

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

MÖLNLYCKE HEALTH CARE US, LLC,
AND BROCK USA, LLC

Plaintiff,

v.

GREENWOOD MARKETING, LLC d/b/a
RESTORATIVE MEDICAL or SPRY
THERAPEUTICS

Defendants.

[DEMAND FOR JURY TRIAL]

Civil Action No. 7:22-cv-3719

COMPLAINT

Plaintiffs Mölnlycke Health Care US, LLC (“MHC”), and Brock USA, LLC (“Brock”), (collectively “Plaintiffs”) by and through their attorneys, bring this action against Defendants Greenwood Marketing LLC d/b/a Restorative Medical or Spry Therapeutics (collectively “Restorative Medical” or “Defendants”) alleging as follows:

INTRODUCTION AND ALLEGATIONS COMMON TO ALL CLAIMS

1. MHC is the US subsidiary of Mölnlycke Health Care AB, a leading international medical solutions company headquartered in Gothenburg, Sweden. It manufactures and sells medical devices including, without limitation, wound care, single-use surgical, and pressure ulcer prevention (“PUP”) products to health care systems around the world.

2. PUP products are generally used to prevent bedsores and other pressure ulcers from developing in immobilized patients, including by redistributing force over a greater surface area while maintaining proper body alignment through the use of the fluidized positioner products at issue in this matter. Pressure ulcers are specifically caused by prolonged

pressure on localized areas of bony prominence resulting in tissue damage and necrosis. PUP products are an imperative preventative measure that hospitals and health systems across the United States use to (1) prevent the creation of pressure ulcers and the added cost associated with treatment, and (2) maintain high quality of care standards to ensure any federal and state subsidies that the hospital or health system may receive.

3. In February 2016, MHC acquired several integrated businesses owned by Bill and Bob Purdy (the “Purdys”), the current owners of Defendant Restorative Medical, including, *inter alia*, the associated intellectual property owned by the Purdys individually (“the Acquisition”). The Acquisition was governed by the Amended and Restated Acquisition Agreement (the “Agreement”) and related closing documents including identical Non-Compete Agreements executed by each of Bill Purdy and Bob Purdy in their individual capacities (collectively, the “Non-Compete”). The Disclosure Schedule to the Agreement outlines the intellectual property assets MHC acquired through the acquisition, which include among other such assets, US Patent 9,120,666 (“’666 Patent”).

4. Simultaneously, MHC and Restorative Medical entered into an Exclusive License and Agreement (“License Agreement”). Attachment A. The License Agreement granted Restorative Medical an exclusive license to the ’666 Patent, but only within the “fields of use” defined in relevant part as “restorative bracing, orthopedic bracing and . . . *to the extent solely for over the counter retail sale*, pregnancy products, sleep apnea pillows, and neck and lumbar support products” Attachment A ¶ 1.3 (emphasis added).

5. In Fall of 2019, during mediation of a different issue with the Purdys, MHC became aware that the Purdys, in violation of the Non-Compete, had begun to develop, manufacture, market, and sell wound or infection prevention products through Defendant

Restorative Medical, including a fluidized heel boot covered by US Patent 8,858,478 (“’478 Patent”), one of the patents transferred to MHC through the Acquisition and the ’666 Patent. MHC subsequently brought a prior lawsuit in 2020 against the Purdys and Restorative Medical alleging, *inter alia*, willful patent infringement of the ’478 Patent. The lawsuit later settled when Purdys and Restorative Medical agreed to redesign the infringing boot in December 2020 and the parties agreed to terminate the Non-Compete.

6. MHC and Restorative Medical simultaneously amended the License Agreement, reiterating that the “field of use” for Restorative Medical’s license of the ’666 Patent and now the ’478 Patent is limited to “over-the-counter retail sale” for pregnancy products, sleep apnea pillows, and neck and lumbar supports. Attachment A ¶ 1.3. In the amendments, Restorative Medical also warranted that it had ceased infringing upon both the ’666 and ’478 Patents outside the permitted field of use.

