

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 No. 10,474,687

**PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW
OF FINAL WRITTEN DECISION**

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. LEGAL STANDARD	2
III. BACKGROUND	2
A. The '687 Patent and Challenged Claims	2
B. Fuloria and Petitioner's Theory	4
C. Final Written Decision	5
IV. ARGUMENT.....	6
A. Fuloria Does Not Teach a Request to Obtain a Number of Engagements ..	6
B. CPC/CPA Pricing Does Not Supply the Missing Limitations.....	8
C. The Error Infects Every Independent Claim and All Grounds	11
V. CONCLUSION	13

TABLE OF AUTHORITIES

Page(s)

Cases

Dynamic Drinkware, LLC v. Nat’l Graphics, Inc., 800 F.3d 1375 (Fed. Cir. 2015).....	1, 6
Harmonic Inc. v. Avid Tech., Inc., 815 F.3d 1356 (Fed. Cir. 2016).....	1, 6
In re Magnum Oil Tools Int’l, Ltd., 829 F.3d 1364 (Fed. Cir. 2016).....	1, 9
In re NuVasive, Inc., 842 F.3d 1376 (Fed. Cir. 2016).....	9
Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd., 821 F.3d 1359 (Fed. Cir. 2016).....	6
KSR Int’l Co. v. Teleflex Inc., 550 U.S. 398 (2007).....	6, 9
TriVascular, Inc. v. Samuels, 812 F.3d 1056 (Fed. Cir. 2016)	9

Statutes and Rules

35 U.S.C. § 316(e)	2
37 C.F.R. § 42.75	1, 2

Other Authorities

Director Review Process, § 2.B	2
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I. INTRODUCTION

Patent Owner EscapeX IP LLC respectfully requests Director Review under 37 C.F.R. § 42.75 of the Final Written Decision (Paper 21, “FWD”) finding claims 1-24 of U.S. Patent No. 10,474,687 (“the ’687 patent”) unpatentable. Director Review should be granted because the Board’s obviousness determination rests on erroneous findings of material fact and erroneous conclusions of law concerning the limitation disputed throughout trial: whether Fuloria teaches a display option configured to receive a request to obtain a number of engagements, and corresponding limitations requiring engagements to be obtained in exchange for resources.

The Board adopted Petitioner’s theory that a user who selects Fuloria’s “super-like” or “feature” button requests to obtain a number of future likes, comments, clicks, or actions by other users. FWD, 24-36. But Fuloria teaches a promotion or advertising mechanism: a user pays to promote content by pinning or more prominently displaying that content. Ex. 1004 ¶¶ 37-39, 57, 60-67. Fuloria does not teach that the user requests a specified number of engagements, that the user obtains those engagements within the meaning of the claims, or that the system calculates the required resources by multiplying the cost of a single engagement by a requested number of engagements.

Those errors were dispositive. The Board relied on the same Fuloria theory to resolve limitations [1e], [1f], [1h], and [1i], then extended that reasoning to independent claims 11-13, 23, and 24 and all dependent claims. FWD, 33-40. Because the Board's reasoning for the core limitation is wrong, the Final Written Decision should be vacated or reversed, or at least reheard with instructions to apply the correct analysis to the record evidence.

II. LEGAL STANDARD

Director Review of a Board final written decision is warranted when the decision presents, among other things, an abuse of discretion, important issues of law or policy, erroneous findings of material fact, or erroneous conclusions of law. 37 C.F.R. § 42.75; Director Review Process § 2.B. Petitioner bears the burden from the outset to show with particularity why the challenged claims are unpatentable, and the burden of persuasion never shifts to Patent Owner. 35 U.S.C. § 316(e); *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016); *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015). Obviousness also requires an articulated reason, supported by evidence, for modifying the prior art to arrive at the claimed invention. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007); *In re Magnum Oil Tools Int'l, Ltd.*, 829 F.3d 1364, 1380 (Fed. Cir. 2016).

III. BACKGROUND

A. The '687 Patent and Challenged Claims

The '687 patent addresses a problem in conventional social-media systems: users could express interest in content, but that interest was generally “content-centric rather than user-centric,” and a single “like” did not distinguish one user from another. Ex. 1001, 1:27-39. The patent therefore teaches a system that allows users to obtain an “uncapped (i.e., unlimited)” number of engagements in exchange for resources, rank users based on engagements, and publish those rankings. Id., 1:50-53, 2:1-11, 12:20-49.

