

UNITED STATES DISTRICT COURT

for the
District of Delaware

Topia Technology, Inc.

Plaintiff

v.

Egnyte, Inc.

Defendant

Civil Action No. 1:21-cv-01821-CJB

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Cooley LLP at 3175 Hanover Street Palo Alto, CA 94304

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Schedule A

Place: Sughrue Mion, PLLC
2000 Pennsylvania Ave, NW Suite 9000 Washington
DC 20006 or mutually agreeable location

Date and Time:

09/28/2023 9:00 am

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/13/2023

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Geoff Mason

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Plaintiff
Topia Technology, Inc; Geoff Mason; Sughrue Mion, PLLC, who issues or requests this subpoena, are:
2000 Pennsylvania Ave, NW Suite 9000 Washington 20006; gmason@sughrue.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 1:21-cv-01821-CJB

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Schedule A

Definitions

1. As used herein, the term “Box” means jointly and severally Box Inc., its officers, directors, managers, employees, divisions, parent companies, subsidiaries, affiliates, predecessors or successors-in-interest, any joint venture to which one or more of them may be a party, consultants, agents, and accountants, including any person who served in any such capacity at any time to Box Inc.

2. As used herein, the term “Cooley LLP” means jointly and severally Cooley LLP, its officers, directors, managers, employees, divisions, parent companies, subsidiaries, affiliates, predecessors or successors-in-interest, any joint venture to which one or more of them may be a party, consultants, agents, and accountants, including any person who served in any such capacity at any time to Cooley LLP.

3. As used herein, the term “DropBox” means jointly and severally DropBox Inc., its officers, directors, managers, employees, divisions, parent companies, subsidiaries, affiliates, predecessors or successors-in-interest, any joint venture to which one or more of them may be a party, consultants, agents, and accountants, including any person who served in any such capacity at any time to DropBox Inc.

4. As used herein, the term “Egnyte Inc.” means jointly and severally Egnyte Inc., its officers, directors, managers, employees, divisions, parent companies, subsidiaries, affiliates, predecessors or successors-in-interest, any joint venture to which one or more of them may be a party, consultants, agents, and accountants, including any person who served in any such capacity at any time to Egnyte Inc.

5. As used herein, the term Heidi Keefe and Affiliates means Ms. Heidi Keefe deposed on June 20, 2023 in Case Numbers IPR2023-00427, 00433, 00432, 00431, 00430, and 00429, any affiliates, any joint venture to which Ms. Keefe or her affiliates may be a party,

consultants, agents, and accountants, including any person who served in any such capacity at any time to Ms. Keefe.

Requests

1. A copy of the transcript of the June 20, 2023 deposition of Heidi Keefe in Case Numbers IPR2023-00427, 00433, 00432, 00431, 00430, and 00429, and all exhibits introduced during this deposition.
2. All documents relating to the June 20, 2023 deposition of Heidi Keefe in Case Numbers IPR2023-00427, 00433, 00432, 00431, 00430, and 00429.
3. All documents relating to communications between Heidi Keefe and Affiliates and Egnyte, Inc. as defined above, which includes but is not limited to Egnyte, Inc.'s counsel.
4. All documents relating to communications between Egnyte, Inc. as defined above, which includes but is not limited to Egnyte, Inc.'s counsel, and Box.
5. All documents relating to communications between Egnyte, Inc. as defined above, which includes but is not limited to Egnyte, Inc.'s counsel, and DropBox.
6. All documents relating to the scope of representation of Egnyte, Inc. by Cooley LLP.
7. All documents relating to the scope of representation of Egnyte, Inc. by Heidi Keefe.
8. All documents relating to the scope of representation of Egnyte, Inc. by Heidi Keefe and Affiliates.

UNITED STATES DISTRICT COURT

for the
District of Delaware

Topia Technology, Inc.

Plaintiff

v.

Egnyte, Inc.

