSTINCT™ product family. *See* EX-1019, ¶¶ 44-46, footnotes 19-21.

products incorporating those items, and any products that are substantially similar to those items.”

See EX-1019, ¶¶ 44-50. The Complaint refers to these AMD INSTINCT™ products as the “Accused Products.” *Id.*, ¶ 50.

Second, AMD established that Patent Owner was seeking to enjoin AMD's INSTINCT™ products from being made, used, or sold in the United States. AMD Opp. at 2-3, n. 1 (citing Complaint, EX-1019, 29). The Complaint is clear on this, seeking an “injunction enjoining AMD and its officers, agents, servants, employees, attorneys and all others in active concert and/or participation with them from further infringing the '768 ... patent[] through the manufacture, use, testing, sale, offer for sale, importation and/or any of the other acts prohibited by 35 U.S.C. § 271, including preliminary and permanent injunctive relief.” EX-1019, 29.

Third, as explained in more detail below, AMD established that the specific accused AMD INSTINCT™ products are critical to national security and U.S. Government interests.

(1) AMD's INSTINCT™ Products are Critical to the U.S. Government's Race to Win the Artificial Intelligence Race

On January 23, 2025, President Trump issued a Presidential Action titled “Removing Barriers to American Leadership in Artificial Intelligence.” EX-1097.

In it, the President explained that it is the “policy of the United States to sustain

and enhance America's global AI dominance in order to promote ... ***national security.***" *Id.* (emphasis added). AMD and its INSTINCT™ products are critical to this effort and having a patent injunction remove those products from the U.S. market would be directly contrary to the President's and the Government's goal of ensuring U.S. technology leads the AI race.

For example, a July 24, 2025, *Wall Street Journal* article stated that "Trump officials said ... that the U.S. needs to sell homegrown chips and software to allies so their AI is dependent on American companies, not Chinese ones." EX-1079, 3. That same article noted that President Trump recognized AMD's CEO as a leader "vital to helping America win the AI race," and identified one of AMD's INSTINCT™ accelerators (the MI308) by name. *Id.*, 2. The White House also stated in a press release that the "Commerce and State Departments will partner with industry to deliver secure, full-stack AI export packages – including hardware, models, software, applications, and standards – to America's friends and allies around the world." EX-1080. In that press release, Secretary of State and Acting National Security Advisor Marco Rubio states that "[w]inning the AI Race is non-negotiable. America must continue to be the dominant force in artificial intelligence to promote prosperity and protect our economic and national security." *Id.*, 2.

Moreover, during a Congressional hearing on the importance of AI to the U.S. Government, Senator Ted Cruz singled out AMD for its “high performance processors, graphic chips and AI accelerators that power artificial intelligence.” EX-1088, 4. And numerous published articles identify the accused AMD INSTINCT™ products as the ones that power AI. *See* EX-1087 (stating that AMD’s latest MI300 series accelerator family strengthens its competitive position in the generative AI space, catering to the increasing demands of AI workloads in modern data centers”); EX-1089 (explaining that Microsoft was using “AMD’s artificial intelligence chips” including its “flagship MI300X AI chips”); EX-1090 (Oracle press release stating that it would offer “an AI supercomputer with AMD Instinct MI355X GPUs”); EX-1091 (explaining that both Meta and OpenAI were embracing “AMD’s MI300X” for AI use).

AMD cited this evidence in its Opposition (*see* pp. 2-7), but it appears the Deputy Director, in stating that AMD’s “arguments are not narrowly-tailored towards particular products,” overlooked or misapprehended it. To the contrary, AMD’s evidence was directed specifically to the accused AMD INSTINCT™ products and explained how and why they are critical to the U.S. Government’s and the President’s interest in ensuring that the United States win the AI race—a

race that, among other vital interests, is, as Secretary Rubio stated, critical to “promote prosperity and protect our economic and national security.” EX-1080, 2.

(2) AMD's INSTINCT™ Products are Critical to National Security

In addition to the role AMD's INSTINCT™ products play in the AI race, those products also are critical to other national security interests. The Department of Energy's (“DOE”) El Capitan supercomputer is “powered by AMD Instinct MI300A APUs (Accelerated Processing Units),” and is the “the fastest supercomputer on the planet.” EX-1094. The El Capitan supercomputer supports the National Nuclear Security Administration's “mission of ensuring the nation's nuclear deterrent is safe, secure, and reliable. It performs critical calculations and modeling and simulation tasks for the NNSA Tri-Labs:LLNL, Los Alamos and Sandia National Laboratories.” *Id.*, 2.