The parties and the Board agreed that “engagement” means “an indication that a user should be distinguished with respect to the content over another user.” FWD, 10-11; Ex. 1001, 5:53-55. That construction matters. An engagement is not merely an advertising impression, click, or downstream user reaction. It is an indication associated with a user that distinguishes that user with respect to the content. The claims also require that the system receive a request to obtain a number or plurality of engagements, debit resources, store associations between engagements and the requesting user, and display the resulting engagement information. Ex. 1001, 16:30-58.

Claim 1 illustrates the disputed requirements. It requires a user interface displaying first and second numbers of engagements obtained by first and second

users, and “a display option configured to receive a request to obtain a number of engagements.” Ex. 1001, 16:30-36. The system must then receive an indication from a third user to obtain a third number of engagements, determine the required resources by multiplying the cost of a single engagement by the third number, debit the resources, store an association between the third number of engagements and the third user, and provide an indication of that third number. Id., 16:41-58.

B. Fuloria and Petitioner’s Theory

Fuloria is not directed to the claimed engagement-purchase and user-ranking system. Fuloria teaches “allowing users of a social networking system to promote specific social networking objects in exchange for payment.” Ex. 1004, Abstract. In Fuloria, a user may click a “Feature” or “super-like” button to promote a post for credits. Id. ¶¶ 37-38, 63. The promoted object may be pinned or displayed as a sponsored story, and pricing may be based on advertising delivery metrics such as CPM, eCPM, CPC, or CPA. Id. ¶¶ 38-39, 57.

Petitioner’s theory was that Fuloria’s paid promotion could be treated as a request to obtain a “number of engagements” because the promoted content might later receive views, likes, comments, clicks, or actions by other users. Pet. 32-38; Reply 6-9. Patent Owner responded that Fuloria quantizes resources or advertising delivery, not engagements. PO Resp. 11-25; Sur-Reply 3-10. A user in Fuloria can request to promote content, but cannot request one engagement, ten engagements,

or enough engagements to surpass another user. *Id.* Fuloria does not disclose the claimed resource-for-engagement exchange or the claimed multiplication of a single-engagement cost by a requested number of engagements.

C. Final Written Decision

The Board accepted Petitioner’s theory. It found that Fuloria’s “super-like” is an engagement and that the number of engagements requested through Fuloria may be a number of likes, comments, clicks, actions, views, impressions, or advertising units resulting from promotion. FWD, 24-32. The Board further relied on Fuloria’s CPC and CPA pricing disclosures to find that a user may request to feature content until it receives ten likes and then be charged per like, or may request promotion and be charged based on later user reactions. *Id.* at 27, 34-35.

The Board acknowledged Patent Owner’s argument that Fuloria quantizes only resources and not super-likes, but rejected it on the ground that the claimed number of engagements could be future interactions by other users. FWD, 27-31. The Board then carried that same reasoning through limitations [1f], [1h], and [1i]. *Id.* at 33-36. The Board likewise rejected Patent Owner’s arguments for claims 11, 12, 23, and 24 because those claims use similar “engagements” language. *Id.* at 37-40.

IV. ARGUMENT

The Board's reasoning contains at least three material errors warranting Director Review. First, the Board found a request to obtain a number of engagements where Fuloria discloses only a request to promote content. Second, the Board relied on advertising-pricing metrics to supply claim limitations requiring a request for, and calculation based on, a number of engagements. Third, the Board treated third-party responses to promoted content as engagements "obtained by" the paying user even though Fuloria does not associate, store, or display those responses as that user's engagements.

A. The Board Erroneously Found that Fuloria Teaches a Request to Obtain a Number of Engagements

The Board's central finding is that a user who selects Fuloria's super-like option requests to obtain a number of engagements. FWD, 24-32. That finding is unsupported. Fuloria's button asks whether the user would like to "feature" or "super-like" content for credits. Ex. 1004 ¶¶ 37-38, 63. The thing requested is promotion of a social networking object. Fuloria never teaches that the user selects, requests, or obtains a number of engagements associated with that user.

The difference is not semantic. In the '687 patent, the number of engagements distinguishes the requesting user with respect to the content over other users. Ex. 1001, 5:53-66, 13:42-14:4. Figure 5, for example, provides options

to “Boost To #1 Fan” or “Boost Up 1,” causing a number of engagements to be obtained by the user. Id., 13:57-14:4. The claims require storing an association between the third number of engagements and the third user and providing an indication of that third number in the user interface. Id., 16:50-58.

