

ESTTA Tracking number: **ESTTA1311353**  
Filing date: **09/20/2023**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer information

Name	Werner Co.
Granted to date of previous extension	09/20/2023
Address	61 EXECUTIVE COURT, NORTH BUILDING WEST MIDDLESEX, PA 16159 UNITED STATES
Attorney information	ALISA C. SIMMONS, JOSEPH T. NABOR, KERIANNE STRACHAN FITCH EVEN TABIN & FLANNERY LLP 120 SOUTH LASALLE STREET, SUITE 2100 CHICAGO, IL 60603 UNITED STATES Primary email: trademark@fitcheven.com Secondary email(s): asimmons@fitcheven.com 312-629-7947
Docket no.	21699-157339

### Applicant information

Application no.	97333237	Publication date	05/23/2023
Opposition filing date	09/20/2023	Opposition period ends	09/20/2023
Applicant	TTS Tooltechnic Systems AG & Co. KG WERTSTRAÅ#E 20 WENDLINGEN, 73240 GERMANY		

### Goods/services affected by opposition

Class 012. First Use: None First Use In Commerce: None All goods and services in the class are opposed, namely: Carts; dollies
Class 020. First Use: None First Use In Commerce: None All goods and services in the class are opposed, namely: Plastic containers for storing and for transporting objects for commercial use; portable plastic storage containers for commercial use; boxes made of plastic; empty tool boxes, not of metal; non-metallic containers for commercial use; plastic lids for containers; plastic lids for containers, not of metal, with an integrated device for reproducing sound; work benches; table tops; work surfaces; mobile work stations; foldable multifunction tables with attachable drawers and containers; furniture parts, namely, connection elements for connecting furniture parts; combination work stool and storage container; customizable storage solutions in the nature of storage containers, organizers, tool bags, tool boxes, drwaer compartments and inserts; non-metallic closures and holders for containers of plastic and for plastic storage containers for commercial use; tool chests, not of metal

## Grounds for opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)

## Marks cited by opposer as basis for opposition

U.S. registration no.	2263914	Application date	07/01/1996
Register	Principal		
Registration date	07/27/1999	Foreign priority date	NONE
Word mark	BETTER BUILT		
Design mark			
Description of mark	NONE		
Goods/services	Class 012. First use: First Use: Jan 1, 1985 First Use In Commerce: Jan 1, 1985 truck bed accessories, namely, truck tool boxes including cross-over boxes, chest boxes, RV boxes, dock boxes, underbody boxes, sidemount boxes, top-mount boxes, tote boxes and dog boxes; trailer hitch mounted cargo carriers; loading ramps; bed rail caps, tailgate covers, tailgate caps, front-end bed covers, front-end caps, step plates, antenna mounts, aluminum and plastic trays; tailgates; [ running boards and steps; grille guards; ] [headache racks]; bed rails; [ step rails ] [and muffler tips] sold for use on truck beds		

U.S. application/ registration no.	NONE	Application date	NONE
Register	NONE		
Registration date	NONE		
Mark	BETTER BUILT		
Goods/services	Truck storage boxes and containers, truck tool boxes, chest boxes, sidemount boxes, topmount boxes, tote boxes; Containers of metal for storage of goods; Metal containers for storage or transport; Metal fluid storage tanks; Metal mounting brackets for general use; Metal storage boxes for general use; Metal storage containers for jobsite and worksite storage; Metal storage tanks; Metal tool boxes; Tool boxes of metal; General purpose metal storage containers; metal storage units; metal storage bins; metal storage tanks; metal fluid transfer tanks; tool chests of metal, empty; metal boxes; lockboxes; strong-boxes.		