7. Also after the December 2020 settlement, MHC and the Purdys were involved in a second lawsuit involving, *inter alia*, defamation claims and enforcement of the December 2020 settlement agreement. This second lawsuit has since been resolved through settlement earlier this year.

8. Though all patent-related disputes between the Purdys and Restorative Medical and MHC seemed resolved with the December 2020 settlement, MHC subsequently learned that the Purdys, through Restorative Medical, are developing, manufacturing, marketing, and selling yet another infringing product, the Flo-Form positioner, and potentially other fluidized positioners, which infringe both the ’666 Patent and US Patent 8,171,585 (“’585 Patent”). Restorative Medical advertises the Flo-Form positioner, and subsequently sells at least that product, to medical institutions directly for use in clinical settings. Restorative Medical

advertises and markets its Flo-Form product, and other positioners, on-line as well as directly to clinicians and purchasers. For example, MHC has seen Restorative Medical market its Flo-Form positioners at clinical seminars such as the New England Region WOCN Conference in Manchester, NH. MHC acquired samples of infringing positioners, such as the Flo-Form positioner, from Restorative Medical at that medical convention, which is aimed at servicing commercial medical providers.

9. MHC currently has an exclusive license to the '585 Patent, which is owned by Brock, within the medical positioning commercial field.

PARTIES

10. Mölnlycke Health Care US, LLC, is a limited liability company organized under the laws of the State of Delaware and doing business in the state of New York under the same name. MHC's principal place of business is 5550 Peachtree Parkway Suite 500, Norcross, Georgia 30092.

11. Brock USA, LLC, is a limited liability company organized under the laws of the State of Colorado and doing business in the state of Colorado under the same name. Brock's principal place of business is 3090 Sterling Circle, Suite 102, Boulder, Colorado 80301.

12. On information and belief, Greenwood Marketing, LLC d/b/a Restorative Medical or Spry Therapeutics is a limited liability company organized under the laws of the state of New York and registered to do business in the Commonwealth of Kentucky. According to the Secretary of State for New York, Restorative Medical's principal place of business is 79 Primrose Street, White Plains, NY 10606.

JURISDICTION AND VENUE

13. This is an action for patent infringement arising under the patent laws of the

United States, 35 U.S.C. § 1, *et seq.* The Court has subject matter jurisdiction regarding claims of willful patent infringement pursuant to 35 U.S.C. §§ 1331 and 1338(a).

14. The Court has personal jurisdiction over Restorative Medical because it has sufficient minimum contacts stemming from its regular and established place of business within this judicial district, and because Restorative Medical has committed acts of infringement in this district through the sale, distribution, marketing/promotion, and education of the products discussed herein, and through the subsequent use in an infringing manner.

15. Venue is proper pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b). Defendants have committed, induced, and/or contributed to the acts alleged herein in this district and these claims arise from those acts. Defendants have regularly engaged in business in this district, at a minimum through the presence of its regular and established place of business in White Plains, New York. Further, Defendants have purposefully availed themselves of the privilege of conducting business in this district, for example, by at least offering, selling, promoting, and/or marketing products in this district that infringe the patent described herein. Moreover, MHC seeks immediate and permanent injunctive relief to prevent the Defendants from continuing to injure and damage MHC.

THE '666 PATENT

16. On September 1, 2015, the United States Patent Office issued the '666 Patent, entitled METHOD AND SYSTEM OF CHANGING FLOW CHARACTERISTICS OF A SUPPORT. *See*, Attachment B.

17. MHC acquired all rights, title, and interest in the '666 Patent, including the right to sue, enforce, and recover damages for all infringements. Restorative Medical has a license of the '666 Patent, limited to over-the-counter sales only.

18. The '666 Patent has not expired and is in full force and effect.

19. Pursuant to 35 U.S.C. § 282, the '666 Patent and each of its claims are valid and enforceable.

20. The '666 Patent contains claims, for example claims 1–23, directed to a method for determining a flow characteristic of a support comprising the steps of: (a) providing a support comprising a bladder including a fluidized particulate material including interstitial spaces between particles of the fluidized particulate material filled with a gas; (2) evacuating the gas by vacuum to a predetermined pressure; and (3) sealing the bladder such that the predetermined pressure is maintained permanently within the support to achieve a predetermined permanent flow characteristic within the support.