Fuloria operates differently. Its “super-like” promotes content by sending it to a sponsored story system, pinning it, or displaying it more prominently. Ex.1004 ¶¶ 38-39, 57, 63-67. The function is advertising delivery for the content, not acquisition of user-distinguishing engagements for the promoter. Fuloria does not disclose a first user buying a first number of engagements, a second user buying a second number, or a third user requesting a third number to be stored and displayed as that user’s engagements.

The Board reached the opposite conclusion by treating later third-party interactions with promoted content as the claimed engagements. FWD, 26-32. But even if promotion increases the chance that other users might view, click, like, or comment, that does not mean the paying user requested or obtained those interactions as engagements in the claimed system. Causation is not claiming. The claims require that the display option receive a request to obtain engagements, that the engagements be obtained in exchange for resources, and that the system associate the resulting number with the requesting user. Ex. 1001, 16:30-58. Fuloria does not teach those steps.

Nor does Andler cure the problem. Andler teaches engagement scores and top-fan status based on interactions with content. Ex. 1005, Abstract, ¶¶ 162-166, 204-206. But Andler does not teach Fuloria's display option, does not convert Fuloria's content-promotion button into an option to purchase engagements, and does not teach that advertising responses are stored and displayed as engagements obtained by the paying user. The Board's decision improperly uses Andler's scoring concept to rewrite Fuloria's promotion system.

The Board also relied on Patent Owner's decision not to separately dispute limitation [1d]. FWD, 29. But limitation [1d] and limitation [1e] are different. Limitation [1d] concerns display of first and second numbers of engagements. Limitation [1e] concerns a display option configured to receive a request to obtain a number of engagements. Ex. 1001, 16:30-36. Non-dispute of one limitation cannot supply evidence of another. Petitioner still bore the burden to prove limitation [1e] with particularity. *See Harmonic*, 815 F.3d at 1363; *Dynamic Drinkware*, 800 F.3d at 1378.

B. The Board's CPC/CPA Reasoning Does Not Supply the Missing Limitations

The Board's second error was relying on Fuloria's advertising-pricing models to supply the missing "number of engagements" and multiplication limitations. Fuloria states that credits for promotion may be deducted based on

CPM, eCPM, CPC, or CPA pricing models. Ex. 1004 ¶ 38. Those are advertising-delivery metrics. They do not disclose a request to obtain a number of user-distinguishing engagements, and they do not disclose the claimed calculation of resources required to obtain that number.

The Board accepted Petitioner's example that a user could request to feature content until it receives ten likes and then be charged per like. FWD, 27, 34-35. But that example is not in Fuloria. Fuloria does not disclose a user interface that lets a user request ten likes, twenty likes, or any other number of engagements. It discloses a promotion confirmation dialog asking whether the user wants to feature the post for credits. Ex. 1004 ¶ 63. It also says credits may be deducted after the promoted object is delivered, based on delivery. Id. ¶ 38. Post-delivery advertising billing is not the claimed pre-requested number of engagements.

This error is especially important for limitation [1i]. Claim 1 requires determining "a third amount of resources required to obtain the third number of engagements by multiplying the amount of resources required for a single engagement with the third number." Ex. 1001, 16:46-49. Fuloria does not disclose a cost for a "single engagement" under the agreed construction. It discloses costs for advertising impressions, clicks, and actions. Ex. 1004 ¶ 38. A click or advertising action is not necessarily an engagement indicating that the user should

be distinguished with respect to the content over another user. FWD, 10-11; Ex. 1001, 5:53-55.

The Board's reasoning therefore substitutes a possible advertising billing calculation for the claimed engagement calculation. That is not enough. Obviousness cannot be sustained by conclusory statements or hindsight reconstruction; it requires record evidence and articulated reasoning with rational underpinning. *See KSR*, 550 U.S. at 418; *In re NuVasive, Inc.*, 842 F.3d 1376, 1383 (Fed. Cir. 2016); *TriVascular, Inc. v. Samuels*, 812 F.3d 1056, 1066 (Fed. Cir. 2016). The Board identified no evidence that a person of ordinary skill would modify Fuloria's advertising promotion system to let users purchase quantified engagements associated with themselves.

The Board's finding also collapses the distinction between resources and engagements. Patent Owner's Response explained that Fuloria quantizes credits and advertising delivery, not the "super-like" engagement. PO Resp. 11-25. The Board responded that the claimed "number" could be quantified in ways other than integers, but that observation does not answer the problem. FWD, 26-28. Whether "number" is broad or narrow, the claim still requires a request to obtain engagements. Fuloria's request is to promote content. Ex. 1004 ¶¶ 37-39, 63.