It would be hard-pressed to identify a more critical component of national security than keeping the country safe from nuclear threats. And the specific AMD INSTINCT™ products are, as the evidence shows, the engines that help do this. *See Opp.* at 10-11. Yet, the Decision fails to address this, other than to state that AMD “does not explain in sufficient detail why review of the challenged patents is in the interest of national security.” Decision at 2. As noted above, AMD set forth in detail how the Accused AMD INSTINCT™ products—at risk of being enjoined

in the parallel litigation—play a key role in national security. It appears that the Deputy Director overlooked or misapprehended this evidence.

(3) AMD's INSTINCT™ Products are Important to Public Health

AMD also demonstrated that the Accused AMD INSTINCT™ products serve important public health interests. *See* Opp. at 12-14; EX-1082; EX-1083, 15 (the AMD Instinct MI300 Series Accelerators can “supercharge HPC, enabling organizations to process the massive amounts of real-time patient data more efficiently, accelerate time-to-insight, and drive better treatment recommendations.”); EX-1084 (noting that a supercomputer built using AMD Instinct MI250X GPUs is a “key resource for life sciences research, providing insight into disease identification and treatment.”); EX-1095. The Decision does not address this evidence or argument other than generically rejecting it. Decision, 2.

B. Rehearing and Referral to a Merits Panel is Warranted

The Deputy Director stated that compelling economic, public health, or national security interests may be relevant when considering discretionary denial arguments. EX-1077, 2. As explained above, AMD presented compelling evidence that demonstrated that these interests overcome any other discretionary denial factors and warrant referral of the petition to a merits panel for consideration of

institution on the merits.² The current Administration has stressed the vital importance of the U.S. winning the AI race and has singled out AMD and the INSTINCT™ accused chips as *critical* to that effort. Those AMD products are also critical to national security, including no less than helping ensure that the Government can effectively deter nuclear threats.

AMD's argument and evidence were specifically tailored at the specific accused INSTINCT™ products and explained how the Government's AI, national security, and public health interests warranted review of the challenged patent. The Deputy Director misapprehended or overlooked this explanation and evidence, and AMD respectfully requests that the Decision should be reconsidered, rehearing should be granted, and the petition should be referred to a merits panel. It would be consistent with the Administration's goals that a potentially invalid patent does not

² For example, while the Decision identifies Patent Owner's settled expectations and the prior IPRs filed against the challenged patent, the Deputy Director has in other proceedings held certain discretionary factors may overcome others. *See, e.g., Home Depot, U.S.A. Inc. v. H2 Intellect LLC*, IPR2025-00480, Paper 11 (PTAB Sept. 4, 2025). Here, the Government's compelling AI and national security interests should trump the other factors identified in the Decision.

interfere with the country's critical AI and national security efforts. *See* 157 Cong. Rec. S1326 (Mar. 7, 2011) (Sen. Sessions) (stating that a goal of the IPR process was to weed out "invalid patents ... before they *disrupt an entire industry*"); 157 Cong. Rec. S1352 (Mar. 8, 2011) (statement of Sen. Udall) (stating that Congress intended the IPR process to "provide additional access to the expertise of the Patent Office on questions of patentability").

IV. ARGUMENT

For these reasons, AMD respectfully asks that this request for rehearing be granted.