U.S. application/ registration no.	NONE	Application date	NONE
Register	NONE		
Registration date	NONE		
Mark	BETTER BUILT in stylized block letter font within rectangular border, the top long side of which points upward at center to form triangular peak like a diamond and the bottom long side of which points downward at center to form a mirroring triangular peak like a diamond.		
Goods/services	Truck storage boxes and containers, truck tool boxes, chest boxes, sidemount boxes, topmount boxes, tote boxes; Containers of metal for storage of goods; Metal containers for storage or transport; Metal fluid storage tanks; Metal mounting brackets for general use; Metal		

	storage boxes for general use; Metal storage containers for jobsite and worksite storage; Metal storage tanks; Metal tool boxes; Tool boxes of metal; General purpose metal storage containers; metal storage units; metal storage bins; metal storage tanks; metal fluid transfer tanks; tool chests of metal, empty; metal boxes; lockboxes; strong-boxes.
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Attachments	Notice of Opposition to BUILT BETTER TO BUILD BETTER - Serial No. 973 33237.pdf(277080 bytes ) Exhibit A - Reg. 2263914.pdf(344087 bytes )
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Signature	/Alisa C. Simmons/
Name	ALISA C. SIMMONS
Date	09/20/2023

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Werner Co.,  
Opposer,

v.

Opposition No.

TTS Tooltechnic Systems AG & Co. KG,  
Applicant.

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Serial No. 97333237  
Filed: March 28, 2022  
Mark: BUILT BETTER TO BUILD BETTER  
Published: May 23, 2023

**NOTICE OF OPPOSITION**

Opposer Werner Co., a Delaware corporation having a principal place of business at 61 Executive Court, North Building, West Middlesex, Pennsylvania 16159 (“Werner” and “Opposer”), believes that it is being and will be damaged by registration of the BUILT BETTER TO BUILD BETTER mark shown in Application No. 97333237 by TTS Tooltechnic Systems AG & Co. KG (“Applicant”) and opposes the same upon the following grounds:

**COUNT I - Likelihood of Confusion**

1. Werner is a leader in the field of truck storage equipment and jobsite storage equipment and solutions and owns the well-known BETTER BUILT brand, trademark, and trade name for truck and jobsite storage products, equipment, and solutions.

2. Werner and its predecessors in interest have owned and used, and Werner still currently uses, the BETTER BUILT trademark and trade name in connection with truck storage boxes and containers, including, but not limited to, tool boxes, transfer tanks, mounting brackets, replacement keys and replacement parts for the storage boxes and containers, and in connection with jobsite storage containers and equipment, including, but not limited to, tool boxes, storage boxes, piano boxes, and replacement parts for such products (collectively referred to as the

“BETTER BUILT goods”). Representative examples of Opposer’s BETTER BUILT goods are shown below.

#### Truck Storage Boxes




#### Jobsite Storage Containers



3. Werner and its predecessors in interest have owned and used in interstate commerce the BETTER BUILT trademark and trade name since at least as early as 1985, in connection with truck storage boxes and containers and replacement parts for those products, and since at least as early as 2005, in connection with jobsite storage containers and equipment, including, but not limited to, tool boxes, storage chests, piano boxes and replacement parts.

4. The purchasing public has come to know and recognize the BETTER BUILT goods of Opposer under the BETTER BUILT trademark and trade name, and Opposer owns valuable goodwill established in the BETTER BUILT trademark and trade name.

5. Werner owns an incontestable trademark registration for BETTER BUILT for use in connection with truck storage boxes and containers and owns common law trademark rights for

the BETTER BUILT word mark and BETTER BUILT stylized mark, , among other BETTER BUILT stylized marks for such truck storage products and for jobsite and worksite storage containers and equipment.

6. On July 27, 1999, the U.S. Patent and Trademark Office (USPTO) registered on the Principal Register and issued Registration No. 2,263,914 for the mark BETTER BUILT for use on “truck bed accessories, namely, truck tool boxes including cross-over boxes, chest boxes, RV boxes, dock boxes, underbody boxes, sidemount boxes, topmount boxes, tote boxes and dog boxes; trailer hitch mounted cargo carriers; loading ramps; bed rail caps, tailgate covers, tailgate caps, front-end bed covers, front-end caps, step plates, antenna mounts, aluminum and plastic trays; tailgates; bed rails.” Registration No. 2,263,914 is presently valid and subsisting, is owned by Werner, and is *prima facie* evidence of Werner’s exclusive right to use the BETTER BUILT mark in commerce in connection with those goods. Werner’s Registration No. 2,263,914 is incontestable under the provisions of 15 U.S.C. § 1065. A printout of the status and title information for Registration No. 2,263,914 from the USPTO electronic database records showing the current status and title of the registration is attached as Exhibit A to this Notice of Opposition.