The claimed invention is not simply paying more to advertise content more broadly. It is a system in which engagements are obtained for users, associated

with those users, and used to distinguish and rank users. Ex. 1001, 5:53-66, 12:28-49, 13:42-14:4. Fuloria's CPC/CPA disclosures do not teach that architecture. The Board's reliance on those disclosures was therefore an erroneous finding of material fact and an erroneous conclusion of law.

C. The Error Infects Every Independent Claim and All Grounds

The Board's erroneous Fuloria finding was not limited to claim 1. For limitation [1f], the Board relied on the same theory that a user obtains a number of engagements by super-liking content and paying through CPC/CPA pricing. FWD, 33-34. For limitation [1h], the Board referred back to the same reasoning. Id. at 34. For limitation [1i], the Board again relied on the same advertising-pricing theory. Id. at 34-36. Thus claim 1 stands or falls with the erroneous finding that Fuloria teaches a request to obtain a number of engagements.

Claim 13 falls for the same reason. The Board treated claim 13 as corresponding to claim 1 and did not identify separate evidence curing the defects in Fuloria. FWD, 36. The dependent claims challenged under Ground 1 also depend on claims 1 or 13, and the Board's findings for those claims likewise depend on the same erroneous Fuloria/Andler reasoning. Id. at 36-37.

Claims 11 and 23 are infected by the same error. The Board recognized that Patent Owner's arguments for limitations [11d] and [11f] referred back to the arguments for limitations [1e] and [1h], and rejected them for the same reasons.

FWD, 37-38. WO '100 was relied on for the “together with at least a third user” concept, not to cure Fuloria’s failure to teach a display option configured to receive a request to obtain engagements. Pet. 47-55; PO Resp. 26-30. If Fuloria does not teach the request-to-obtain-engagements limitation, claims 11 and 23 are not unpatentable on the stated ground.

Claims 12 and 24 likewise depend on the same flawed analysis. The Board reasoned that claim 12 recites a “plurality of engagements” rather than a “number of engagements.” FWD, 39. But Patent Owner’s argument was not limited to the word “number.” The point was that Fuloria’s super-like option is a request to promote content, not a request to obtain engagements, whether framed as a number or a plurality. PO Resp. 30-33; Sur-Reply 12-13. Bartholomew was relied on for credit-transfer or donation limitations, not to supply the missing request-to-obtain-engagements limitation. Pet. 55-60.

The dependent claims challenged over Kirk and Cheung also fall with their parent claims. The Board recognized that Kirk and Cheung were cited for additional dependent-claim features and that Patent Owner argued they did not cure the deficiencies in Fuloria and Andler. FWD, 40. Because the Board’s Fuloria/Andler reasoning was erroneous, those dependent claims cannot stand on the stated grounds.

Director Review is warranted because the Final Written Decision rests on a single unsupported leap: that a paid content-promotion request in Fuloria is a request to obtain user-distinguishing engagements, and that advertising billing units provide the claimed engagement quantity and resource calculation. That leap lacks support in Fuloria, is not supplied by Andler, and is not cured by WO '100, Bartholomew, Kirk, or Cheung.

V. CONCLUSION

For the foregoing reasons, Patent Owner respectfully requests that Director Review be granted, that the Final Written Decision be vacated or reversed as to claims 1-24, and that the Board be directed to enter judgment that Petitioner has not shown the challenged claims unpatentable, or alternatively to reconsider the Final Written Decision under the correct analysis.

IPR2025-00337
Patent No. 10,474,687

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Respectfully submitted,

/Jacob B. Henry/

Jacob B. Henry

Registration No. 61,093

5020 Montrose Blvd, Suite 800

Houston, Texas 77006

Telephone: (832) 454-1456

Fax: (832) 900-4941

jhenry@rameyfirm.com

uspto@rameyfirm.com

Attorney for Patent Owner EscapeX IP
LLC

CERTIFICATE OF SERVICE

I certify that on April 27, 2026, a true and correct copy of the foregoing
Patent Owner's Request for Director Review was served via email to Petitioner by
serving the correspondence email addresses of record as follows:

Lead Counsel
Matthew A. Smith
SMITH BALUCH LLP
700 Pennsylvania Ave SE, Ste. 2060
Washington, DC 20003
(202) 669-6207
smith@smithbaluch.com

Back-Up Counsel
Elizabeth Laughton
SMITH BALUCH LLP
700 Pennsylvania Ave SE, Ste. 2060
Washington, DC 20003
(202) 669-6207
laughton@smithbaluch.com

Dated: April 27, 2026

/Jacob B. Henry/
Jacob B. Henry