Defendant

Civil Action No. 1:21-cv-01821-CJB

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Heidi Keefe, Cooley LLP at 3175 Hanover Street Palo Alto, CA 94304

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Schedule A

Place: Sughrue Mion, PLLC
2000 Pennsylvania Ave, NW Suite 9000 Washington
DC 20006 or mutually agreeable location

Date and Time:

09/28/2023 9:00 am

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/13/2023

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Geoff Mason

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Plaintiff
Topia Technology, Inc; Geoff Mason; Sughrue Mion, PLLC, who issues or requests this subpoena, are:
2000 Pennsylvania Ave, NW Suite 9000 Washington 20006; gmason@sughrue.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 1:21-cv-01821-CJB

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
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(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
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- (iv) subjects a person to undue burden.

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- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

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(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Schedule A

Definitions

1. As used herein, the term “Box” means jointly and severally Box Inc., its officers, directors, managers, employees, divisions, parent companies, subsidiaries, affiliates, predecessors or successors-in-interest, any joint venture to which one or more of them may be a party, consultants, agents, and accountants, including any person who served in any such capacity at any time to Box Inc.

2. As used herein, the term “Cooley LLP” means jointly and severally Cooley LLP, its officers, directors, managers, employees, divisions, parent companies, subsidiaries, affiliates, predecessors or successors-in-interest, any joint venture to which one or more of them may be a party, consultants, agents, and accountants, including any person who served in any such capacity at any time to Cooley LLP.

3. As used herein, the term “DropBox” means jointly and severally DropBox Inc., its officers, directors, managers, employees, divisions, parent companies, subsidiaries, affiliates, predecessors or successors-in-interest, any joint venture to which one or more of them may be a party, consultants, agents, and accountants, including any person who served in any such capacity at any time to DropBox Inc.

4. As used herein, the term “Egnyte Inc.” means jointly and severally Egnyte Inc., its officers, directors, managers, employees, divisions, parent companies, subsidiaries, affiliates, predecessors or successors-in-interest, any joint venture to which one or more of them may be a party, consultants, agents, and accountants, including any person who served in any such capacity at any time to Egnyte Inc.

5. As used herein, the term Heidi Keefe and Affiliates means Ms. Heidi Keefe deposed on June 20, 2023 in Case Numbers IPR2023-00427, 00433, 00432, 00431, 00430, and 00429, any affiliates, any joint venture to which Ms. Keefe or her affiliates may be a party,

consultants, agents, and accountants, including any person who served in any such capacity at any time to Ms. Keefe.

Requests

1. A copy of the transcript of the June 20, 2023 deposition of Heidi Keefe in Case Numbers IPR2023-00427, 00433, 00432, 00431, 00430, and 00429, and all exhibits introduced during this deposition.
2. All documents relating to the June 20, 2023 deposition of Heidi Keefe in Case Numbers IPR2023-00427, 00433, 00432, 00431, 00430, and 00429.
3. All documents relating to communications between Heidi Keefe and Affiliates and Egnyte, Inc. as defined above, which includes but is not limited to Egnyte, Inc.'s counsel.
4. All documents relating to communications between Egnyte, Inc. as defined above, which includes but is not limited to Egnyte, Inc.'s counsel, and Box.
5. All documents relating to communications between Egnyte, Inc. as defined above, which includes but is not limited to Egnyte, Inc.'s counsel, and DropBox.
6. All documents relating to the scope of representation of Egnyte, Inc. by Cooley LLP.
7. All documents relating to the scope of representation of Egnyte, Inc. by Heidi Keefe.
8. All documents relating to the scope of representation of Egnyte, Inc. by Heidi Keefe and Affiliates.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TOPIA TECHNOLOGY, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No.: 1:21-CV-01821-CJB
	)	
EGNYTE, INC.,	)	
	)	
Defendant.	)	

**COOLEY LLP'S OBJECTIONS AND RESPONSES TO PLAINTIFF'S SUBPOENA TO
PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO
PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, by and through the undersigned counsel, Cooley LLP ("Cooley") serves the following Objections and Responses to Plaintiff Topia Technology, Inc.'s ("Plaintiff") Document Requests attached to the Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action, dated September 13, 2023 ("Subpoena" or "Requests" collectively and "Request" individually). Cooley's response is made to the best of its present knowledge, information, and belief. Cooley reserves the right to supplement or amend these objections and responses to the extent allowed by the Federal Rules of Civil Procedure and the Local Rules of this Court.