7. The BETTER BUILT registered and common law trademarks set forth in the forgoing paragraphs 6-7 above are collectively referred to as the “BETTER BUILT trademark” in this Notice of Opposition.

8. Werner promotes its popular truck storage and jobsite storage products under the BETTER BUILT trademark through the website at [www.lifebetterbuilt.com](http://www.lifebetterbuilt.com), which prominently features the BETTER BUILT trademark and trade name and the BETTER BUILT goods.

9. All of the BETTER BUILT goods detailed above have been offered and sold under the BETTER BUILT trademark in commerce for years and were offered well before the filing date of the opposed application, and any alleged date of use that Applicant may prove.

10. Werner has expended substantial monies in marketing, advertising, and promoting its BETTER BUILT trademark and trade name in connection with the BETTER BUILT goods in the United States.

11. Werner has enjoyed continuous and substantial sales of its BETTER BUILT goods in connection with the BETTER BUILT trademark and the BETTER BUILT trade name in the United States.

12. By reason of Werner's longstanding and extensive marketing, advertising, promotion, and resulting sales of its goods in connection with the BETTER BUILT trademark and the high quality of those goods, the BETTER BUILT trademark has acquired distinctiveness, recognition, and fame among purchasers.

13. By reason of the extensive use and marketing, advertising, promotion, and resulting sales and public recognition of Werner's goods in connection with the BETTER BUILT trademark and the high quality of those goods, the BETTER BUILT mark has come to represent extremely valuable goodwill to Werner.

14. Applicant seeks registration on the Principal Register for the BUILT BETTER TO BUILD BETTER mark, in Application No. 97333237 filed May 23, 2023, and published for opposition on May 23, 2023, for various products, including "Carts; dollies," in Class 12 and "Plastic containers for storing and for transporting objects for commercial use; portable plastic

storage containers for commercial use; boxes made of plastic; empty tool boxes, not of metal; non-metallic containers for commercial use; plastic lids for containers; plastic lids for containers, not of metal, with an integrated device for reproducing sound; work benches; table tops; work surfaces; mobile work stations; foldable multifunction tables with attachable drawers and containers; furniture parts, namely, connection elements for connecting furniture parts; combination work stool and storage container; customizable storage solutions in the nature of storage containers, organizers, tool bags, tool boxes, drawer compartments and inserts; non-metallic closures and holders for containers of plastic and for plastic storage containers for commercial use; tool chests, not of metal” in Class 20 with these products also referred to as “the Applicant’s goods” in this Notice of Opposition.

15. On information and belief, Applicant’s goods are similar and related to those of Werner and encompass and overlap with the BETTER BUILT goods for which Werner owns and uses the BETTER BUILT trademark and BETTER BUILT trade name.

16. Upon information and belief, the Applicant cannot claim any priority in the United States for the BUILT BETTER TO BUILD BETTER mark for the goods and services listed in Application No. 97333237 earlier than the March 28, 2022, date on which Application No. 97333237 was filed with the USPTO.

17. Upon information and belief, the Applicant’s goods for which the Applicant seeks registration of the BUILT BETTER TO BUILD BETTER mark are likely to be promoted to and sold to the same customers and through the same channels of trade in which Werner promotes and provides the BETTER BUILT goods in connection with its BETTER BUILT trademark and BETTER BUILT trade name.

18. The Applicant’s BUILT BETTER TO BUILD BETTER mark contains the words “Better” and “Built.”



19. The Applicant's BUILT BETTER TO BUILD BETTER mark is confusingly similar to the BETTER BUILT trademark and the BETTER BUILT trade name.