Respectfully submitted,

Dated: October 2, 2025

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PETITIONER'S EXHIBIT LIST

Ex.1001	U.S. Patent No. 10,333,768
Ex.1002	Prosecution History of U.S. Patent No. 10,333,768
Ex.1003	Declaration of Dr. Chandrajit L. Bajaj under 37 C.F.R. § 1.68
Ex.1004	<i>Curriculum Vitae</i> of Dr. Chandrajit L. Bajaj
Ex.1005	“MultiMATLAB: Integrating MATLAB with High-Performance Parallel Computing,” Menon et al., SC '97: Proceedings of the 1997 ACM/IEEE Conference on Supercomputing 1997
Ex.1006	“MultiMATLAB: MATLAB on Multiple Processors,” Trefethen et al., 1996 Computer Science Technical Report, Cornell University 1996
Ex.1007	“RS/6000 SP: Planning Vol. 1, Hardware and Physical Environment,” IBM 2001
Ex.1008	“Operation and Use, Volume 1, Using the Parallel Operating Environment,” IBM 2001
Ex.1009	“Single program multiple data” in Dictionary of Algorithms and Data Structures, P. E. Black, (accessible at https://www.nist.gov/dads/HTML/singleprogrm.html), Dec. 2004
Ex.1010	The RS/6000 SP Inside Out” to Barrios et al., IBM 1999
Ex.1011	“High Performance Cluster Computing: Programming and Applications,” Rajkumar Buyya, Vol. 2, 1999
Ex.1012	“Analysis of 100Mb/s Ethernet for the Whitney Commodity Computing Testbed,” Fineberg et al., NAS Technical Report NAS-97-025 1997
Ex.1013	“A Parallel Linear Algebra Server for Matlab-like Environments,” G. Morrow et al., SC '98: Proceedings of the 1998 ACM/IEEE Conference on Supercomputing 1998

Ex.1014	“Parallel MATLAB: Doing It Right,” R. Choy et al., Proceedings of the IEEE, Vol. 93, No. 2, 2005
Ex.1015	“Mathematica Parallel Computing Toolkit - Unleash the Power of Parallel Computing,” R. Maeder, 2005
Ex.1016	“Mastering MATLAB® 5 – A Comprehensive Tutorial and Reference,” D. Hanselman et al., 1998
Ex.1017	“MPI: A Message-Passing Interface Standard,” Message Passing Interface Forum, 1994
Ex.1018	“Modern Operating Systems,” A.S. Tanenbaum, 2001
Ex.1019	September 26, 2024 Complaint in Western District of Texas against AMD
Ex.1020	Scheduling Order for <i>Advanced Cluster Systems, Inc. v. Advanced Micro Devices, Inc.</i> , 7:24-CV-00244 (W.D. Tex.)
Ex.1021	Federal Court Statistics
Ex.1022	Advanced Cluster Systems, Inc.’s Preliminary Infringement Contentions, February 24, 2025, <i>Advanced Cluster Systems, Inc. v. Advanced Micro Devices, Inc.</i> , 7:24-CV-00244 (W.D. Tex.)
Ex.1023	Cornell Websites
Ex.1024	“pyMPI—An introduction to parallel Python using MPI,” P. Miller 2002
Ex.1025	Amended Joint Claim Construction Chart for <i>Advanced Cluster Systems, Inc. v. Nvidia Corporation</i> , 1:19-cv-02032 (DDE)
Ex.1026	SC97: High Performance Networking and Computing Conference Website
Ex.1027	Declaration of IEEE
Ex.1028	ACM Digital Library - Citations to Menon

Ex.1029	Affidavit of Archive.org
Ex.1030	HPC Wire Article about the SC97 High Performance Computing Conference
Ex.1031	Flyer about the SC97 High Performance Computing Conference
Ex.1032	IEEE Xplore Website
Ex.1033	Article about Cornell Theory Center
Ex.1034	ACM Digital Library
Ex.1035	ACM Digital Library - Citations to Menon
Ex.1036	A Beginner's Guide to the IBM SP
Ex.1037	ACM Digital Library - Citations to MPIref
Ex.1038	IBM Website for RS6000
Ex.1039	IBM Website for POE
Ex.1040	ACS Preliminary Response, IPR2021-00019
Ex.1041	Decision Denying Institution, IPR2021-00019
Ex.1042	Sotera Stipulation, <i>Advanced Cluster Systems, Inc. v. Advanced Micro Devices, Inc.</i> , 7:24-CV-00244 (W.D. Tex.)
Ex.1043	U.S. Patent No. 8,082,289
Ex.1044	U.S. Patent No. 8,140,612
Ex.1045	U.S. Patent No. 8,676,877
Ex.1046	"X86 vs. ARM: A Deep Dive into the Architecture," Semicon Electronics, October 28, 2024
Ex.1047	"Intel battles AMD with new data center chips," Cherney et al, Reuters, June 4, 2024

