

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

ESCAPEX IP LLC,
Patent Owner

IPR2025-00337
Patent 10,474,687 B2

Record of Oral Hearing
Held: February 25, 2026

BEFORE: JUSTIN T. ARBES, MICHAEL J. STRAUSS, and
GEORGIANNA W. BRADEN, *Administrative Patent Judges*.

IPR2025-00337
Patent 10,474,687 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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The above-entitled matter came on for hearing on February 25, 2026,
commencing at 12:21 p.m.

P R O C E E D I N G S

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JUDGE BRADEN: We are convened for oral arguments in IPR2025-00337, which challenges claims in U.S. Patent Number 10,474,687. I am Judge Braden, and also appearing with me virtually are Judges Arbes and Strauss. Welcome to the USPTO's Southwest Regional Outreach Office in Dallas. I want to take this opportunity to address counsel before we begin here today.

As an inter partes review is a contested proceeding, today's hearing provides you an opportunity for counsel to orally advocate for your positions on the patentability of the challenged claims as raised in the petition. We understand that in every case that comes before us, the parties, both Petitioner and Patent Owner, have a lot at stake. The judges before you today take our role in deciding this dispute seriously. We've reviewed the briefs and the evidence, and we are prepared today with questions. These questions and your answers will help us to decide the issues in the case.

In the interest of fairness and due process, we must limit our consideration to the arguments and evidence already presented in the record. Our role as judges on the panel is to assess your arguments and evidence, and weigh those in accordance with the burdens established by our rules of procedure and presidential authority. We remind the parties that Petitioner has the ultimate burden of establishing unpatentability by preponderance of the evidence.

We have the briefs and the evidence available to us electronically on our computers. So if we look down or away during the hearing, we may

1 be consulting the documents in the record or taking notes. Please know that
2 we are paying close attention to your arguments and carefully considering
3 the case. And if we interrupt you, or when we interrupt you, I apologize in
4 advance, but it is so that we are able to ask questions that may be essential to
5 our resolution of the issues or potentially to help keep the hearing on track
6 with time.

7 Recording of any PTAB hearing is prohibited. The court reporter
8 will provide a transcript of the hearing that will become a part of the record
9 in the proceeding at a later date. To ensure that the transcript of this hearing
10 is clear, we ask that you please speak directly into the microphone when
11 talking and to identify specific slide numbers, numbering in figures, and any
12 other pertinent identifying information when referring to your
13 demonstratives.

14 Please note that this proceeding is being streamed to enable public
15 attendance. If the parties wish to discuss confidential information, please
16 notify us before discussing anything confidential.

17 That being said, Patent Owner filed Papers 14 and 15, which
18 includes Patent Owner's sur-reply, as well as Exhibit 2001, which is the slide
19 deck for today's hearing. These were all filed as "parties and board only"
20 instead of "public." So please confirm that you do not object that these
21 documents are changed in P-TACTs to being "public."

22 MR. HENRY: Jacob Henry for the Patent Owner. We do not
23 object to that.

24 JUDGE BRADEN: Very good, thank you. So we'll get those
25 converted over and changed to "public." Per the hearing order, which is

1 Paper 18 in this proceeding, each party has 60 minutes total time to argue
2 their case. Petitioner will open the argument and may reserve rebuttal time,
3 which may not exceed more than half of Petitioner's total argument time.
4 Patent Owner will then respond to Petitioner's argument and may reserve
5 surrebuttal time, also not to exceed more than half of Patent Owner's total
6 argument time.

7 Please remember that your arguments should be limited to only
8 those arguments previously presented in your briefs. Please make it clear
9 which challenges and which claims you're addressing at all times. And we
10 ask that the parties hold any objections regarding the other parties'
11 arguments until it is your time at the podium to note such objections. So
12 now that we've covered all of that, let's get started with appearances for both
13 parties for who will be arguing.

14 If anyone else is attending remotely with you today but is not
15 speaking, please identify them as well. For example, please let us know if
16 your client is on the public line. Following the hearing, please confirm with
17 the court reporter to ensure that there are no questions regarding spelling of
18 names or terms. We will start with appearances for Petitioner.

19 MS. LAUGHTON: Good afternoon, Your Honors. My name is
20 Elizabeth Laughton of the Law Firm of Smith Baluch, and I represent the
21 Petitioner, Google, today in this hearing. And I believe that Matthew Smith,
22 also of the Law Firm of Smith Baluch, is on the public line.

23 JUDGE BRADEN: Very good. Patent Owner?

24 MR. HENRY: Good afternoon, Your Honor. My name is Jacob
25 Henry. I'm here for Patent Owner, obviously, and on behalf of Ramey LLP.

1 And there's no one on the line to the best of my knowledge.

2 JUDGE BRADEN: Very good. Thank you. Our hearing room
3 has a timer that I set up for each party with the requested time allotment.
4 The light on the clock changes to yellow when you're nearing your end of
5 the time, whether opening or rebuttal. When the light is red, that means you
6 have run out of time. Petitioner, do you wish to reserve any rebuttal time?

7 MS. LAUGHTON: Yes, Your Honor. Can I please reserve 15
8 minutes for rebuttal?

9 JUDGE BRADEN: Very good. Are there any issues or questions
10 that the parties would like to raise before we begin, starting with Petitioner?

11 MS. LAUGHTON: No, Your Honor.

12 JUDGE BRADEN: Patent Owner?

13 MR. HENRY: No, Your Honor.

14 JUDGE BRADEN: Very good. Petitioner, you may begin your
15 arguments when ready.

16 MS. LAUGHTON: Thank you, Your Honor. Just confirming that
17 all of Your Honors can see the slides that are displayed here.

18 JUDGE BRADEN: Yes, we can see what you have on the slide
19 right there, but we also have them electronically. So please make sure you
20 note what slide number you're on.

21 MS. LAUGHTON: Absolutely, Your Honor. Thank you. Good
22 afternoon, Your Honors. May it please the Board. As I noted, my name is
23 Elizabeth Laughton of Smith Baluch, and I'm representing the Petitioner
24 Google LLC in connection with the present IPR.

25 All claims of the '687 Patent are challenged in the present IPR

1 under the grounds that you can see set forth here on Slide 2. Let me turn to
2 that. I would like to note for the Board, five grounds are presented here
3 because the '687 Patent actually has three different sets of independent
4 claims, each of which is directed to different subject matter, and so that's the
5 reason for the number of grounds that are presented here. And so Claims 1
6 and 13 are similar, 11 and 23 are similar, and 12 and 24 are similar.

7 Turning now to Slide 3. I'd like to begin by discussing the
8 challenged '687 Patent and the concept of engagement, which is central to
9 the challenged claims and also to the issues in dispute in this IPR. The '687
10 Patent concerns social networks and users interacting with content on social
11 networks, something that I hope we all have at least some sort of basic
12 familiarity with here. The '687 Patent actually explicitly defines
13 engagement with content on a social network. There is no dispute between
14 the parties as to this definition.