20. The Applicant's BUILT BETTER TO BUILD BETTER mark and intended use thereof by the Applicant on the Applicant's "Carts; dollies," and "Plastic containers for storing and for transporting objects for commercial use; portable plastic storage containers for commercial use; boxes made of plastic; empty tool boxes, not of metal; non-metallic containers for commercial use; plastic lids for containers; plastic lids for containers, not of metal, with an integrated device for reproducing sound; work benches; table tops; work surfaces; mobile work stations; foldable multifunction tables with attachable drawers and containers; furniture parts, namely, connection elements for connecting furniture parts; combination work stool and storage container; customizable storage solutions in the nature of storage containers, organizers, tool bags, tool boxes, drawer compartments and inserts; non-metallic closures and holders for containers of plastic and for plastic storage containers for commercial use; tool chests, not of metal," as currently specified in Application No. 97333237 is likely to cause confusion, mistake, or deception that Applicant's goods are those of Werner or are otherwise endorsed, sponsored, or approved by Werner, whereby Werner will be damaged by the registration of Applicant's BUILT BETTER TO BUILD BETTER mark on the Principal Register of the United States Patent and Trademark Office.

21. If the Applicant is granted registration of its BUILT BETTER TO BUILD BETTER mark as set forth in Application No. 97333237, then the Applicant will thereby obtain the *prima facie* exclusive right to use such mark, and such registration will damage, impair, diminish, and dilute Werner's goodwill and rights in its BETTER BUILT trademark and BETTER BUILT trade name, causing irreparable injury to Werner.

## **COUNT II - Dilution**

22. Werner incorporates by reference all of the allegations contained in the foregoing paragraphs.

23. Werner's BETTER BUILT trademark and trade name are widely recognized by the general consuming public of the United States as a designation of source the BETTER BUILT goods.

24. Werner's BETTER BUILT trademark mark is famous and distinctive within the meaning of the Lanham Act, is entitled to protection of the anti-dilution provisions of the Lanham Act, including 15 U.S.C § 1125(c) and was famous prior to the filing of the subject application or prior to any use of the BUILT BETTER TO BUILD BETTER mark by the Applicant.

25. Applicant's BUILT BETTER TO BUILD BETTER mark is likely to cause dilution and to impair the distinctiveness of Werner's BETTER BUILT trademark whereby Werner will be damaged by the registration of Applicant's proposed mark on the Principal Register of the United States Patent and Trademark Office.

**PRAYER FOR RELIEF**

Werner prays that this Opposition be sustained, that Application No. 97333237 be rejected for the opposed goods, that registration of the mark BUILT BETTER TO BUILD BETTER be refused for the opposed goods, and that Werner be awarded such further relief as this Board deems just and proper.

Respectfully submitted,

September 20, 2023

/Alisa C. Simmons/  
Alisa C. Simmons  
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asimmons@fitcheven.com

*Attorneys for Opposer*

# EXHIBIT A



**Trademarks > Trademark Electronic Search System (TESS)**

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# BETTER BUILT

**Word Mark** BETTER BUILT

**Goods and Services** IC 012. US 019 021 023 031 035 044. G & S: truck bed accessories, namely, truck tool boxes including cross-over boxes, chest boxes, RV boxes, dock boxes, underbody boxes, sidemount boxes, topmount boxes, tote boxes and dog boxes; trailer hitch mounted cargo carriers; loading ramps; bed rail caps, tailgate covers, tailgate caps, front-end bed covers, front-end caps, step plates, antenna mounts, aluminum and plastic trays; tailgates; [ running boards and steps; grille guards; ] [headache racks]; bed rails; [ step rails ] [and muffler tips] sold for use on truck beds. FIRST USE: 19850101. FIRST USE IN COMMERCE: 19850101

**Mark Drawing Code** (1) TYPED DRAWING

**Serial Number** 75127895

**Filing Date** July 1, 1996

**Current Basis** 1A

**Original Filing Basis** 1B

**Published for Opposition** March 10, 1998

**Change In Registration** CHANGE IN REGISTRATION HAS OCCURRED

**Registration Number** **2263914**

**Registration Date** July 27, 1999

**Owner** (REGISTRANT) Daws Manufacturing Company, Inc. CORPORATION FLORIDA 8811 Grow Drive Pensacola FLORIDA 32514  
  
(LAST LISTED OWNER) WERNER CO. CORPORATION DELAWARE 61 Executive Court, North Building West Middlesex PENNSYLVANIA 16159