THE '585 PATENT

21. On May 8, 2012, the United States Patent Office issued the '585 Patent, entitled LIGHTWEIGHT FLUID. *See*, Attachment C.

22. Brock owns all rights, title, and interest in and to the '585 Patent, including the right to sue, enforce, and recover damages for all infringements.

23. On June 7, 2012, Brock entered into a Patent and Know-How License Agreement with Greenwood Marketing, LLC under which Brock granted Greenwood Marketing, LLC an exclusive license in the medical positioning commercial field of the '585 Patent.

24. On February 10, 2016, Brock, Greenwood Marketing, LLC and MHC entered into an amendment to the Patent and Know-How License Agreement under which Greenwood Marketing, LLC's rights and obligations under the Patent and Know-How License Agreement, including the exclusive license in the medical positioning commercial field of the '585 Patent,

were assigned and transferred to MHC.

25. The '585 Patent has not expired and is in full force and effect.

26. Pursuant to 35 U.S.C. § 282, the '585 Patent and each of its claims are valid and enforceable.

27. The '585 Patent contains claims, for example, claim 3, directed to a fluid pad comprising a bladder, closed-cell foam beads, and a surrounding fluid, where the closed-cell foam beads and the surrounding fluid comprise a composite fluid, the closed-cell foam beads are substantially impervious to the surrounding fluid, the closed-cell foam beads are exceedingly flooded by the surrounding fluid such that interstitial spaces between the closed-cell foam beads are filled with the surrounding fluid, and the bladder houses the composite fluid within the interior of the bladder.

RESTORATIVE MEDICAL'S SPRY POSITIONERS

28. On information and belief, approximately a year ago, Restorative Medical began advertising, marketing, and selling the "Flo-Form" fluidized positioner and potentially other fluidized positioners not for over-the-counter sale that also maintain a predetermined, sub-atmospheric pressure within its bladder so as to achieve a predetermined permanent flow characteristic or comprise of small and large closed-cell foam beads (collectively, the "Spry positioners").

29. MHC discovered a promotional video of various Spry positioners, demonstrating the fluidized nature of the positioners.