15 Turning now to Slide 4, the '687 Patent, as can be seen in the
16 abstract here, is directed to allowing a user to obtain an unlimited number of
17 engagements relating to this content, the networked content on a social
18 network. In the claims, this concept is referred to as uncapped engagements.
19 We see that in the preamble. What I would like to highlight here is that the
20 '687 Patent talks about obtaining engagements, and so that's kind of really
21 the relevant language that we have to confront here today. We'll focus on
22 that in the claims.

23 JUDGE BRADEN: Is it Petitioner's position that there's a
24 temporal element to obtaining? Does that mean that it has to be obtained
25 right away, or is it obtaining it and using it in the future?

1 MS. LAUGHTON: I think that engagements can be obtained at
2 any time. I think, obviously, if Your Honor is speaking about sort of a
3 specific claim element, I think I would want to address that maybe in the
4 context of that claim element, but sort of broadly, engagements can be
5 obtained at any time. So, for example, I can obtain an engagement in the
6 context of the proposed combination here by super-liking content. So I've
7 engaged with it. I've obtained an engagement.

8 I then also can obtain engagements when people like that content.
9 So I'm getting their likes, right? This is kind of the normal parlance, I think,
10 that often is used in this context. How many likes did that get? How many
11 comments did that get? Oh, that didn't get very many likes, you know, that
12 kind of thing. So those can be obtained by the other users interacting.
13 There's no temporal limitation as to that.

14 JUDGE BRADEN: Thank you.

15 MS. LAUGHTON: And so reproduced here on Slide 5 is
16 independent claim 1 with claim elements as noted in the petition. We see
17 here -- I just want to take a little bit of time to orient us to this claim because
18 there's a lot of language and a lot of references to engagement in this claim.
19 So just to be clear kind of what we're focusing on. So we see here in Claim
20 Element 1A, the preamble, we see this reference to uncapped engagement.
21 We don't actually see that again in the claims, but it's there in the preamble.

22 And then focusing on Claim Element 1E, I've highlighted that
23 claim language that forms the basis for the principal issue in dispute here.
24 This is the claim language that Patent Owner has really focused on in all of
25 its briefing, which is this claim language, the display option configured to

1 receive a request to obtain a number of engagements with respect to the
2 network content item.

3 And as you can see here, I've also highlighted other claim
4 elements. Those are ones that Patent Owner has identified as being in
5 dispute, but that's because they -- at least as I understand it, that's because
6 they concern obtaining engagements. So it's because we're seeing the same
7 language coming up in all the rest of those claim elements. And so you'll
8 see this in the briefing, the way that it's argued. It's really kind of argued
9 referring back to the prior arguments with respect to that first claim
10 language.

11 JUDGE ARBES: This is Judge Arbes. One question. Some of the
12 claims recite a number of engagements and some of the other claims recite a
13 plurality of engagements. Is there any difference between the two in your
14 view?

15 MS. LAUGHTON: Well, I think that -- so the claim language is
16 different. Patent Owner has treated them as if they are all equivalent. We
17 think that we've presented a theory that addresses both of them, whether it's
18 obtaining engagements or obtaining a number of engagements. The number
19 of engagements can be one engagement. It can be multiple engagements.

20 I think that to the extent that there is any difference associated with
21 that language and number of engagements, again, this has not been
22 addressed in the briefing, but I think it might refer to the fact that the '687
23 Patent actually states that engagements can be quantified in different ways,
24 and I think we actually refer to that in the petition. We cite that there. I can
25 find that citation.

1 JUDGE ARBES: I think we have that.

2 MS. LAUGHTON: You have that? Oh, you have that?

3 Wonderful. Okay, great.

4 JUDGE ARBES: To be clear, though, your position is that a
5 number of engagements can be one, which would be different from the other
6 claims that expressly recite a plurality, which is more than one?

7 MS. LAUGHTON: I think with respect to that particular claim
8 element, it can be satisfied by one, but we've certainly presented a theory
9 that encompasses multiple engagements that goes to all of the claims. So
10 that theory then, of course, would meet this claim element and meet the
11 other claim elements as well.

12 JUDGE ARBES: I see. Thank you.

13 MS. LAUGHTON: So as I noted, there's the challenge really that
14 that does come down to that language regarding the obtaining engagements
15 and the number of engagements.

16 I'd like to just take a moment here to talk briefly about independent
17 claims 11 and 12. They were not really separately addressed by Patent
18 Owner in any of its briefing, but we do have the burden here, and I just want
19 to make clear what the differences are with respect to those claim elements
20 in terms of how the grounds are presented and the prior arts applied against
21 those claims.

22 So we have here independent claims 11 and 12. They're also
23 system claims like claim 1, but they have some differences. And I've tried to
24 highlight in each claim here what the principal difference is. So claim 11 is
25 directed to what the '687 pattern refers to as collaboration engagements.

1 And what this really is when you have multiple users who are working
2 together to get engagements. And so you see that here together, indication
3 to obtain it together with at least a third user, and that's this collaboration
4 engagements working together idea.

5 And then in claim 12, you see it's also similar in many respects, but
6 it's really focusing on what the '687 pattern refers to as this donation of
7 resources. So if, for example, I have a bunch of credits in my account in
8 connection with a social network, I can donate those credits over to another
9 account in order for another user to use those.

10 Skipping Slide 7 for the present moment. Now that we're
11 somewhat oriented as to the '687 Patent, I'd like to turn to the petition's
12 theories and to the issues in dispute. I'd first like to note, just so that we're
13 all clear as to the record in this matter, Patent Owner never deposed Google's
14 expert in this proceeding, nor did Patent Owner submit any evidence of its
15 own expert testimony or otherwise. So really the record that we have here is
16 the evidence that has been presented by Petitioner here.

17 As I noted, the '687 Patent itself mentions Facebook as an example
18 of a social network, which was well established as the earliest possible
19 priority date of the '687 Patent, which is 2016. And I am focusing on
20 Facebook because the principle prior art at issue is a Facebook reference.

21 And on Slide 9 now, we have here an image from the Fuloria
22 reference. And we see here a Facebook news feed interface. And Fuloria
23 allows a user to super-like -- they call it different things, sometimes it's like
24 promote or highlight, but essentially we're sort of using the term that they
25 use, super-like, to refer to all of that here. It allows a user to super-like her

1 own content.

2 So if I post something, I can super-like it, or you can super-like
3 content from another user. You like what your favorite band posted, or you
4 like what your friend posted, and you want to super-like that. You can do it
5 for another user as well, in exchange for credits. And the super-like allows
6 the user to promote that content in a manner very similar to an ad. So
7 essentially the user is paying in order to increase the visibility of that
8 content. It isn't getting lost in people's news feed. It's posted right up at the
9 top, or it's posted in a sponsored story, or in an advertisement window, just
10 to make sure that everybody really sees it.

