

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,

Petitioner

v.

EscapeX IP LLC,

(record) Patent Owner

IPR2025-00337
Patent No. 10,474,687

**PETITIONER’S OPPOSITION TO PATENT OWNER’S
REQUEST FOR DIRECTOR REVIEW**

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Petitioner Google LLC respectfully submits its Opposition to Patent Owner EscapeX IP LLP's ("EscapeX's") Request for Director Review ("DR Request"). Authorization to file an opposition was granted by email of April 28, 2026.

I. EscapeX has Forfeited, Expressly Waived, or Conceded Many of the Arguments it makes for Director Review

EscapeX asks the Director to adopt a host of arguments the Panel never had the opportunity to consider, or arguments that EscapeX has already conceded. Such arguments should not be considered. *See* Director Review Process¹, §3.E. ("The Director will not consider new evidence or new arguments not part of the official record.").

In its Patent Owner Response ("POR", Paper 9), EscapeX argued essentially one point: whether the prior art taught the "number of engagements" language of element [1e]. POR, pp. 10-21. Although the POR included a number of additional sections purporting to address different elements of claim 1, the arguments within these sections all reduced to the same core assertion concerning the "number of engagements". As Google stated in its Reply,

"The POR concedes most of the case made by the Petition. The POR, for example, does not argue motivation, reasonable expectation of

¹ *See* <https://www.uspto.gov/patents/ptab/decisions/director-review-process>, visited May 5, 2026, herein "Director Review Process".

success, or claim construction. Instead, the POR argues that certain claim elements are not taught or rendered obvious by the prior art. But even these arguments—accounting for all cross-references—appear to boil down to a single assertion: that the Fuloria prior art does not teach ‘a request to obtain a **number of** engagements with respect to the networked content item’ as recited in some—but not all—of the independent claims.”

Reply (Paper 13), p. 4.

While EscapeX did attempt to supplement its arguments in its Sur-Reply (Paper 15), EscapeX’s counsel expressly withdrew all such arguments at the Oral Argument. Transcript (Paper 20), 36:20-37:13 (EscapeX’s counsel stating: “[t]here were some – I’ll let you ask your questions, of course, but there were some arguments presented in sur-reply that I think upon further reflection shouldn’t have been, and so those are withdrawn. JUDGE ARBES: Counsel, can you be specific about what arguments those were? MR. HENRY: I cannot.”).

Several arguments, made now for the first time in EscapeX’s DR Request, merit specific attention. First, on page 10 of the DR Request, EscapeX appears to argue that there was no motivation to modify Fuloria. EscapeX, however, did not make this argument in the POR, the Sur-Reply, or at the Oral Argument. Moreover, in its Sur-Reply, EscapeX *admitted* that the combination of Fuloria and Andler would “render obvious” portions of the claim—which would not be true if the

combination lacked sufficient motivation. *See* Sur-Reply, pp. 5-6 (“Patent Owner also does not dispute that Fuloria in view of Andler renders obvious displaying a ‘first number of engagements’ and a ‘second number of Engagements’ as required under claim element [1d].”).

On pages 6-7 of the DR Request, EscapeX appears to argue that the requested “engagements” must be engagements performed by the same user who requests them. This stems, allegedly, from the construction of “engagement” agreed to by the parties adopted by the Panel—namely that “[a] user engagement with content refers to an indication that a user should be distinguished with respect to the content over another user.” FWD (Paper 21), pp. 10-11. In its DR Request, EscapeX seems to argue that a first user is not “distinguish[ed]” by engagements if they are the engagements of other users. EscapeX, however, failed to argue this in its POR. Although EscapeX does appear to have made a similar argument in its Sur-Reply (at pages 4-5), EscapeX (as noted above) later expressly waived new arguments presented in the Sur-Reply. Transcript, 36:20-37:13. Furthermore, when asked at the Oral Argument whether an engagement under limitation [1e] could be in the future from another user, EscapeX’s counsel indicated that it could be. *Id.* at 38:9-12. (“[JUDGE ARBES] Petitioner has taken the position that those engagements can take place in the future **from other users**. Why is that incorrect, in your view? MR. HENRY: I don't know that it is. **I think that’s correct.**”) (Emphasis added).

Finally, EscapeX’s DR Request may now be arguing (*see* Request, pp. 4-5, 7, and 9-10) that Fuloria does not teach certain claim requirements related to a “third user”, specifically claim elements [1j] (“debit the third amount of resources...”), and [1k] (“store, in a database accessible to the computer system, an association between the third number of engagements and the third user...”). These arguments were not presented in the POR, Sur-Reply, or at the Oral Argument.