**Assignment Recorded** ASSIGNMENT RECORDED

**Attorney of Record** Pooja Van Dyck

**Type of Mark** TRADEMARK

**Register** PRINCIPAL-2(F)  
**Affidavit Text** SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20200319.  
**Renewal** 2ND RENEWAL 20200319  
**Live/Dead Indicator** LIVE

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## Trademark Assignment Abstract of Title

**Total Assignments: 9****Serial #:** [75127895](#)**Filing Dt:** 07/01/1996**Reg #:** [2263914](#)**Reg. Dt:** 07/27/1999**Registrant:** Daws Manufacturing Company, Inc.**Mark:** BETTER BUILT**Assignment: 1****Reel/Frame:** [3249/0152](#)**Recorded:** 02/16/2006**Pages:** 11**Conveyance:** ASSIGNMENT OF SECURITY INTEREST**Assignor:** [DAWS MANUFACTURING COMPANY, INC.](#)**Exec Dt:** 12/29/2005**Entity Type:** CORPORATION**Citizenship:** DELAWARE**Entity Type:** NATIONAL BANKING ASSOC.**Citizenship:** NONE**Assignee:** [BANK OF AMERICA, N.A.](#)300 GALLERIA PARKWAY, SUITE 800  
ATLANTA, GEORGIA 30339**Correspondent:** CBCINNOVIS DBA FEDERAL RESEARCH  
1023 FIFTEENTH STREET, NW, SUITE 401  
ATTN: PENELOPE J.A. AGODOA  
WASHINGTON, DC 20005**Assignment: 2****Reel/Frame:** [5061/0981](#)**Recorded:** 07/02/2013**Pages:** 4**Conveyance:** RELEASE BY SECURED PARTY**Assignor:** [DAWS MANUFACTURING COMPANY, INC.](#)**Exec Dt:** 12/29/2005**Entity Type:** CORPORATION**Citizenship:** FLORIDA**Entity Type:** NATIONAL BANKING ASSOCIATION**Citizenship:** UNITED STATES**Assignee:** [BANK OF AMERICA, N.A.](#)300 GALLERIA PARKWAY, SUITE 800  
ATLANTA, GEORGIA 30339**Correspondent:** CAROLYN R. WARD  
125 WEST ROMANA STREET, STE. 800  
PENSACOLA, FL 32502**Assignment: 3****Reel/Frame:** [6714/0369](#)**Recorded:** 08/07/2019**Pages:** 6**Conveyance:** ASSIGNS THE ENTIRE INTEREST**Assignor:** [DAWS MANUFACTURING COMPANY, INC.](#)**Exec Dt:** 03/22/2019**Entity Type:** CORPORATION**Citizenship:** FLORIDA**Entity Type:** CORPORATION**Citizenship:** DELAWARE**Assignee:** [WERNER CO.](#)93 WERNER ROAD  
GREENVILLE, PENNSYLVANIA 16125**Correspondent:** DUNCAN H. POIRIER  
BENESCH FRIEDLANDER COPLAN & ARONOFF LLP  
200 PUBLIC SQUARE, SUITE 2300  
CLEVELAND, OH 44114