I. GENERAL OBJECTIONS AND RESPONSES

The following objections apply to each and every Topic.

1. The following General Responses and Objections apply to each individual response to Plaintiff's Requests, as if fully set forth therein. The failure to mention any of the following General Objections in the specific responses below shall not be deemed a waiver of such objection or limitation.

2. Cooley objects to the time and place of production referenced in the Requests.

Cooley will produce responsive documents, if at all, within a reasonable time and to a mutually agreed upon location.

3. Cooley objects to all instructions, definitions, and Requests to the extent they seek documents or things not currently in Cooley's possession, custody, or control, or refer to persons, entities, or events not known to Cooley.

4. Cooley objects to each Request to the extent it seeks information or documents that are available from public sources, records, or other third parties, or that are otherwise readily available to Plaintiff.

5. Cooley objects to any and all factual characterizations stated or implied by the Requests. By responding, Cooley does not accept or admit any of Plaintiff's factual characterizations.

6. Cooley objects to these Requests to the extent they call for legal opinions or conclusions or expert opinion.

7. Neither Cooley's objections and responses, nor the provisions of information or production of documents in response to any Requests, are an admission or indication that such information and documents are relevant to any legal theory.

8. Cooley objects to the Requests to the extent they seek information or things that are not relevant to the claims or defenses asserted in this litigation or not proportional to the needs of the case.

9. Cooley objects to each Request to the extent that the Request is not properly limited in subject matter, scope, and/or time on the grounds that such Requests are overbroad, unduly burdensome, and seek information that is not relevant to the subject matter of this action or reasonably calculated to lead to the discovery of admissible evidence.

10. Cooley objects to all definitions, instructions, and Requests to the extent they seek information that requires extensive and unreasonable investigative work on the part of Cooley.

11. Cooley objects to the introductory definitions and instructions and any and all Requests to the extent they contain vague, ambiguous, unintelligible, overbroad, or uncertain language.

12. Cooley objects to each Request to the extent that it seeks documents or information that is private, confidential, commercially sensitive, proprietary, trade secret, or otherwise protected from disclosure.

13. Cooley objects to the definition of “Box” as overbroad. Cooley will construe this term to mean Box, Inc.

14. Cooley objects to the definition of “Cooley LLP” as overbroad. Cooley will construe this term to mean Cooley LLP.

15. Cooley objects to the definition of “DropBox” as overbroad. Cooley will construe this term to mean Dropbox, Inc.

16. Cooley objects to the definition of “Egnyte Inc.” as overbroad. Cooley will construe this term to mean Egnyte, Inc.

17. Cooley objects to the definition of “Heidi Keefe and Affiliates” as overbroad, vague, ambiguous, unintelligible, and uncertain language. Cooley will construe this term to mean Heidi Keefe.

18. Cooley objects to each and every use of the word “document” to the extent it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, insofar as it purports to require Cooley to search any and all electronically stored information within its possession, custody, or control beyond what is required under the

Federal Rules of Civil Procedure. Cooley further objects to each and every use of the word “document” as overbroad and unduly burdensome, especially to the extent it encompasses emails, text messages, instant messages, and other electronic messages.

19. Cooley objects to each and every use of the word “communication” to the extent it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, insofar as it purports to require Cooley to search any and all communications within its possession, custody, or control beyond what is required under the Federal Rules of Civil Procedure. Cooley further objects to each and every use of the word “communication” as overbroad and unduly burdensome, especially to the extent it encompasses emails, text messages, instant messages, and other electronic messages.

20. Cooley objects to each and every use of the phrase “scope of representation” to the extent it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, insofar as it purports to require Cooley to search for documents and/or communications beyond what is required under the Federal Rules of Civil Procedure. Cooley further objects to each and every use of the phrase “scope of representation” as vague, ambiguous, unintelligible, and uncertain language.

21. Cooley objects to each Request that seeks documents “relating to” as overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, and unintelligible. Without waiving this objection, and subject to all other applicable objections stated herein, Cooley will provide, in response to any Request seeking information “relating to” a given subject, responses that expressly reflect or refer to information relevant to the Request.