11 And so the user is paying to increase the visibility of that content,
12 and the whole goal of that is so that more people see it and interact with it.
13 So super-liking is an engagement with that content. That isn't disputed here,
14 that super-liking is engagement with the content. And so other users can
15 also engage with that content as a result of the super-like. They can click on
16 it, they can like it, they can comment on it. We see that here, circled, some
17 likes and some comments on this item. I think it's also not disputed that a
18 like or a comment is an engagement with content.

19 I'll now focus on the petitions unpatentability theory with an
20 emphasis on this claim language engagements, and then really kind of dive
21 in here to some of the disputed issues. So starting, though, with an
22 undisputed issue. This is Claim Element 1A, which is the preamble. It's not
23 disputed by EscapeX. But I do want to run through the theory here, just
24 because I think it will be helpful to the Board just to sort of understand the
25 kind of broader theory in play here.

1 Under Claim Element 1A, the petition contends that the super-likes
2 themselves are engagements, and they're uncapped, right? There's no
3 limitation on them, how often you can do it, how much can be spent to
4 increase the reach of a super-like. These things are uncapped. And the
5 petition also contends that when a user super-likes a content item, she
6 obtains the engagements of other users who interact with the content item,
7 for example, by liking or commenting on it.

8 This functionality is also uncapped. There's no limit on how much
9 one can spend to obtain the likes and the comments of other people. So, like
10 I said, how many likes did she get? She got 100 likes. Those are
11 engagements --

12 JUDGE BRADEN: So, Counsel, can you confirm, when you say
13 uncapped, even though I understand it's just in the preamble, are you saying
14 that uncapped is the number of engagement times, or is it the amount of
15 resources spent to incur the engagement?

16 MS. LAUGHTON: I think it's either. I'm not sure that a position
17 has really been taken on that, but I think that our theory accommodates both,
18 and that hasn't been disputed, is that both facilitate uncapped engagement.
19 You can spend as much as you like, and that also results in getting more
20 engagements. If you pay more to put it out there, more and more people are
21 going to see it and likely engage with it.

22 And then, also, there's no amount on the amount of money that you
23 can spend to do this. There's also no amount on how many times a user can
24 super-like content. You can do that as many times as you like. So I think
25 either are encompassed by our theory and would satisfy whatever facilitating

1 uncapped engagement is.

2 JUDGE BRADEN: Thank you, Counsel.

3 MS. LAUGHTON: So I'd like to turn now to Claim Element 1D.

4 And Patent Owner actually admits in its briefing that this claim element is
5 rendered obvious by the combination of Fuloria and then the Andler
6 reference. And the Andler reference, just as a reminder, is relied on
7 primarily for the teaching of these engagement scores. That's actually what
8 it calls it. And then the incorporation, specifically, of those engagement
9 scores into Fuloria.

10 And so, like I said, they admit this. This is a quote from their sur-
11 reply at page 6. And they say that, Fuloria in view of Andler renders
12 obvious displaying a first number of engagements and a second number of
13 engagements as required under Claim Element 1D. And they also say here
14 that Andler discloses displaying an engagement score. And they say that an
15 engagement score corresponds to a number of engagements. And so I would
16 like to flag that here because I will come back to that later, hopefully.

17 But just as a reminder, under this claim element, the petition
18 contends that it would have been obvious to modify Fuloria in view of the
19 Andler reference, which is also directed to social media, such as Facebook,
20 to display a ranking of top users with respect to a particular piece of content,
21 with each user having a number or a score that reflects engagements
22 obtained by that user.

23 So now, I will turn to Claim Element 1E. This is disputed. And
24 this is actually, like I said, the principal disputed limitation here. And so I've
25 reproduced here for the Board's convenience the petition's theory with

1 respect to this claim element, or at least the relevant excerpt of that.

2 The petition's theory is that a request to super-like is the claimed
3 request. So a request to obtain -- do I have to touch it [the computer]? Do I
4 keep going? All right. He [the IT technician] can work on that. We'll keep
5 going.

6 JUDGE BRADEN: Yes.

7 MS. LAUGHTON: No worries. Go ahead.

8 JUDGE BRADEN: All right. And so he can do that. And you
9 can continue because we do have your slides electronically right in front of
10 us.

11 MS. LAUGHTON: No problem. So on Slide 12, the petition's
12 theory is that a request to super-like is the claimed request because it is itself
13 -- it requests to obtain a number of engagements. It's also a request to obtain
14 engagements, right? With reference to the other claim language that Your
15 Honor mentioned.

16 And this is because a user is seeking to increase engagement with
17 the super-liked content by seeking to increase engagement by other users.
18 And this number of engagements or engagements is met by the engagements
19 of the other users who are then obtained by and essentially are attributed to
20 the person super-liking the content.

21 Turning now to Slide 13. This further illustrates the process in
22 Fuloria. So a user can pay to increase the reach of a super-like. And I just
23 want to flag that this can be done -- Fuloria specifically teaches that this can
24 be done on a cost-per-action model. So Fuloria teaches a number of
25 different ways in which you could actually set this up, right? They give kind

1 of simple examples of like, oh, I just want to feature this for 10 credits, but it
2 contemplates a large number of ways in which this can be done. And so --

3 JUDGE ARBES: Counsel, can I ask a question about that? Let's
4 say that I click the super-like button in Fuloria and I pay 10 credits for, let's
5 say, 100 likes in the future.

6 MS. LAUGHTON: Mm-hmm.

7 JUDGE ARBES: I have -- that transaction has occurred, but those
8 likes may or may not take place in the future. It could be the case that this
9 post is just very bad and no one ever likes it, right? That is possible.

10 MS. LAUGHTON: You're talking about some of my social media
11 posts, yes. That happens. It's possible that nobody will like it. But I think
12 -- this is where I think it's important to kind of look at the claim language
13 and then also the contention here. So that is an option, right? That the
14 payment can be determined up front. But it can also be -- and we discussed
15 this in the petition, I think it contemplates this, that you can pay on the back
16 end, right? As a result of the distribution. And Fuloria specifically states
17 that. And I believe we quote that and discuss that in the petition.

18 So, for example, you could say, I'd like to super-like this until this
19 gets 10 likes. And you understand generally that a like is 10 credits or
20 something like that. And based on the delivery, you can then be charged.
21 And I think there's no temporal requirement, for example, in the claim
22 language. So that's one way that it could be set up. And really, that's how a
23 cost-per-action model would work, right? You don't know what's going to
24 happen until it happens sometimes.

25 But you can also say, I want to make it also be configured such

1 that you pay in advance and perhaps if it doesn't reach that milestone, you
2 know, there might be a refund. That could also be a way it could be
3 configured. I think Fuloria is very broad in terms of the ways that it teaches
4 that this can be done.

5 JUDGE ARBES: I see. So my question is about the word obtain.
6 In that scenario, where I click the super-like button, it is a cost-per-action
7 model, and let's say I pay on the back end once those actions have occurred.
8 At what point in time have those engagements been obtained, in your view?