**Assignment: 4****Reel/Frame:** [7441/0959](#)**Recorded:** 10/04/2021**Pages:** 7**Conveyance:** SECURITY INTEREST**Assignor:** [WERNER CO.](#)**Exec Dt:** 10/04/2021**Entity Type:** CORPORATION**Citizenship:** DELAWARE**Assignee:** [JPMORGAN CHASE BANK, N.A., AS COLLATERAL AGENT](#)10 S. DEARBORN STREET  
CHICAGO, ILLINOIS 60603**Entity Type:** NATIONAL BANKING  
ASSOCIATION**Citizenship:** UNITED STATES**Correspondent:** JESSICA BAJADA-SILVA  
1271 AVENUE OF THE AMERICAS  
NEW YORK, NY 10010**Assignment: 5****Reel/Frame:** [7442/0027](#)**Recorded:** 10/04/2021**Pages:** 7**Conveyance:** SECURITY INTEREST**Assignor:** [WERNER CO.](#)**Exec Dt:** 10/04/2021**Entity Type:** CORPORATION**Citizenship:** DELAWARE**Assignee:** [JPMORGAN CHASE BANK, N.A., AS COLLATERAL AGENT](#)10 S. DEARBORN STREET  
CHICAGO, ILLINOIS 60603**Entity Type:** NATIONAL BANKING  
ASSOCIATION**Citizenship:** UNITED STATES**Correspondent:** JESSICA BAJADA-SILVA  
1271 AVENUE OF THE AMERICAS  
NEW YORK, NY 10010**Assignment: 6****Reel/Frame:** [8097/0333](#)**Recorded:** 06/12/2023**Pages:** 10**Conveyance:** RELEASE OF SECURITY INTEREST IN TRADEMARKS AT R/F 7441/0959**Assignor:** [JPMORGAN CHASE BANK, N.A., AS COLLATERAL AGENT](#)**Exec Dt:** 06/09/2023**Entity Type:** NATIONAL BANKING  
ASSOCIATION**Citizenship:** UNITED STATES**Assignee:** [WERNER CO.](#)555 PIECE ROAD  
SUITE 300  
ITASACA, ILLINOIS 60143**Entity Type:** CORPORATION**Citizenship:** DELAWARE**Correspondent:** LATHAM & WATKINS C/O JESSICA BAJADA-BART  
1271 AVENUE OF THE AMERICAS  
NEW YORK, NY 10020**Assignment: 7****Reel/Frame:** [8097/0346](#)**Recorded:** 06/12/2023**Pages:** 12**Conveyance:** SECURITY INTEREST**Assignor:** [WERNER CO.](#)**Exec Dt:** 06/09/2023**Entity Type:** CORPORATION**Citizenship:** DELAWARE**Assignee:** [WILMINGTON TRUST, NATIONAL ASSOCIATION, AS NOTES  
COLLATREAL AGENT](#)99 WOOD AVENUE SOUTH  
SUITE 1000  
ISELIN, NEW JERSEY 08830**Entity Type:** NATIONAL BANKING  
ASSOCIATION**Citizenship:** UNITED STATES**Correspondent:** LATHAM & WATKINS C/O J. BAJADA-BARTLETT



1271 AVENUE OF THE AMERICAS  
NEW YORK, NY 10020

**Assignment: 8****Reel/Frame:** [8111/0321](#)**Recorded:** 06/27/2023**Pages:** 12**Conveyance:** SECURITY INTEREST**Assignor:** [WERNER CO.](#)**Exec Dt:** 06/27/2023**Entity Type:** CORPORATION**Citizenship:** DELAWARE**Assignee:** [WILMINGTON TRUST, NATIONAL ASSOCIATION, AS NOTES  
COLLATERAL AGENT](#)**Entity Type:** NATIONAL BANKING  
ASSOCIATION**Citizenship:** UNITED STATES

99 WOOD AVENUE SOUTH  
SUITE 1000  
ISELIN, NEW JERSEY 08830

**Correspondent:** LATHAM & WATKINS C/O J. BAJADA-BARTLETT  
1271 AVENUE OF THE AMERICAS  
NEW YORK, NY 10020**Assignment: 9****Reel/Frame:** [8111/0493](#)**Recorded:** 06/27/2023**Pages:** 12**Conveyance:** SECURITY INTEREST**Assignor:** [WERNER CO.](#)**Exec Dt:** 06/27/2023**Entity Type:** CORPORATION**Citizenship:** DELAWARE**Assignee:** [WILLA FINCO II SARL \(FORMERLY TRITON V LUXCO 95 SARL\)](#)**Entity Type:** PRIVATE LIMITED  
COMPANY**Citizenship:** LUXEMBOURG

2 RUE EDWARD STEICHEN  
L-2540  
LUXEMBOURG, LUXEMBOURG B 275244

**Correspondent:** ROB SONESON  
300 N LASALLE  
KIRKLAND & ELLIS LLP  
CHICAGO, IL 60654

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