22. Cooley objects to each Request to the extent that it relies on use of the singular

versus the plural, “any” versus “all,” and the disjunctive versus the conjunctive. Plaintiff’s usage of such instructions would render the task of interpreting Plaintiff’s Requests unduly burdensome and would render Plaintiff’s Requests vague, ambiguous, or unintelligible. Cooley will respond to each Request according to its ordinary meaning, without reference to Plaintiff’s instructions.

23. Cooley objects to each Request to the extent that it seeks information protected by the attorney-client privilege, the attorney work product doctrine, common interest privilege, joint defense privilege, or any other applicable law, privilege, protection or immunity.

24. Cooley objects to each Request to the extent that it purports to impose discovery obligations on Cooley that are broader than, or inconsistent with, the Federal Rules of Civil Procedure, Federal Rules of Evidence, or any other applicable court rule or statute.

25. Cooley objects to each Request to the extent that it seeks information that is already in Plaintiff’s possession, equally accessible to Plaintiff, or reasonably obtainable through other means that are less burdensome on non-party Cooley.

26. Cooley objects to the Subpoena on the grounds that it is invalid and unenforceable insofar as Plaintiff failed to comply with Federal Rule of Civil Procedure 45(a)(4) (“If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served on the person to whom it is directed, a notice and a copy of the subpoena must be served on each party.”).

27. Cooley objects to the Subpoena because it solely seeks information that is irrelevant to the instant proceedings under Federal Rule of Civil Procedure 26(b)(1), which only allows discovery of information “that is relevant to any party’s claim or defense.” Under the same rule, Cooley objects to the Subpoena because it solely seeks information for which “the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1).

Although some courts have interpreted relevancy “broadly,” *Amini Innovation Corp. v. McFerran Home Furnishings, Inc.*, 300 F.R.D. 406, 409 (C.D. Cal. 2014), “[a] showing of relevance can be viewed as a showing of need; for the purpose of prosecuting or defending a specific pending civil action, one is presumed to have no need of a matter not ‘relevant to the subject matter involved in the pending action.’” *Meijer, Inc. v. Warner Chilcott Holdings Co., III, Ltd.*, 245 F.R.D. 26, 29-30 (D.D.C. 2007) (quoting *Friedman v. Bache Halsey Stuart Shields, Inc.*, 238 U.S. App. D.C. 190, 738 F.2d 1336, 1341 (D.C. Cir. 1984)) (citing Fed. R. Civ. P. 26(b)(1)). In addition, courts “must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or (iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1).” Fed. R. Civ. P. 26(b)(2)(C).

28. Cooley objects to the Subpoena under Federal Rule of Civil Procedure 45(d)(3) because it solely seeks information that is irrelevant to the instant proceedings, in contravention of Federal Rule of Civil Procedure 26(b)(1).

29. Cooley objects to the Subpoena to the extent it seeks information regarding a potential theory or cause of action that is purely speculative. *See Micro Motion, Inc. v. Kane Steel Co., Inc.*, 894 F.2d 1318, 1320-26 (Fed. Cir. 1990) (holding that district court abused its discretion in denying a non-party’s motion to quash a discovery subpoena that was supposedly relevant to a damages theory that was speculative and solely based on a suspicion that the third-party’s product infringed).

30. Cooley objects to the Subpoena to the extent it seeks information in this Court that

should instead be sought before the Patent Trial and Appeal Board and because the Subpoena is attempting to circumvent the discovery procedures set forth by the Patent Trial and Appeal Board. *MedIdea, L.L.C. v. DePuy Orthopaedics, Inc.*, No. CV 17-11172-LTS, 2018 WL 4039359, at *5 (D. Mass. Aug. 23, 2018) (granting motion to quash subpoena that was an “improper attempt to gather information [the plaintiff] wishe[d] to use in [a] pending IPR proceedings (where it is not generally entitled to discover such information)”).

II. SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENTS REQUESTED

Without waiving or limiting in any manner any of the foregoing General Objections and Responses, but rather incorporating them into each of the following responses to the extent applicable, Cooley responds to Plaintiff’ Requests as follows:

REQUEST NO. 1:

A copy of the transcript of the June 20, 2023 deposition of Heidi Keefe in Case Numbers IPR2023-00427, 00433, 00432, 00431, 00430, and 00429, and all exhibits introduced during this deposition.

RESPONSE TO REQUEST NO. 1:

Cooley incorporates by reference its General Objections and Responses as though fully set forth herein.

Cooley objects to this Request to the extent it seeks information not in Cooley’s possession, custody, or control and/or information that is otherwise equally accessible to Plaintiff. Cooley is responding on behalf of Cooley only, and no other entity. Cooley objects to this Request because Plaintiff is already in possession of the information sought in the Request, given that Plaintiff took the referenced deposition and already obtained copies of the deposition transcript and exhibits introduced during the deposition. Cooley objects to the Request because it solely seeks information that is not relevant to the instant case. Cooley objects to this Request because it is

duplicative of discovery that Plaintiff sought and/or could have sought, subject to objections, at the Patent Trial and Appeal Board and improperly seeks to circumvent the discovery procedures set forth by the Patent Trial and Appeal Board.

REQUEST NO. 2:

All documents relating to the June 20, 2023 deposition of Heidi Keefe in Case Numbers IPR2023-00427, 00433, 00432, 00431, 00430, and 00429.

RESPONSE TO REQUEST NO. 1:

Cooley incorporates by reference its General Objections and Responses as though fully set forth herein.

Cooley objects to this Request to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, common interest privilege, joint defense privilege, or any other applicable law, privilege, protection or immunity. Cooley objects to this Request's use of the phrase "relating to" as overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, unintelligible, and uncertain language. Cooley objects to this Request to the extent it seeks information not in Cooley's possession, custody, or control and/or information that is otherwise equally accessible to Plaintiff. Cooley is responding on behalf of Cooley only, and no other entity. Cooley objects to this Request on the grounds that it seeks discovery that is unduly burdensome, not relevant, and not proportional to the needs of the case insofar as the requested discovery has no demonstrated relevance to the instant case. Cooley objects to this Request because it is duplicative of discovery that Plaintiff sought and/or could have sought, subject to objections, at the Patent Trial and Appeal Board and improperly seeks to circumvent the discovery procedures set forth by the Patent Trial and Appeal Board.

REQUEST NO. 3:

All documents relating to communications between Heidi Keefe and Affiliates and Egnyte, Inc. as defined above, which includes but is not limited to Egnyte, Inc.'s counsel.

RESPONSE TO REQUEST NO. 3:

Cooley incorporates by reference its General Objections and Responses as though fully set forth herein.

Cooley objects to this Request to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, common interest privilege, joint defense privilege, or any other applicable law, privilege, protection or immunity. Cooley objects to this Request's use of the phrase "relating to" as overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, unintelligible, and uncertain language. Cooley objects to this Request to the extent it seeks information not in Cooley's possession, custody, or control and/or information that is otherwise equally accessible to Plaintiff. Cooley is responding on behalf of Cooley only, and no other entity. Cooley objects to this Request on the grounds that it seeks discovery that is unduly burdensome, not relevant, and not proportional to the needs of the case insofar as the requested discovery has no demonstrated relevance to the instant case. Cooley objects to this Request because it is duplicative of discovery that Plaintiff sought and/or could have sought, subject to objections, at the Patent Trial and Appeal Board and improperly seeks to circumvent the discovery procedures set forth by the Patent Trial and Appeal Board.

REQUEST NO. 4:

All documents relating to communications between Egnyte, Inc. as defined above, which includes but is not limited to Egnyte, Inc.'s counsel, and Box.

RESPONSE TO REQUEST NO. 4:

Cooley incorporates by reference its General Objections and Responses as though fully set forth herein.