9 MS. LAUGHTON: Well, I think specifically here, if we're just
10 focusing on Claim Element 1E --

11 JUDGE ARBES: So if we could actually put the art aside for a
12 moment.

13 MS. LAUGHTON: Oh, sure.

14 JUDGE ARBES: The meaning of the word obtain. Because the
15 word obtain appears in a number of places in the claim. And I'd like to drill
16 down on just what exactly that word means, if we can.

17 MS. LAUGHTON: So I think that it's been obtained once that
18 interaction has occurred, once the engagement has occurred, and I think that
19 our theory contemplates that. So you want to obtain them, and then you're
20 requesting to obtain them, you're doing something to try to get them, and
21 then you get them when you get them.

22 JUDGE ARBES: Okay. So if I understand you correctly, clicking
23 the super-like button is a request to obtain them, but the engagements are not
24 actually obtained until they occur, if I'm paying on the back end?

25 MS. LAUGHTON: I think that's right in that context, and perhaps

1 it might help a little bit to talk about this in the context of Claim Element
2 1D, right? Because we see there that you display the first number of
3 engagements obtained by the first user, right? And the second number of
4 engagements obtained. And there, if you look at our theory, we have that in
5 the form of the engagement score, right?

6 And the way that Andler teaches its engagement scores are
7 calculated is that that is as a result of not only your own engagement with
8 the content, but it's also based off of how many other people have interacted
9 with that content. That goes into the calculation of the engagement score.
10 So that's specifically reflected there, you know, what kind of numbers you're
11 doing in terms of engagement with your content. It then goes into that score
12 of those engagements obtained in ranking you vis-a-vis that content.

13 JUDGE ARBES: And that first user is also someone who clicked
14 on a super-like button and obtained engagements of other users, correct?

15 MS. LAUGHTON: Right. I think that they are engaging with the
16 content, so they're obtaining an engagement with the content. And then they
17 also are obtaining the engagements of other people who then subsequently
18 interact with that content as a result of their super-like.

19 JUDGE ARBES: Okay. So if I understand your position, I can
20 obtain an engagement by me actually doing the engagement, clicking a like
21 or a super-like or posting a comment. I can also obtain engagements
22 through this process of clicking super-like and then other users engage in
23 response to that. There's two ways to obtain an engagement.

24 MS. LAUGHTON: That is correct, Your Honor. And I personally
25 will say that sometimes I like my own content. And I can also obtain an

1 engagement, for example, of myself, again, engaging and liking that content,
2 right? These are all obtaining engagements. These are all engagements with
3 the content.

4 JUDGE ARBES: And certainly you would agree that the
5 specification of the '687 Patent is about that scenario, that a user is obtaining
6 engagements for themselves, that they can like once or they can like many
7 times. That is different than what Fuloria is doing.

8 MS. LAUGHTON: Well, I think that the '687 Patent focuses on
9 that as a way to obtain engagement, right? So you can say, I want one
10 engagement, I want ten engagements, look at that. But I would say that that
11 is in essence what Fuloria is doing in that, particularly in the combination
12 with Andler, where we have these engagement scores, is that you have a way
13 to show an increased engagement with the content, right? That you have
14 this ability to super-like and to get other people involved with this content
15 and to get that out there. And you have a score specifically showing that
16 you have a high amount of engagement now with this content. And I think
17 that it's getting at similar purposes as the '687 Patent.

18 But in specific response to your question, I agree that Fuloria
19 doesn't have this thing where you say, I would like to buy one engagement
20 for myself, I would like to buy ten engagements for myself. That
21 specifically is not what Fuloria is teaching in the context of the super-like.

22 JUDGE ARBES: But in your view, the claim language is broad
23 enough to encompass what's happening in Fuloria?

24 MS. LAUGHTON: I think that's right, Your Honor. I think it is
25 broad enough to encompass that. And I will just note, for the record, I think

1 we mentioned this in the petition, that's really consistent with the way that
2 this patent has been asserted. So it was asserted against the YouTube super-
3 chat feature, which you basically pay an amount to essentially pin a
4 comment. And that's supported in the record. We have the complaint and
5 then we have the claim chart associated with the complaint in the record
6 there.

7 And so I just want to note that that's the manner in which this
8 patent has been asserted. And so we think that looking at these claims, and
9 certainly I don't think Patent Owner has provided any basis to narrow them.
10 We think that if you look at this claim language, obtaining engagements or
11 obtaining a number of engagements, it's broad enough to encompass what is
12 occurring here in Fuloria and Andler.

13 JUDGE ARBES: One more question about the word obtain. I
14 noticed that there are a number of other instances in the specification of the
15 patent, some of the dependent claims, and even in claim 1, that use that term.
16 And in response to Judge Braden's question about whether there's a temporal
17 aspect of it -- those other instances do appear to indicate that obtain is
18 something that happens immediately.

19 Like, for instance, limitation 1C says, obtain a networked content
20 item authored by a user. That doesn't take place in the future. When I
21 obtain that, I'm obtaining it now. Shouldn't we read the word obtain
22 consistently throughout that there is a temporal aspect to it?

23 MS. LAUGHTON: Well, I guess -- respectfully, Your Honor, I'm
24 not sure that I agree that there's necessarily that temporal aspect. I think
25 certainly -- so here, obtain a networked content item, right? It's because you

1 have to have a particular -- you have here essentially a computer system
2 comprising -- this is by the way focusing on independent claim 1. A
3 computer system comprising one or more physical processors programmed
4 by computer instructions to.

5 So at some point, they have to be programmed by the computer
6 instructions to obtain this. And they do this, right? There's stuff that's
7 posted, and that's content, and that's obtained. And I think that that's
8 something that's going on here. So certainly, before you have interaction
9 with the network content, there must be content. But I think that we have
10 system claims here, and I don't think that there's necessarily a temporal
11 requirement that would be in play there.

12 And also, with respect to the method claims, I think unless there's
13 one logically present, I don't know that there's a temporal requirement. And
14 so, for example, I would just say, as an example, looking at Claim Element
15 1J, we have this debit, the third amount of user resources, right? That can
16 happen at any time, right? That doesn't have to happen immediately.
17 There's no logical limitation on that. You know, just that this has to be
18 debited, right? And I don't think there's any -- and again, that hasn't really
19 been challenged here.

20 And so I don't think there's anything inconsistent in just saying that
21 obtain takes its ordinary meaning. You have your request to obtain, which
22 all that has to be is a request to obtain. It doesn't mean I've gotten anything.
23 I've requested it. I make lots of requests that are not honored, and that's all
24 that is. And then I think if you have, for example, the word obtained, then
25 that indicates that it has occurred, and then otherwise an indication to obtain.

1 Again, I think it would depend on the context.

2 JUDGE ARBES: Okay. And that debiting, that paying, can occur
3 on the back end, right, in your view?

4 MS. LAUGHTON: I think so. I see no reason why it couldn't in
5 either the system or the method claims.

6 JUDGE ARBES: What was the -- can you refresh my recollection,
7 what paragraph of Fuloria was that disclosed in?

8 MS. LAUGHTON: Sure. So if I could go to Claim Element 1J.
9 And again, this is one of the claim elements that was undisputed. So we
10 have 1J, right? The account associated with the user may be -- so one option
11 is it may be debited a predetermined number of credits. And then it also
12 says, Fuloria further explains that in particular embodiments -- by the way,
13 I'm looking at pages 38 and 39 of the petition for your reference.