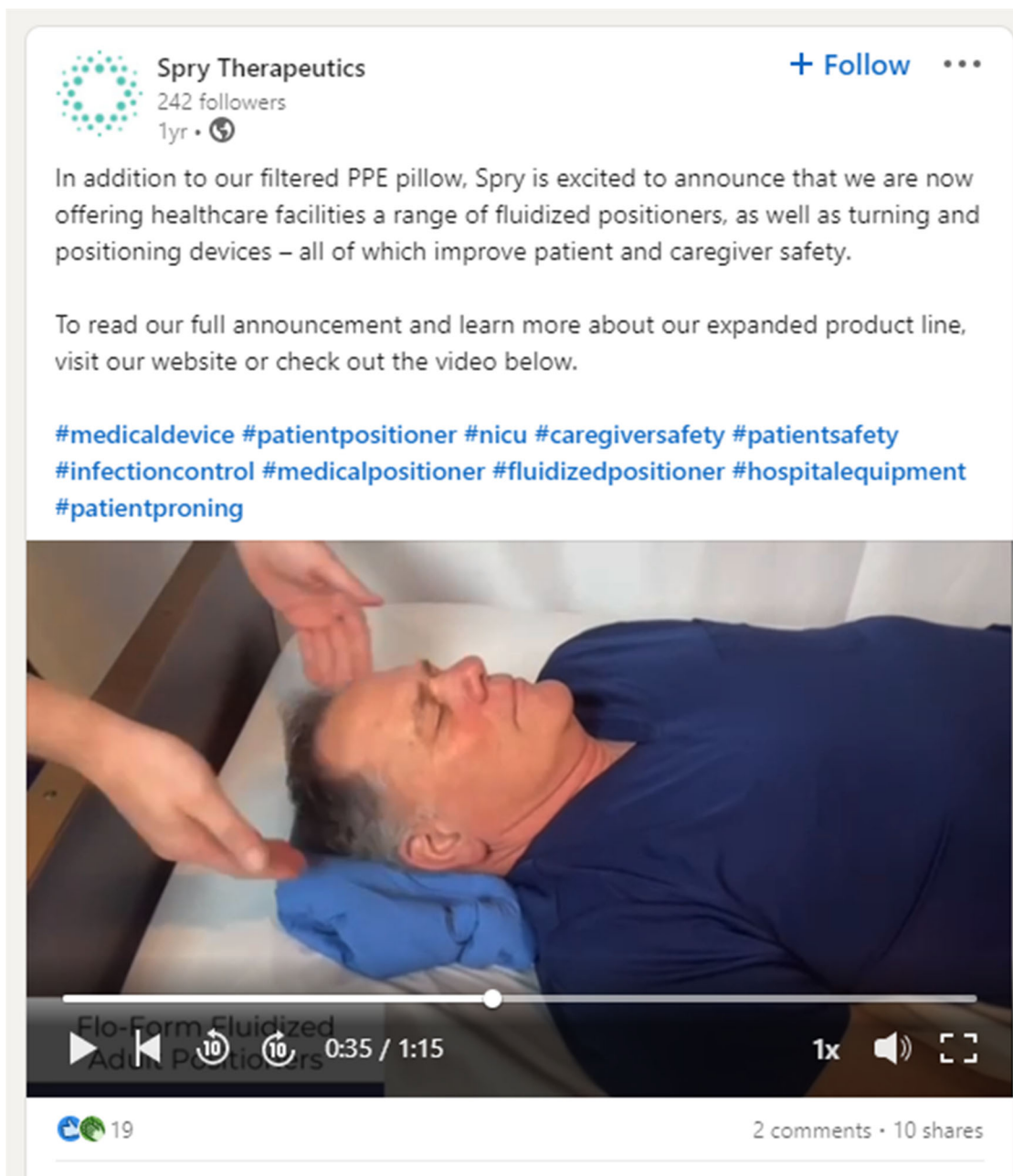


Figure 1. A still from the Linked-In video showing the Flo-Form positioner (captured April 8, 2022)

30. On April 2, 2021, MHC then sent an infringement notice letter to Restorative Medical, explaining that the Flo-Form positioner “must maintain a negative pressure to the

surrounding atmosphere,” as claimed in the ’666 Patent, in order for the positioner to be moldable as demonstrated in the promotional video. Restorative Medical responded denying it used sub-atmospheric pressure to create its positioners.

31. On information and belief, the Spry positioners use the manufacturing method as claimed by claim 1 of the ’666 Patent to achieve its fluidized, moldable state. Based on experience and investigation of the Spry positioners, the products are able to retain their shape and possess physical characteristics which are obtained only by subjecting the positioners to negative, or sub-atmospheric pressure during manufacture. The official marketing pamphlet for the Flo-Form positioner further confirms the products retain their shape and are fluidized.



Figure 2. Restorative Medical’s instructions for the Flo-Form positioner (captured and downloaded April 8, 2022)

32. Analysis confirms that a positioner able to retain its shape cannot be achieved to

similar degree of success and effectiveness as that of MHC's positioners *unless* a sub-atmospheric pressure is maintained inside the positioner, as claimed by claim 1 of the '666 Patent. Comparing the characteristics of the Flo-Form positioner and MHC's positioner as manufactured and sold, and then attempting to recreate a positioner with those same or comparable characteristics without creating a sub-atmospheric pressure with a vacuum during the manufacturing process confirms this. As the figures below show, a positioner with comparable characteristics could not be created without a vacuum:



Figure 3. MHC's positioner after the pinch test showing a tight, snug fit around the inner beads