The Director should not entertain arguments that EscapeX never made, expressly waived, or conceded on the record.

II. The Panel Correctly Decided Patentability

The Panel correctly found that Fuloria in view of Andler rendered claim 1 obvious. *See* FWD, p. 36. EscapeX’s arguments on the merits attack the references individually, without accounting for the combination, read limitations into the claims that simply are not present, or both.

Before addressing EscapeX’s arguments, it is worth briefly reviewing the combination from the Petition. The principal reference, Fuloria, was directed to a modified version of Facebook, where a user could “super-like” particular content, and pay to have the super-like generate a number of engagements by other users. *See* FWD, pp. 13-16, 26-28 (citing record evidence). The Petition further contended that it would have been obvious to combine Fuloria with Andler, another Facebook reference. FWD, pp. 18-20 (citing record evidence). Andler taught using

“engagement scores”, where the engagement scores take into account how a first user influences other users to engage with content. *See* FWD, pp. 16-17 (citing record evidence). For example, if a first user can influence other users to engage with content, that will increase the first user’s engagement score. Andler further teaches displaying a ranking of users by engagement score, to incentivize users to increase their engagement scores. *See* FWD, pp. 17-18 (citing record evidence). Thus, Fuloria taught a first user purchasing a super-like to achieve a certain amount of engagement by other users, and Andler taught a way to have those engagements by other users accrue to the benefit of the first user who purchased the super-like, thus “distinguishing” the first user.

EscapeX argues that Fuloria does not have a “display option configured to receive a request to obtain a number of engagements with respect to the networked content item.” Request, pp. 6-7. Specifically, while EscapeX concedes that Fuloria has a “display option configured to receive a request to obtain engagement”, POR, 16, the engagement is not “a number of engagements”. EscapeX further clarifies this argument in its DR Request by stating that “[p]ost-delivery advertising billing is not the claimed **pre-requested** number of engagements.” Request, p. 9 (Emphasis added).

EscapeX’s argument is factually incorrect with respect to Fuloria, reads the claim incorrectly, and contradicts EscapeX’s admissions. First, as the Panel

correctly found, Fuloria teaches a dialog box with an option to super-like content for a given number of credits, and also teaches that the scope of the super-like can be changed to target more or fewer engagements by other users. *See* FWD, pp. 27-28 (citing record evidence). As the Panel explained in the FWD:

“Petitioner’s theory is consistent with the disclosure of Fuloria. ‘When a user clicks the ‘super-like’ or promotion button, the account associated with the user may be debited a predetermined number of credits.’ Ex. 1004 ¶ 38. For example, Figures 8B and 9B show dialog boxes allowing the user to pay 10 credits to super-like a content item. Importantly, Fuloria expressly discloses that the credits can be ‘deducted after the promoted social networking object is delivered to various users, based on the delivery. For example, the social networking system may deduct the credits based on a . . . cost per click (CPC), or cost per action (CPA) pricing model.’ *Id.* (emphasis added). In that case, the amount paid by the user would be correlated to later clicks or actions (e.g., likes, comments) taken by other users with respect the super-liked content item...[numerous record citations omitted]...The subsequent engagements of other users are thus quantified because the price for the super-like depends on the number of clicks or actions being purchased, where the user can pay more for more engagement. *See* Pet. 31, 33–34; Reply 7; Sur-Reply 4–5 (acknowledging that in Fuloria, ‘a user can pay more to increase the scope of the super-like, e.g., to present it for more time, to present it to more people’). For example, a super-liking user may pay for a content item to be featured until 10 likes occur, or for the content

item to be featured for a period of time and be charged per like. *See* Pet. 34; Reply 7.”

FWD, pp. 27-28. Fuloria is receiving a request for a number of engagements, because the user’s request can target a certain amount of engagements by others, and pay correspondingly more or less for them.

EscapeX appears to argue in its DR Request that the “number of engagements” must include a specific number (e.g. “1,000”), but as the Panel found, the number is, in fact, specified when a user requests a certain number of engagements by others, or when the user pays on a price per action model, such that the cost of the super-like is charged when the number of engagements is known. Either way, the user must request the super-like of a particular scope that contains (or in some cases, will later contain) a number of engagements. To the extent EscapeX is now arguing that the engagements must appear as a given, specified number *at the time the request was made*, it is exactly the argument that EscapeX gave up at the Oral Argument. *See* Transcript, 38:9-12. (“[JUDGE ARBES] Petitioner has taken the position that those engagements can take place in the **future** from other users. Why is that incorrect, in your view? MR. HENRY: I don’t know that it is. **I think that’s correct.**”)(Emphasis added); *see also* FWD, p. 29 (citing the Oral Argument transcript).