14 Fuloria further explains that in particular embodiments, the credits
15 are deducted after the promoted social networking object is delivered to
16 various users based on the delivery, 38. So you can do it predetermined.
17 You could do it on the front end. You could do it back end based on the
18 delivery, which is the whole thing about when you have a cost per action or
19 a cost per click. You kind of have to know what happened in order to make
20 that payment.

21 And so basically we say that, no matter how that's done, that's
22 rendered obvious by Fuloria's standard teachings that, you know, these are
23 the standard ways in which you would pay for something here and debit that
24 out.

25 JUDGE ARBES: So the delivery in paragraph 38 is showing the

1 promoted posting to the other users, and then they can click or take an action
2 on it, and that's when the cost per action model comes into play?

3 MS. LAUGHTON: That's what I believe it's referring to here in
4 38. And I actually have a slide with 38. So it says, specifically in particular,
5 it kind of gives an example, right? So that's the sentence right before that,
6 and then it gives those in examples. And so that's what I understand it to be
7 referring to. And by the way, I'm looking at Slide 13 right now for Your
8 Honors.

9 So it says deducted after the promoted social networking object is
10 delivered to various users based on the delivery, and then it gives these
11 examples of these different types of models that you can use in order to do
12 payment. And that would also be, for example, the cost-per-action model,
13 cost per click.

14 Because, again, a lot of what's happening here in Fuloria is that
15 -- and I think Fuloria recognizes this in its disclosures is that you have
16 something that's very -- kind of similar to an advertiser promoting content,
17 right? And so sometimes I think that's something you see in advertising,
18 right? Where you get payment based off of how many people have seen it
19 and interacted with it.

20 So unless there are any further questions about that, I do want an
21 opportunity, if I may, to respond to some of the statements that were made in
22 sur-reply by the Patent Owner. I just want to note that in the Patent Owner
23 response, there was very little that was said that actually responded to the
24 theory presented by the petition that we've been discussing today. And I'm
25 looking right now at Slide 14.

1 This underlined line right here, the argument has no nexus with a
2 number of engagements, is all that the Patent Owner said. And as we stated
3 in our reply briefing, respectfully, we don't think that this is an argument that
4 is fully developed enough for us to really be able to respond to it. And I'm
5 talking specifically about the argument that actually really confronts the
6 petition's real theory that we've been talking about here today.

7 And so the Patent Owner never explained in its Patent Owner
8 response why a request to obtain engagement, for example, via the likes and
9 comments of other people, doesn't satisfy the claim language. It did not
10 explain that.

11 And so turning to Slide 15. I just wanted to note here that in the
12 Patent Owner response, Patent Owner did admit that Fuloria discloses a
13 display option configured to receive a request to obtain engagement. And
14 again, as Your Honor noted, some of the other claim language here, for
15 example, in Claim Elements 11D and 12D, the only difference there is the
16 plural nature of it. And so we have that admission from them. And I don't
17 think they've really explained why that plural nature is, at least in their
18 Patent Owner response, is not reflected there.

19 So now in sur-reply, turning now to Slide 16, they do present new
20 arguments that they're now trying to attempt to explain this position. I'd just
21 like to note that from our perspective, these arguments are waived. They
22 should have been presented in the Patent Owner response. There's no reason
23 why they couldn't have been. Instead, we believe that EscapeX chose to
24 keep that Patent Owner response vague. And in our view, the new
25 arguments in sur-reply should be rejected for this reason alone.

1 But certainly, even if considered, these arguments in our view are
2 also wrong. So I've reproduced here some portions of the patent in their sur-
3 reply. EscapeX argues in sur-reply that this number of engagements in
4 Claim Element 1E is kind of what they call here the user's engagement
5 number. And so what they seem to mean is that it must only reflect the
6 user's own engagement with the content item. And I think what they're
7 arguing here is nowhere in the claims.

8 Claim Element 1E, for example, says a request to obtain a number
9 of engagements. There's no limitation on the nature of those engagements.
10 They don't require that the engagement in that claim element be performed
11 by a specific user or attributable only to a specific user. You just have to
12 obtain it. That's it.

13 And certainly, it doesn't also explain how this argument applies to
14 the claims that we just saw. They just recite a request to obtain engagement.
15 So it's focusing on this claim language number of engagements, but then it
16 just treats that as exactly the same as this request to obtain engagements. It
17 doesn't draw any distinction. And so to the extent they're then focusing on
18 that claim in the language, we don't really fully understand the argument.

19 So third, contrary to EscapeX's assertion, the petition's theory is
20 not summing engagements. Again, I've reproduced here on Slide 17 a
21 portion of their sur-reply. They're not summing engagements here. What
22 we have is we have a portion of Andler, which I've reproduced here, talking
23 about how the engagement score may further be based on whether additional
24 users have accessed the item of content based on the interaction of one of the
25 first users.

1 So the prior art itself recognizes that this is relevant, right? The
2 whole point of being an influencer is that you put something out there and
3 it's relevant, how many other people engage with that content that you are
4 promoting? So I think that the prior art itself specifically recognizes the
5 reality that a user can obtain engagements by getting others to engage with
6 content, right? That's right here. That goes into your engagement score.

7 And we have here a quote from their sur-reply, and they
8 specifically admit that Andler discloses obtaining the number of
9 engagements with other ways. Well, this is what Andler does. Andler gets
10 it. Andler computes an engagement score and looks at engagement as not
11 only being the result of the user's own actions, but also the actions of
12 everybody else. And so they seem to be contradicting themselves here. I
13 think they understand that in the context of Andler, and in the context
14 broadly of social media, that that factors into engagement and is
15 engagement.

16 And the result of all of this is that -- particularly in view of the
17 combination that we've presented in terms of both Fuloria and Andler, the
18 result of this is that a user is distinguished with respect to this content
19 because they're able to obtain more engagements than other users. So if I
20 super-like a piece of content and I get a thousand likes, and if someone else
21 super-likes that content and they only get two likes, that distinguishes me
22 with respect to the content, right? Like I'm an influencer now. Greater
23 association with that content. I can drive engagement with that content
24 somebody else can't.

25 JUDGE ARBES: I guess, Counsel, can you explain that a bit

1 more? It's a little bit different in that when the user is engaging more, or
2 paying to engage more, it is for him or her to be ranked higher, like a fan of
3 a band, for instance. But this is a little bit different, in your view, because
4 two people are clicking super-like, and in response to each of those, they get
5 different amounts of likes in response. So why would a person of ordinary
6 skill in the art want to rank those two people, the two that click super-like,
7 and not all of the other people in the universe that are just liking in general,
8 for instance?