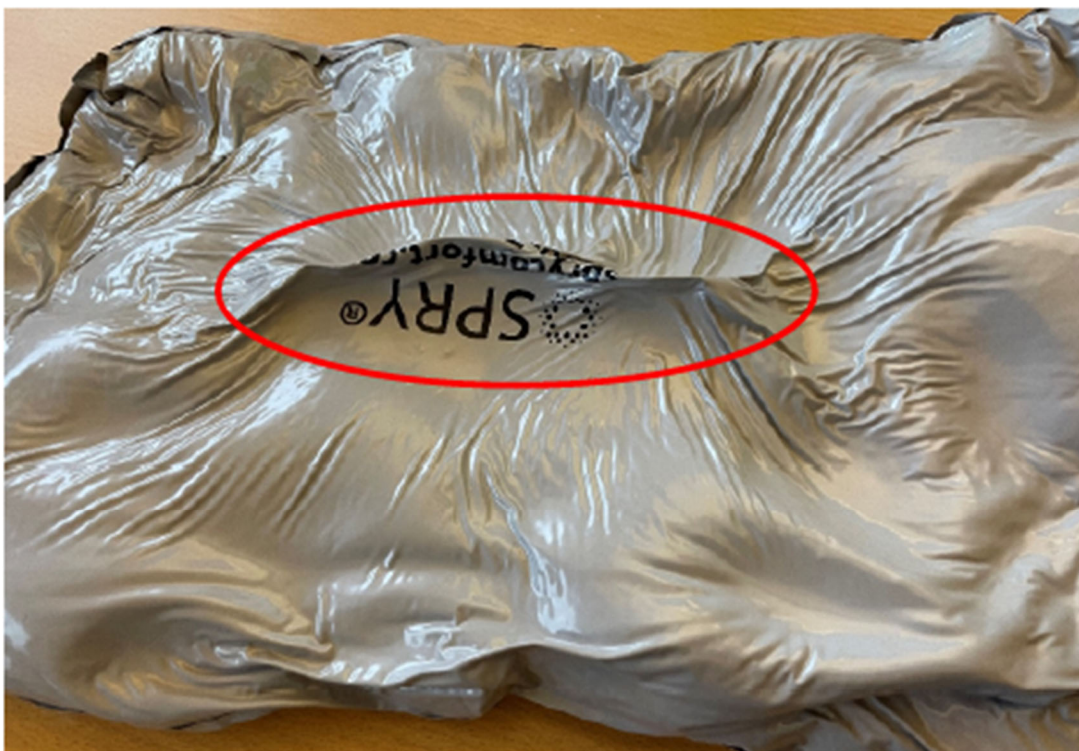


Figure 4. Flo-Form positioner after the pinch test showing a tight, snug fit around the inner beads



Figure 5. Positioner created without vacuum after the pinch test showing a looser, non-snug fit over the inner beads

33. In November of 2021, Restorative Medical attended a wound-care conference for medical practitioners in New Hampshire where it provided samples of its Spry positioner products. At this conference, representatives of MHC obtained a sample. On information and belief, one or more of the Spry positioners comprises foam beads, including closed-cell foam beads as required by claim 3 of the '585 patent, as shown in the figure below.



Figure 6. Expanded view of the Flo-Form positioner showing the outlines of closed-cell foam beads within

34. Furthermore, Fourier Transform Infrared (“FTIR”) spectroscopy tests show that the foam beads are composed of Poly(ethylene). Based on experience and industry knowledge, the beads are therefore closed-cell foam beads, as claimed by claim 3 of the '585 Patent.

35. On information and belief, Restorative Medical continues to manufacture, advertise, market, and sell the Spry positioners.

COUNT I: WILLFUL INFRINGEMENT OF THE '666 PATENT

(brought by Plaintiff Mölnlycke Health Care US, LLC)

36. MHC incorporate by reference the averments of paragraphs 1–35 of this Complaint as though fully set forth herein.

37. Restorative Medical has a limited exclusive license for the '666 Patent within the field of use as defined in the amended License Agreement: over-the-counter sales.

38. Restorative Medical, without license or authorization to do so, infringes the '666 Patent by manufacturing, selling, distributing, or otherwise making available the Flo-Form positioner and, on information and belief, other Spry positioners.

39. The Flo-Form positioner, for example, appears to be manufactured using a method comprising of the following steps: (1) providing a support comprising a bladder including fluidized particulate material with interstitial spaces filled with a gas; (2) evacuating the gas by vacuum to a predetermined pressure; and (3) sealing the bladder such that the predetermined pressure is maintained permanently within the support to achieve a predetermined permanent flow characteristic within the bladder, as claimed in claim 1 of the '666 Patent.