Ex.1048	“Economic Contributions of Data Centers in the United States, 2017-2023,” PWC, Feb. 2025
Ex.1049	“Back & Forth 2: Intel and the Semiconductor Industry,” S. Shivakumar et al., Center for Strategic & International Studies, Jan. 13, 2025
Ex.1050	“DoD Extends Contract for ORAN-based Private 5G Networks through 2025,” Echostar, March 18, 2024
Ex.1051	“HPE selected to deliver supercomputers for DoD computing modernization program,” M. Iriarte, Military Embedded Systems, February 20, 2018
Ex.1052	“ZMicro to Provide Rugged Computers for US Sky Warden Aircraft,” R. Manuel, The Defense Post, Oct. 6, 2022
Ex.1053	“Argonne National Laboratory’s Aurora 2+ ExaFLOPS System Will Enable New Science and Engineering”
Ex.1054	“What milestone advancements in computer chips mean for the military,” Breaking Defense
Ex.1055	Amended Order Assigning the Business of the Court (Judge Moses, Jan. 31, 2025)
Ex.1056	LexMachina docket report
Ex.1057	LexMachina docket report
Ex.1058	USPTO Notice rescinding the June 21, 2022, memorandum entitled “Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation.”
Ex.1059	Notice of Filing Date Accorded to Petition, IPR2025-00915
Ex.1060	Notice of Filing Date Accorded to Petition, IPR2025-00914
Ex.1061	Notice of Filing Date Accorded to Petition, IPR2025-00916
Ex.1062	Notice of Filing Date Accorded to Petition, IPR2025-00913
Ex.1063	Claim Construction Order and Memorandum in Support Thereof,

	<i>ParkerVision, Inc. v. MediaTek Inc.</i> , 6:22-cv-01163 (WDTX)
Ex.1064	Claim Construction Order, <i>TOT Power Control, S.L. v. AT&T, Inc.</i> , 6:21-cv-00107 (WDTX)
Ex.1065	Claim Construction Order, <i>Repairify, Inc. v. Keystone Automotive Industries, Inc.</i> , 6:21-cv-00819 (WDTX)
Ex.1066	Petition for a Writ of Mandamus, <i>In re Sap America, Inc.</i> , 25-118 (Fed. Cir.)
Ex.1067	Decision Granting Institution of <i>Inter Partes</i> Review of USPN 8,082,289, IPR2020-01608
Ex.1068	Decision Granting Institution of <i>Inter Partes</i> Review of USPN 8,140,612, IPR2021-00075
Ex.1069	Decision Granting Institution of <i>Inter Partes</i> Review of USPN 8,676,877, IPR2021-00108
Ex.1070	“FAQs for Interim Processes for PTAB Workload Management” (USPTO)
Ex.1071	September 26, 2024 Complaint in Western District of Texas against Intel
Ex.1072	Termination Due to Settlement After Institution of Trial, IPR2020-01608
Ex.1073	Termination Due to Settlement After Institution of Trial, IPR2021-00075
Ex.1074	Termination Due to Settlement After Institution of Trial, IPR2021-00108
Ex.1075	Reserved
Ex.1076	Declaration of Pamela Keyl, IPR2023-00042
Ex.1077	March 26, 2025 Memorandum titled “Interim Processes for PTAB Workload Management” (Acting Director Stewart)
Ex.1078	March 24, 2025 Memorandum titled “Guidance on USPTO’s rescission of ‘Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation’” (Chief Administrative Patent Judge Boalick)
Ex.1079	“Nvidia, AMD CEOs Rally Behind President Trump’s AI ‘Action