Even if Fuloria did not specify a number of engagements, the claim simply

does not require that there be a specific number associated with the request. The phrase “a number” can mean a *specified* number, but can also be a reference to an *unspecified* number (as in “he purchased a number of items at the store”), and in that sense is equivalent to “some”. EscapeX never argued that the Panel should construe the claim to require the “specified number” while excluding the “unspecified number” reading. Nor did EscapeX present any reasoning or evidence that a “specified number” needed to occur at the time the request occurred.

EscapeX also argues that the combination was improper or not sufficiently motivated. *See* DR Request, pp. 8-10. First, EscapeX argues that “[t]he Panel’s decision improperly uses Andler’s scoring concept to rewrite Fuloria’s promotion system.” *Id.* at p. 8. But this is not a complete argument: EscapeX never points out any specific error in the combination, and indeed, every obviousness combination of two references involves one reference being used to modify the other. Second, EscapeX argues that “[o]bviousness cannot be sustained by conclusory statements or hindsight reconstruction; it requires record evidence and articulated reasoning with rational underpinning.” *Id.* at p. 10. However, the petition presented, and the Panel found credible, an extensive discussion of the rationale supporting the combination and the evidence therefor. *See* FWD, pp. 18-20, 24 (citing record evidence). EscapeX never challenged this evidence, nor the rationale for the combination, in the proceedings before the Panel. *See* FWD, p. 23 (“Patent Owner

in its Response does not dispute that Fuloria and Andler teach limitations [1a]–[1d], [1g], and [1j]–[1l] of claim 1, or that a person of ordinary skill in the art would have had reason to combine the references’ teachings in the manner asserted by Petitioner.”); *see also* Sur-Reply, pp. 5-6 (“Patent Owner also does not dispute that Fuloria in view of Andler renders obvious displaying a ‘first number of engagements’ and a ‘second number of Engagements’ as required under claim element [1d].”). Nor did EscapeX present any of its own evidence: as the Panel correctly found, “Patent Owner did not file any declarations in the proceeding and did not cross-examine [Google’s expert] Dr. Bederson.” FWD, p. 8.

EscapeX argues in the DR Request that the engagements requested cannot be those of other users, stating:

“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.”

DR Request, p. 7. As noted above, EscapeX expressly waived this argument at the Oral Argument. *See* Transcript, 38:9-12.

This argument also ignores the obviousness combination. In the combination,

when a first user pays to obtain engagements by other users, those other users' engagements contribute to the first user's engagement score per Andler. In this manner, the engagements of other users "distinguish" the first user, because the first user's score increases. *See* FWD, pp. 17, 21-22, 29 (citing record evidence). *See Palo Alto Networks, Inc. v. Centripetal Networks, LLC*, 122 F.4th 1378, 1386 (Fed. Cir. 2024) ("Where, as here, the grounds for obviousness are based on a specific combination of references, arguments that 'attack the disclosures of the two references individually' lack merit.").

Finally, EscapeX argues that Fuloria is related to advertising and promotion, while the claims are directed to users promoting themselves. *See* DR Request, pp. 7, 8-9, 10-11, and 13 (calling "unsupported" the notion that "paid content-promotion request in Fuloria is a request to obtain user-distinguishing engagements...."). Even if this were a correct gloss on the claim language, the argument again ignores the combination: when a user in the combination requests to obtain the engagement of others, that boosts the requesting user's engagement score per Andler, and distinguishes the requesting user. EscapeX never squarely confronts this argument. The argument was, moreover, well-founded in the factual record, and unopposed in proceedings before the Panel.

The Director should reject EscapeX's attempt to rewrite the record to this point, and deny the request for Director Review.

Date: <u>May 5, 2026</u>	<u>/Matthew A. Smith/ (RN 49,003)</u> Matthew A. Smith SMITH BALUCH LLP 700 Pennsylvania Ave SE, 2nd Floor Washington, DC 20003 (202) 669-6207 smith@smithbaluch.com <i>Counsel for Petitioner Google LLC</i>
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing PETITIONER'S OPPOSITION TO PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW, together with all exhibits and other documents filed therewith, was served by electronic email, on the Patent Owner's counsel of record at the United States Patent & Trademark Office having the following addresses:

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Date: May 5, 2026

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