From:	Hur, Soo Jin
To:	Director_PTABDecision_Review
Cc:	"hkeefe@cooley.com"; "rchen@cooley.com"; "lmead@cooley.com"; "swhitt@cooley.com"; Saliba, Raja; Iyer, Chid S.; Dzwonczyk, Michael R.; Rachuba, L Roman; _Topia
Subject:	Box, Inc., and Dropbox, Inc. v. Topia Technology, Inc. (Case No. IPR2023-00427, Patent No. 9,143,561)
Date:	Friday, August 18, 2023 6:19:43 PM
Attachments:	(HC AEO) IPR2023-00427 PO"s Request for Director Review.pdf

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To the Honorable Director Vidal,

Patent Owner Topia Technology, Inc. respectfully requests review of the institution decision in the above-identified *inter partes* review based on the Board's determination that unnamed time-bared party Egnyte, Inc. is not an RPI/privy of Petitioners.

In finding that Egnyte is not an RPI/privy, the Board did not account for all of the factors in *AIT II*, and did not appear to recognize key facts regarding: the scope of shared counsel's representation, the ethical implications and constraints of shared counsel's representation, the implications of shared counsel's compensation arrangement, the prior history of shared counsel's firm and Egnyte, and shared counsel's contradictory statements made during deposition.

To the knowledge of Patent Owner's counsel, never before has the Board found that no RPI/privy relationship exists between a petitioner and an unnamed time-barred party under circumstances where there is common counsel (i.e., the same attorney), where common counsel prepared the petition, and where the unnamed party raises invalidity defenses in court with the same references relied on in the Petition.

The Board's decision and extension of the law on RPI disclosure raises serious policy and law considerations, and if undisturbed may serve as a roadmap for future accused infringers to exploit the use of common counsel in order to avoid the statutory time bar and estoppel provisions.

Patent Owner therefore respectfully requests that the Director consider the request for review.

Additionally, Patent Owner submitted its request under seal to protect confidential information of Petitioners, but seeks clarification on whether a motion to seal and a redacted version of the request should also be submitted.

Respectfully submitted,

On behalf of
Raja N. Saliba (Reg. No. 43,078)
Chidambaram S. Iyer (Reg. No. 43,355)
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