9 MS. LAUGHTON: Right. So I think Andler actually specifically
10 talks about these engagement scores being vis-a-vis a user and specific
11 content, right? And so it's user-content specific, right? And so I think we
12 described this in the petition and the motivation to combined, but I think that
13 this is valuable information. So for example, say some band posts a new
14 song, right? And I've super-liked it, and I tell everybody about it, I want
15 everybody to know about it. Someone else does the same thing.

16 If I have loads of people engaging with it as a result of me, I'm
17 now a top fan, right? Under the theory here, particularly with respect to 1D,
18 the use of the engagement scores and the incorporation of Andler. I'm now a
19 top fan. And the band sees me. I'm now a top fan with respect to the song.
20 Wow, she really likes this song. She's the person who is engaging the most
21 and getting the most people talking about and clicking and commenting on
22 this song. And I think that that can be relevant information.

23 I think we talk about this in the petition, for example. If they want
24 to pay that person, for example, to promote their content in the future, or if
25 they want to offer a sponsored deal to that person, or maybe they want to

1 give that person a free ticket or highlight some of their top fans, right? This
2 is, I think, valuable information for someone who's posting this content.

3 JUDGE ARBES: But it does seem that it's not so much that you
4 are the top fan. You may be the top promoter. All of the other users that
5 you are spurring to like, they are the fans. You're just promoting it. So
6 we're ranking kind of promoters, not fans, right?

7 MS. LAUGHTON: Isn't the biggest fan somebody who gets
8 everybody else excited too? I think you are, right? And you're paying for
9 that privilege. And you care enough about it to want to pay for it, to really
10 put that out there. And so, I mean, I think that -- and again, Andler says this
11 in terms of its own engagement scores, right? In that your level of
12 engagement and how, you know, as big of a fan you are, a top fan.

13 I think they use the language top fan, how big of a fan you are with
14 respect to content is not only based off of what you do, vis-a-vis the content,
15 but it's also based off of how much you're driving the conversation, you're
16 driving engagement from other people with that content. And I think the
17 prior art specifically recognizes that that's relevant.

18 JUDGE ARBES: Okay. And responding to one argument, I
19 believe, Patent Owner made in its sur-reply. Let's say that we have two
20 users that both clicked super-like, and they paid different amounts to get
21 different amounts of future likes in the future. There's nothing in Fuloria
22 about publicizing how much each of them paid, or how much -- how many
23 likes in the future that each of them paid for that -- differentiated? If I'm a
24 user on the outside, I only see that this person clicked super-like and this
25 person clicked super-like. That's all I see. I don't know how much they paid

1 for it, or how many future likes they were paying for.

2 MS. LAUGHTON: I don't believe Fuloria specifically discusses
3 disclosing how much is paid for it. I think it does show it as being
4 promoted, and so you would know that. And then, of course, you see who's
5 liking it, right? So you see it pinned up there, and you see it's got thousands
6 of likes on it, right? And so you see that that occurred. Or, you know, how
7 x many comments, right? Whatever occurs with respect to that content item.
8 Anybody who's friends or whatever with the person who did that can see
9 that.

10 I think that that's also why we are bringing in the Andler reference
11 here, which does this basic concept of ranking, top fan ranking. And they
12 talk about engagement scores and ranking people vis-a-vis a particular piece
13 of content, which I think really dovetails exactly with what Fuloria is doing.

14 JUDGE ARBES: But just to be clear, if there is a post like in
15 Figure 8B of Fuloria, two different people super-like it, that post will be
16 promoted for other users, but those other users will see no differentiation
17 between those two people that super-liked it, right?

18 MS. LAUGHTON: I think in general that's right with respect to
19 Fuloria, although I suppose I can envision a scenario where, for example,
20 you have three band members, and they've got their news video out there or
21 something, and all three of them have super-liked it, and they're all friends
22 with the same people. And it might be showing up multiple people's super-
23 likes, right? It might be showing up on any particular person's feed, and
24 they can see how many people have interacted with it posted by both of
25 those people. I think that can occur.

1 But I do agree with you that it's not specifically saying, hey, this
2 person posted, you know, or said this person paid 300 credits to get this, or
3 this person's trying to get this number of likes. I think that that kind of
4 ranking and that ranking concept is coming in with the combination with
5 Andler.

6 JUDGE ARBES: Okay. And that's my question. If they do
7 appear the same, why rank them? But you're saying that the disclosure of
8 Andler provides sufficient motivation to rank them, even though those two
9 people that super-liked it in Fuloria are really treated the same?

10 MS. LAUGHTON: Yeah, I think they're treated the same in the
11 extent that, you know, if I super-like it, it's going to go out to my contacts or
12 whomever, right? However, it's determined by the system, people who
13 might be interested. But I think that, for example, because we see here,
14 right? In the claims, we see that you have content that's posted by someone
15 other than someone super-liking it, right?

16 And so I think that that person might want to know who's super-
17 liking their content, who's getting likes, who's engaging the most with the
18 content. And I think that's what Andler is teaching, again, in the context of
19 Facebook, right? It's the same kind of system. And you have the -- you
20 know, there's been no dispute that there would be a motivation to combine
21 here. I think these are very combinable references in terms of being directed
22 to really the same kinds of things.

23 Unless there are any further questions, I think I'm now into my
24 rebuttal time. And so I don't think I have --

25 JUDGE BRADEN: You still have three minutes left --

1 MS. LAUGHTON: Oh, I do? Oh, I didn't realize that's how I was
2 counting down. Got it. Okay, great. So I -- let me just check one second.
3 Hold on for a moment, please. Right. And so looking here at Slide 17, we
4 see here that there is an admission that Andler discloses obtaining
5 engagements in other ways. Yeah, this is exactly how you do it. This is the
6 way that you obtain them is via the interactions of these other people.

7 And then finally, turning to Slide 18. We have additional
8 arguments that -- in Patent Owner's sur-reply that I think should have been
9 presented in the Patent Owner response, but I'll do my best to address them
10 briefly here. Here we have Patent Owner contending there has to be some
11 corresponding request to retrieve that specified number of engagements. I
12 don't see that anywhere in the claim language.

13 And so I think we have here Patent Owner reading in -- reading
14 things into the claim language that are not present in the claim language. I
15 think also, if that's really what that means, then that doesn't really explain
16 then why Patent Owner's arguments would be the same for all of these
17 claims, if they're kind of reading that into that number of engagements
18 language. But then they're treating all of these other -- treating all the rest of
19 this claim language the same.

20 That's another reason that their argument, I think, just really
21 doesn't make any sense. Because why would there be a corresponding
22 request to achieve a specified number if -- even assuming, you know, you've
23 had that language required a specified number, if you just have this language
24 saying, obtain engagements. And so I think that that is all I have --

25 JUDGE ARBES: Sorry, Counsel. Can you say that one more

1 time, please?

2 MS. LAUGHTON: Sure. So let me see if I can say it more
3 clearly. So here in the sur-reply, you see here, this quote on the top, you see
4 the Patent Owner arguing that what this received request to obtain a number
5 of engagements claim language means that you have to have this, like, very
6 specific display option saying you have to select a desired number of
7 engagements.