	Plan,” Belle Lin, Wall Street Journal, July 24, 2025, https://www.wsj.com/articles/nvidia-amd-ceos-rally-behind-president-trumps-ai-action-plan-08a94a74
Ex.1080	“White House Unveils America’s AI Action Plan” and “ <i>Winning the AI Race: America’s AI Action Plan</i> ” linked therein, The White House, July 23, 2025, https://www.whitehouse.gov/articles/2025/07/white-house-unveils-americas-ai-action-plan/
Ex.1081	Order Resetting Markman Hearing, <i>Advanced Cluster Systems, Inc. v. Advanced Micro Devices, Inc.</i> , 7:24-CV-00244 (W.D. Tex.)
Ex.1082	“Frontier Supercomputer Hits New Highs in Third Year of Exascale,” Matt Lakin, Nov. 18, 2024, https://www.ornl.gov/news/frontier-supercomputer-hits-new-highs-third-year-exascale
Ex.1083	“AMD Flags \$800 Million Hit from New US Curbs on Chip Exports to China,” Reuters, Apr. 16, 2025, https://www.reuters.com/technology/amd-flags-800-million-hit-new-us-curbs-chip-exports-china-2025-04-16/
Ex.1084	ACS Preliminary Response, IPR2021-00020
Ex.1085	Trial Institution Document, IPR2021-00020
Ex.1086	AI Arms Race Escalates as Meta Poaches Two or More OpenAI Execs,” James Darley, July 17, 2025, https://technologymagazine.com/news/ai-arms-race-escalates-as-meta-poaches-two-more-openai-execs
Ex.1087	“AMD’s AI Chips Gain Grounds in Data Centers: A Sigh for More Upside?,” Zacks Equity Research, July 16, 2025, https://www.nasdaq.com/articles/amds-ai-chips-gain-ground-data-centers-sign-more-upside?utm_source=chatgpt.com
Ex.1088	“Transcript: Sam Altman Testifies at US Senate Hearing on AI Competitiveness,” Cristiano Lima-Strong, May 8, 2025, https://www.techpolicy.press/transcript-sam-altman-testifies-at-us-senate-hearing-on-ai-competitiveness/?utm_source=chatgpt.com
Ex.1089	“Microsoft Offers Cloud Customers AMD Alternative to Nvidia AI Processors,” Max A. Cherney, May 17, 2024,

	https://www.reuters.com/technology/microsoft-offers-cloud-customers-amd-alternative-nvidia-ai-processors-2024-05-17/
Ex.1090	“Oracle and AMD Collaborative to Help Customers Deliver Breakthrough Performance for Large-Scale AI and Agentic Workloads,” Oracle Press Release, June 12, 2025, https://www.oracle.com/news/announcement/oracle-and-amd-collaborate-to-help-customers-deliver-breakthrough-performance-for-large-scale-ai-and-agentic-workloads-2025-06-12/
Ex.1091	“Meta’s Obsession with AI is Great News for AMD,” AMD, July 9, 2025, https://seekingalpha.com/article/4800016-metas-obsession-with-ai-is-great-news-for-amd
Ex.1092	“TensorWave Just Deployed the Largest AMD GPU Training Cluster in North America – Features 8, 192 MI325X AI Accelerators Tamed by Direct Liquid-Cooling,” Hassam Nasir, July 14, 2025, https://www.tomshardware.com/pc-components/gpus/tensorwave-just-deployed-the-largest-amd-gpu-training-cluster-in-north-america-features-8-192-mi325x-ai-accelerators-tamed-by-direct-liquid-cooling?utm_source=chatgpt.com
Ex.1093	“Nvidia: ‘We are Racing to Scale Supply to Meet Incredible’ Blackwell Demand,” Dylan Martin, Nov. 20, 2024, https://www.crn.com/news/components-peripherals/2024/nvidia-we-are-racing-to-scale-supply-to-meet-incredible-blackwell-demand
Ex.1094	“El Capitan Reigns Supreme Across Three Major Supercomputing Benchmarks,” Jeremy Thomas, June 16, 2025, https://www.llnl.gov/article/53006/el-capitan-reigns-supreme-across-three-major-supercomputing-benchmarks#:~:text=Missions,.El%20Capitan%20reigns%20supreme%20across%20three%20major%20supercomputing%20benchmarks,3)
Ex.1095	AMD’s Post, LinkedIn, https://www.linkedin.com/posts/amd_thehumancomponent-activity-7345900200793731073-TaKh/
Ex.1096	“Advancing Artificial Intelligence Education for American Youth,” Executive Orders, The White House, Apr. 23, 2025,

	https://www.whitehouse.gov/presidential-actions/2025/04/advancing-artificial-intelligence-education-for-american-youth/
Ex.1097	“Removing Barriers To American Leadership In Artificial Intelligence,” Presidential Actions, The White House, January 23, 2025, https://www.whitehouse.gov/presidential-actions/2025/01/removing-barriers-to-american-leadership-in-artificial-intelligence/

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of October, 2025, I caused to be served a true and correct copy of the foregoing Petitioner's Request for Rehearing Under 37 C.F.R. § 42.71(d) on the following:

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