Cooley objects to this Request to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, common interest privilege, joint defense privilege, or any other applicable law, privilege, protection or immunity. Cooley objects to this Request's use of the phrase "relating to" as overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, unintelligible, and uncertain language. Cooley objects to this Request to the extent it seeks information not in Cooley's possession, custody, or control and/or information that is otherwise equally accessible to Plaintiff. Cooley is responding on behalf of Cooley only, and no other entity. Cooley objects to this Request on the grounds that it seeks discovery that is unduly burdensome, not relevant, and not proportional to the needs of the case insofar as the requested discovery has no demonstrated relevance to the instant case. Cooley objects to this Request because it is duplicative of discovery that Plaintiff sought and/or could have sought, subject to objections, at the Patent Trial and Appeal Board and improperly seeks to circumvent the discovery procedures set forth by the Patent Trial and Appeal Board.

REQUEST NO. 5:

All documents relating to communications between Egnyte, Inc. as defined above, which includes but is not limited to Egnyte, Inc.'s counsel, and DropBox.

RESPONSE TO REQUEST NO. 5:

Cooley incorporates by reference its General Objections and Responses as though fully set forth herein.

Cooley objects to this Request to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, common interest privilege, joint defense privilege, or any other applicable law, privilege, protection or immunity. Cooley objects to this Request's use of the phrase "relating to" as overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, unintelligible, and uncertain language. Cooley objects to this Request to the extent it seeks information not in Cooley's possession, custody, or control and/or information that is otherwise equally accessible to Plaintiff. Cooley is responding on behalf of Cooley only, and no other entity. Cooley objects to this Request on the grounds that it seeks discovery that is unduly burdensome, not relevant, and not proportional to the needs of the case insofar as the requested discovery has no demonstrated relevance to the instant case. Cooley objects to this Request because it is duplicative of discovery that Plaintiff sought and/or could have sought, subject to objections, at the Patent Trial and Appeal Board and improperly seeks to circumvent the discovery procedures set forth by the Patent Trial and Appeal Board.

REQUEST NO. 6:

All documents relating to the scope of representation of Egnyte, Inc. by Cooley LLP.

RESPONSE TO REQUEST NO. 6:

Cooley incorporates by reference its General Objections and Responses as though fully set forth herein.

Cooley objects to this Request to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, common interest privilege, joint defense privilege, or any other applicable law, privilege, protection or immunity. Cooley objects to this Request's use of the phrase "scope of representation" as overly broad, unduly burdensome, not

reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, unintelligible, and uncertain language. Cooley objects to this Request to the extent it seeks information not in Cooley's possession, custody, or control and/or information that is otherwise equally accessible to Plaintiff. Cooley is responding on behalf of Cooley only, and no other entity. Cooley objects to this Request on the grounds that it seeks discovery that is unduly burdensome, not relevant, and not proportional to the needs of the case insofar as the requested discovery has no demonstrated relevance to the instant case. Cooley objects to this Request because it is duplicative of discovery that Plaintiff sought and/or could have sought, subject to objections, at the Patent Trial and Appeal Board and improperly seeks to circumvent the discovery procedures set forth by the Patent Trial and Appeal Board.

REQUEST NO. 7:

All documents relating to the scope of representation of Egnyte, Inc. by Heidi Keefe.

RESPONSE TO REQUEST NO. 7:

Cooley incorporates by reference its General Objections and Responses as though fully set forth herein.

Cooley objects to this Request to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, common interest privilege, joint defense privilege, or any other applicable law, privilege, protection or immunity. Cooley objects to this Request's use of the phrase "scope of representation" as overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, unintelligible, and uncertain language. Cooley objects to this Request to the extent it seeks information not in Cooley's possession, custody, or control and/or information that is otherwise equally accessible to Plaintiff. Cooley is responding on behalf of Cooley only, and no other entity.

Cooley objects to this Request on the grounds that it seeks discovery that is unduly burdensome, not relevant, and not proportional to the needs of the case insofar as the requested discovery has no demonstrated relevance to the instant case. Cooley objects to this Request because it is duplicative of discovery that Plaintiff sought and/or could have sought, subject to objections, at the Patent Trial and Appeal Board and improperly seeks to circumvent the discovery procedures set forth by the Patent Trial and Appeal Board.

REQUEST NO. 8:

All documents relating to the scope of representation of Egnyte, Inc. by Heidi Keefe and Affiliates.