40. At all times relevant to this cause of action, Restorative Medical has known of its infringement of the '666 Patent or at the very least has been willfully blind to its infringement of the '666 Patent. The Purdys are listed as the inventors on the '666 Patent and Defendant knowingly infringe on the patent through Restorative Medical's manufacturing, selling, distributing, or otherwise making available the Flo-Form positioner and other infringing Spry positioners. Through their assignment to MHC, Defendant cannot challenge the validity of the '666 Patent.

41. Because Restorative Medical knows and at all times relevant has known of its infringement of the '666 Patent or at the very least has been willfully blind to its infringement of the '666 Patent, its infringement is deliberate and willful.

42. MHC has been and continues to be damaged and irreparably harmed by Restorative Medical's infringement of the '666 Patent.

43. Such infringement has been, and will continue to be, willful and upon further belief Restorative Medical lacks any reasonable non-infringement defenses making this case exceptional and entitling MHC to increased damages and reasonable attorneys' fees pursuant to 34 U.S.C. §§ 284 and 285.

COUNT II: WILLFUL INFRINGEMENT OF THE '585 PATENT

(brought by Plaintiffs Brock USA, LLC and Mölnlycke Health Care US, LLC)

44. Plaintiffs incorporate by reference the averments of paragraphs 1–43 of this Complaint as though fully set forth herein.

45. Restorative Medical, without license or authorization to do so, infringes the '585 Patent by manufacturing, selling, distributing, or otherwise making available the Flo-Form positioner and, on information and belief, other Spry positioners.

46. The Flo-Form positioner is comprised a fluid pad with a bladder that houses a composite fluid comprising small closed-cell foam beads and a surrounding fluid, where the closed-cell foam beads are substantially impervious to the surrounding fluid and are exceedingly flooded by the surrounding fluid such that interstitial spaces between the closed-cell foam beads are filled with the surrounding fluid, as claimed in claim 3.

47. Restorative Medical has known of its infringement of the '585 Patent or at the very least has been willfully blind to its infringement of the '585 Patent, at least as of the date

of filing of this Complaint. Restorative Medical has known of the '585 Patent since at least June 2012 when Restorative Medical took a license to the Brock '585 Patent, which was subsequently transferred from Restorative Medical to MHC.

48. Because Restorative Medical knows of its infringement of the '585 Patent or at the very least has been willfully blind to its infringement of the '585 Patent at least as of the date of filing of this Complaint if not since 2012, its continuing infringement is deliberate and willful.

49. Plaintiffs have been and continues to be damaged and irreparably harmed by Restorative Medical's infringement of the '585 Patent.

50. Such infringement has been, and will continue to be, willful and upon further belief Restorative Medical lacks any reasonable non-infringement defenses making this case exceptional and entitling Plaintiffs to increased damages and reasonable attorneys' fees pursuant to 34 U.S.C. §§ 284 and 285.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the following relief:

A. JUDGMENT under 35 U.S.C § 271 that Restorative Medical willfully infringes MHC's '666 and Brock's '585 Patents referenced and detailed above;

B. DAMAGES under 35 U.S.C § 284 adequate to compensate Plaintiffs for Restorative Medical's willful infringement and continued infringement of MHC's '666 and Brock's '585 Patents referenced and detailed above;

C. TREBLING or other enhancement of the DAMAGES pursuant to 35 U.S.C. § 284 as a result of Restorative Medical's willful and deliberate acts of infringement;

D. AWARD pursuant to 35 U.S.C. § 284 of costs and pre- and post-judgment

interest on MHC's compensatory damages;

E. AWARD pursuant to 35 U.S.C § 285 of MHC's attorneys' fees incurred in this action;

F. INJUNCTIVE RELIEF enjoining Defendant's patent infringement;

G. ALL OTHER RELIEF the Court deems warranted and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff Mölnlycke Health Care US LLC hereby demands a trial by jury on all issues so triable of right.

DATED: May 6, 2022

Respectfully submitted,

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