8 And then once you get this selection, you then have to have a
9 corresponding request to retrieve that specified number of engagements,
10 which then means that the desired number of engagements is equal to that,
11 right? I don't think any of that is in the claim language. That's what they're
12 saying that means. I don't think that's correct, but that's their position.

13 But then, later in the sur-reply, they then treat that claim language
14 request to obtain a number of engagements the same as this other claim
15 language, number of engagements or obtain engagements. And I think that
16 that just further indicates that this first argument is wrong, right? I think that
17 this claim language is very similar, and I think they're reading things in there
18 and they don't explain why those arguments could possibly apply to this
19 other claim language that just says things like obtain engagements.

20 I think they're being inconsistent here in treating the claim
21 language as all being the same, but then trying to also read all of this
22 meaning into the claim language in 1E, which is just not present. Does that
23 hopefully answer your question, Your Honor?

24 JUDGE ARBES: Yes. Thank you.

25 MS. LAUGHTON: Okay. Unless the Board has any further

1 questions, I will reserve the rest of my time.

2 JUDGE BRADEN: Very good. Thank you, Counselor.

3 MS. LAUGHTON: Thank you very much.

4 (Whereupon, the above-entitled matter went off the record at 1:18
5 p.m. and resumed at 1:20 p.m.)

6 JUDGE BRADEN: Patent Owner, do you wish to reserve any
7 rebuttal time?

8 MR. HENRY: Yes, Your Honor. Ten minutes will be fine.
9 Thank you.

10 JUDGE BRADEN: Very good. You may begin your arguments
11 when ready.

12 MR. HENRY: Good afternoon, Your Honor and Ma'am. If you'll
13 indulge me, I want to tell you a very quick story that illustrates the point.
14 When I was a child, I had this book, and it had to do with -- it was one of the
15 scholastic books. We used to get some books from school, and this thing
16 had to do with aliens or something, aliens landing. And I said to my
17 grandfather, you know, the spacemen are coming, the aliens are coming.
18 And he just looked at me, that's nonsense, was his point. Don't believe that.

19 And I said, but it's in a book, Grandpa. And he said, listen, believe
20 half of what you see and none of what you read. The point of that story that
21 stuck with me is to be skeptical. And I also wanted to tell you that because I
22 wanted to give you a frame of reference in dealing with my grandfather.

23 The next story I have, and this will be relevant, I'll tie it in. My
24 grandfather presented to me when I was a kid with this -- a regular nail was
25 nailed into a 2x4, and just about a three and a half inch nail, and with the

1 head on the size of about maybe a dime, a little bit smaller than a dime, and
2 about seven or eight other nails. He said to me, can you put all the belts
3 -- can you place all of those nails on the head of that nail that's sticking up in
4 the 2x4? Can you do that?

5 And of course, I'm dealing with this guy who's a bit of a
6 curmudgeon. He's always been a bit tricky. He didn't tell me whether it
7 could be done or whatever. He said, tell you what, you go think about it,
8 and you come back and you tell me if you can do it. So I went, and I sat,
9 and I thought, and I thought, and I came back. I said, you're tricking me,
10 Grandpa. I can't do this. That's not possible.

11 And he said, watch. And he laid one nail on the table, and then he
12 took another nail, and he laid it with the head just across that first nail, and
13 he laid another one on the other side, and down that nail that was on the top
14 -- excuse me, laying flat on the table. So we had several nails laying
15 interleaved. And then he took the last nail and he set it on top between the
16 heads that were all laying on the first nail, and he raised it up, and it had a
17 nice little structure to it, and he set it on top of that first nail.

18 And I thought, of course, of course. If I'd thought about that just a
19 little bit more, I'm sure I could have figured that out. And almost like he
20 was reading my mind, he looked me in the eye, and he said, it's easy when
21 you know how. That is an example of immediacy, of hindsight bias. I went
22 -- the puzzle seemed to be impossible to me, and suddenly it was easy,
23 because I had a roadmap, and I had the solution laid out in front of me.

24 By the same token, there's been a lot of discussion today about
25 pieces of the claim. I'll focus on claim 1 for the time being, because I think

1 that it's very indicative. Pieces of claim 1 are in Fuloria, arguably, and
2 they're in Andler. In order to find this claim, all of it, obvious, the basic
3 thesis is to go something like this. A person of skill in the art, back in when
4 this was written, I think it was 2016, would have said, if you give them
5 -- here, read Fuloria, read this. Okay. Read it, you thought it over. No, read
6 Andler, read that.

7 Okay. You read it, you understood it. You get it? Sure. And that
8 person of skill in the art would have said, aha, I know what I need to do. I
9 have a new invention in mind. It's for a system. It's a system for
10 aggregating content, and facilitating uncapped engagement of the content.
11 The system comprising a computer system, with computer instructions that
12 are obtained to -- excuse me, configured to obtain a network content from a
13 user, generate, blah, blah, blah, lots of detail. Also, it receives -- it
14 determines a third amount.

15 I'm not going to read this whole claim to you. It's extremely long.
16 I don't think I have enough wherewithal to read all this right now. The point
17 is, it's extremely detailed, and the point of my story is, it is not enough, and
18 it is not fair to say, well, we've shown you all the pieces, or to use my
19 analogy with dealing with my grandfather in the nail story. I've shown you
20 where -- shown you all the nails. It's up to you to put them in place.

21 And to say that a person of skill in the art would read those two
22 references, and then come up with this invention, as claimed, not just a
23 bunch of pieces working together, maybe, but, which we can see, sure, the
24 references have a lot of the pieces. Of course they do. We wouldn't be here
25 if they didn't. They're not laid out in the way that they're described in the

1 claims. To say that that would be obvious, without the benefit of hindsight,
2 seems unlikely. It's unlikely. So I ask you to -- when you deliberate, please
3 remain skeptical, and consider what I said about non-obviousness.

4 JUDGE BRADEN: And you keep referring to a person of
5 ordinary skill in the art. I want to make sure we're all on the same page.
6 What is it that Patent Owner considers to be a person of ordinary skill in the
7 art?

8 MR. HENRY: We -- excuse me. The Petitioner proffered one and
9 we agree with that. It is basically somebody who's skilled in computer
10 science and familiar with this type of technology. I'm paraphrasing.

11 JUDGE BRADEN: Okay. So a person -- my understanding is that
12 Petitioner has proffered that it would be someone with a bachelor's degree in
13 computer science or similar field, and three years of professional computer
14 programming experience, including experience with networked media and
15 databases, where additional education can substitute for experience or vice
16 versa. And Patent Owner agrees with that level of skill?

17 MR. HENRY: I do. I think that they would need to have at least
18 that much skill, yes.

19 JUDGE BRADEN: All right. Thank you.

20 MR. HENRY: You're welcome. I have no arguments about really
21 anything that Petitioner has said. I don't think that there is anything -- I
22 didn't hear -- let's put it this way. I didn't hear or say anything that I thought
23 was untrue or needed to be corrected. But I would think it's relevant -- you'll
24 probably ask, well, I'll just nip it in the bud. There were some -- I'll let you
25 ask your questions, of course, but there were some arguments presented in

1 sur-reply that I think upon further reflection shouldn't have been, and so
2 those are withdrawn.