RESPONSE TO REQUEST NO. 8:

Cooley incorporates by reference its General Objections and Responses as though fully set forth herein.

Cooley objects to this Request to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, common interest privilege, joint defense privilege, or any other applicable law, privilege, protection or immunity. Cooley objects to this Request's use of the word "Affiliates" and the phrase "scope of representation" as overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, unintelligible, and uncertain language. Cooley objects to this Request to the extent it seeks information not in Cooley's possession, custody, or control and/or information that is otherwise equally accessible to Plaintiff. Cooley is responding on behalf of Cooley only, and no other entity. Cooley objects to this Request on the grounds that it seeks discovery that is unduly burdensome, not relevant, and not proportional to the needs of the case insofar as the requested discovery has no demonstrated relevance to the instant case. Cooley objects to this Request

because it is duplicative of discovery that Plaintiff sought and/or could have sought, subject to objections, at the Patent Trial and Appeal Board and improperly seeks to circumvent the discovery procedures set forth by the Patent Trial and Appeal Board.

Dated: October 12, 2023

COOLEY LLP

/s/ Lowell D. Mead

COOLEY LLP

Lowell D. Mead

3175 Hanover Street

Palo Alto, CA 94304-1130

(650) 843-5000

Attorneys for Cooley LLP

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on October 12, 2023, this document was served on persons listed below via email:

Geoff Mason
gmason@sughrue.com
Gughrue Mion, PLLC
2000 Pennsylvania Ave., Suite 9000
Washington, DC 20006



Tracy Gibbs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TOPIA TECHNOLOGY, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No.: 1:21-CV-01821-CJB
	)	
EGNYTE, INC.,	)	
	)	
Defendant.	)	

**HEIDI KEEFE’S OBJECTIONS AND RESPONSES TO PLAINTIFF’S SUBPOENA TO
PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO
PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, by and through the undersigned counsel, Heidi Keefe serves the following Objections and Responses to Plaintiff Topia Technology, Inc.’s (“Plaintiff”) Document Requests attached to the Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action, dated September 13, 2023 (“Subpoena” or “Requests” collectively and “Request” individually). Ms. Keefe’s response is made to the best of her present knowledge, information, and belief. Ms. Keefe reserves the right to supplement or amend these objections and responses to the extent allowed by the Federal Rules of Civil Procedure and the Local Rules of this Court.

I. GENERAL OBJECTIONS AND RESPONSES

The following objections apply to each and every Topic.

1. The following General Responses and Objections apply to each individual response to Plaintiff’s Requests, as if fully set forth therein. The failure to mention any of the following General Objections in the specific responses below shall not be deemed a waiver of such objection or limitation.

2. Ms. Keefe objects to the time and place of production referenced in the Requests.

Ms. Keefe will produce responsive documents, if at all, within a reasonable time and to a mutually agreed upon location.

3. Ms. Keefe objects to all instructions, definitions, and Requests to the extent they seek documents or things not currently in Ms. Keefe's possession, custody, or control, or refer to persons, entities, or events not known to Ms. Keefe.

4. Ms. Keefe objects to each Request to the extent it seeks information or documents that are available from public sources, records, or other third parties, or that are otherwise readily available to Plaintiff.

5. Ms. Keefe objects to any and all factual characterizations stated or implied by the Requests. By responding, Ms. Keefe does not accept or admit any of Plaintiff's factual characterizations.

6. Ms. Keefe objects to these Requests to the extent they call for legal opinions or conclusions or expert opinion.

7. Neither Ms. Keefe's objections and responses, nor the provisions of information or production of documents in response to any Requests, are an admission or indication that such information and documents are relevant to any legal theory.

8. Ms. Keefe objects to the Requests to the extent they seek information or things that are not relevant to the claims or defenses asserted in this litigation or not proportional to the needs of the case.

9. Ms. Keefe objects to each Request to the extent that the Request is not properly limited in subject matter, scope, and/or time on the grounds that such Requests are overbroad, unduly burdensome, and seek information that is not relevant to the subject matter of this action or reasonably calculated to lead to the discovery of admissible evidence.