3 JUDGE ARBES: Counsel, can you be specific about what
4 arguments those were?

5 MR. HENRY: I cannot.

6 JUDGE BRADEN: Are they the ones that Petitioner points out in
7 Petitioner's Slides? I believe -- just want to make sure we have it on the
8 record. It is sur-reply at page 6, dealing with Andler's displaying a number
9 of engagements, and then there was Patent Owner's sur-reply at pages 5 and
10 11, where there is phrase, a display option can be used to receive a request to
11 obtain a number of engagements compared with -- the reply doesn't argue
12 that W.O. 11 teaches Elements 11D, 11F, 11G. Is that --

13 MR. HENRY: Yes, Your Honor.

14 JUDGE BRADEN: Very good.

15 MR. HENRY: I have nothing further for the group. Unless you
16 have any questions for me, I'll take my seat.

17 JUDGE BRADEN: Judge Arbes, Judge Strauss, do you have any
18 questions for Patent Owner's counsel?

19 JUDGE ARBES: Yes. I'm sorry, Counsel, can you explain your
20 view of what the word obtain means in the limitation that we've been talking
21 about? And specifically, is there a temporal requirement to the word obtain?

22 MR. HENRY: My reading of that word is that the obtained event
23 occurs, if you will. And is there a temporal component? Not as such in the
24 sense that I don't see that there -- for example, you mentioned obtain a
25 network content item authored by a user. I didn't -- I don't read that as

1 requiring any kind of instantaneous. It certainly may be contemplated that
2 that's going to be the sort of the kickoff and will happen promptly, but no, I
3 don't see that that is required as being instant, whereas other ones can take
4 longer. I think they all have to have occurred before the claim is satisfied.

5 JUDGE ARBES: Okay. Well, that's -- if we're going to talk about
6 limitation 1E specifically, that recites a display option configured to receive
7 a request to obtain a number of engagements with respect to the networked
8 content item, and -- that language in future tense, that there is a request to
9 obtain a number of engagements. Petitioner has taken the position that those
10 engagements can take place in the future from other users. Why is that
11 incorrect, in your view?

12 MR. HENRY: I don't know that it is. I think that's correct. It's a
13 request that it will happen in the future. I mean, the request has to --

14 JUDGE ARBES: So the engagements need not take place
15 immediately then?

16 MR. HENRY: I agree with that, yes.

17 JUDGE ARBES: And one more question. There are claims that
18 recite a number of engagements and other claims that recite a plurality of
19 engagements. Petitioner took the position that a number of engagements can
20 be one. Do you agree with that?

21 MR. HENRY: I don't agree with it in the sense that reading the
22 '687 Patent, to me, as a reader, contemplates that that term is synonymous
23 with happening multiple times. There are multiple engagements. One
24 would probably be a failure. Linguistically, one is a number. Of course,
25 also linguistically, a plurality incorporates a bunch of ones. So I don't think

1 that the claim is certainly not directed towards claiming exactly one.

2 JUDGE ARBES: I guess my question is, do you see any
3 difference between those two phrasings, a number of engagements and a
4 plurality of engagements, or are they really the same thing?

5 MR. HENRY: Well, I think that -- I don't like doing textual mind
6 reading into the past. In the spirit, in the sense that we are supposed to treat
7 claim -- different words generally usually means different things. If the
8 drafter of the claim meant the same thing, he should have used the same
9 word. Of course, there are exceptions to that based on logic. So I think that
10 they are, in that sense, different.

11 In the main, they're the same because I think that the people who
12 do the work in this type of field certainly are interested. Looking at it from
13 an inventor's point of view, they're interested in getting a lot of multiple
14 ones. A single one is probably not something that was really contemplated
15 within their plans. I mean, it's gained an uncapped number. So they're
16 thinking big. I'm sorry, I can't give you any better answer than that, sir.

17 JUDGE ARBES: Thank you.

18 JUDGE BRADEN: Any other questions, Judge Arbes, Judge
19 Strauss? No further questions from me. Thank you very much, Counselor.
20 Petitioner's counsel, you may begin your sur-reply -- I'm sorry, your rebuttal
21 time when you are ready.

22 MS. LAUGHTON: Thank you, Your Honor. I just have a couple
23 of quick points, of course, unless the Board has any specific questions,
24 which I'm happy to answer. I think what I just heard was something like a
25 challenge to motivation and reasonable expectations of success. And there

1 was no such challenge presented in the Patent Owner's response, no
2 particularized argument to that.

3 I think that we've laid out in detail why a person of ordinary skill
4 in the art would be motivated to make the -- to arrive at the challenged
5 claims and would have had a reasonable expectation of success in doing so.
6 I think we have, in particular, been thinking about the Fuloria and Andler
7 references that we've been talking a lot about today. They're both references
8 that deal with Facebook, and they contemplate interchangeability and are
9 directed to the same concepts.

10 I just have one other note. I believe I heard counsel for Patent
11 Owner withdraw certain sur-reply arguments. I just wanted to note that also
12 on Slide 16 of Petitioners demonstrative, I think we also had there, from
13 page 4 of the sur-reply, what we believe to be a new argument.

14 I'll also just note that as I was preparing these demonstratives, I put
15 up the quotes that I think seemed to me to be -- that struck me as being the
16 most new, but certainly I don't think I did an exhaustive job necessarily with
17 respect to the slides. And so to the extent that Patent Owner is withdrawing
18 any new arguments in their sur-reply, I would just suggest that the Board
19 compare the arguments presented in the sur-reply to the Patent Owner
20 response and properly reject the ones that are newly presented.

21 Unless there are any further questions, I will cede the rest of my
22 time. We respectfully request that the challenge claims be found
23 unpatentable for the reasons stated today and in the briefing.

24 JUDGE BRADEN: Judge Arbes, Judge Strauss, do you have any
25 questions for counselor?

1 JUDGE STRAUSS: No, thank you.

2 JUDGE ARBES: No, thank you.

3 MS. LAUGHTON: Thank you very much for your time, Your
4 Honors.

5 JUDGE BRADEN: All right. Patent Owner's counsel, would you
6 like any time for surrebuttal?

7 MR. HENRY: No, Your Honor. Nothing further.

8 JUDGE BRADEN: Very good. Thank you. Thank you both for
9 appearing here today and for answering all of our questions. Your answers
10 have helped the panel. We will take this case under advisement and issue
11 our decision in due course.

12 As a reminder, we ask that you please stay for a little bit longer
13 and answer any questions the court reporter may have regarding spelling.
14 And with that, we will wish you a good day. Thank you. The hearing is
15 adjourned.

16 (Whereupon, the above-entitled matter went off the record at 1:38
17 p.m.)

IPR2025-00337
Patent 10,474,687 B2

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