10. Ms. Keefe objects to all definitions, instructions, and Requests to the extent they seek information that requires extensive and unreasonable investigative work on the part of Ms. Keefe.

11. Ms. Keefe objects to the introductory definitions and instructions and any and all Requests to the extent they contain vague, ambiguous, unintelligible, overbroad, or uncertain language.

12. Ms. Keefe objects to each Request to the extent that it seeks documents or information that is private, confidential, commercially sensitive, proprietary, trade secret, or otherwise protected from disclosure.

13. Ms. Keefe objects to the definition of “Box” as overbroad. Ms. Keefe will construe this term to mean Box, Inc.

14. Ms. Keefe objects to the definition of “Cooley LLP” as overbroad. Ms. Keefe will construe this term to mean Cooley LLP.

15. Ms. Keefe objects to the definition of “DropBox” as overbroad. Ms. Keefe will construe this term to mean Dropbox, Inc.

16. Ms. Keefe objects to the definition of “Egnyte Inc.” as overbroad. Ms. Keefe will construe this term to mean Egnyte, Inc.

17. Ms. Keefe objects to the definition of “Heidi Keefe and Affiliates” as overbroad, vague, ambiguous, unintelligible, and uncertain language. Ms. Keefe will construe this term to mean Ms. Keefe.

18. Ms. Keefe objects to each and every use of the word “document” to the extent it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, insofar as it purports to require Ms. Keefe to search any and all electronically

stored information within its possession, custody, or control beyond what is required under the Federal Rules of Civil Procedure. Ms. Keefe further objects to each and every use of the word “document” as overbroad and unduly burdensome, especially to the extent it encompasses emails, text messages, instant messages, and other electronic messages.

19. Ms. Keefe objects to each and every use of the word “communication” to the extent it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, insofar as it purports to require Ms. Keefe to search any and all communications within its possession, custody, or control beyond what is required under the Federal Rules of Civil Procedure. Ms. Keefe further objects to each and every use of the word “communication” as overbroad and unduly burdensome, especially to the extent it encompasses emails, text messages, instant messages, and other electronic messages.

20. Ms. Keefe objects to each and every use of the phrase “scope of representation” to the extent it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, insofar as it purports to require Ms. Keefe to search for documents and/or communications beyond what is required under the Federal Rules of Civil Procedure. Ms. Keefe further objects to each and every use of the phrase “scope of representation” as vague, ambiguous, unintelligible, and uncertain language.

21. Ms. Keefe objects to each Request that seeks documents “relating to” as overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, and unintelligible. Without waiving this objection, and subject to all other applicable objections stated herein, Ms. Keefe will provide, in response to any Request seeking information “relating to” a given subject, responses that expressly reflect or refer to information relevant to the Request.

22. Ms. Keefe objects to each Request to the extent that it relies on use of the singular versus the plural, “any” versus “all,” and the disjunctive versus the conjunctive. Plaintiff’s usage of such instructions would render the task of interpreting Plaintiff’s Requests unduly burdensome and would render Plaintiff’s Requests vague, ambiguous, or unintelligible. Ms. Keefe will respond to each Request according to its ordinary meaning, without reference to Plaintiff’s instructions.

23. Ms. Keefe objects to each Request to the extent that it seeks information protected by the attorney-client privilege, the attorney work product doctrine, common interest privilege, joint defense privilege, or any other applicable law, privilege, protection or immunity.

24. Ms. Keefe objects to each Request to the extent that it purports to impose discovery obligations on Ms. Keefe that are broader than, or inconsistent with, the Federal Rules of Civil Procedure, Federal Rules of Evidence, or any other applicable court rule or statute.

25. Ms. Keefe objects to each Request to the extent that it seeks information that is already in Plaintiff’s possession, equally accessible to Plaintiff, or reasonably obtainable through other means that are less burdensome on non-party Ms. Keefe.

26. Ms. Keefe objects to the Subpoena on the grounds that it is invalid and unenforceable insofar as Plaintiff failed to comply with Federal Rule of Civil Procedure 45(a)(4) (“If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served on the person to whom it is directed, a notice and a copy of the subpoena must be served on each party.”).

27. Ms. Keefe objects to the Subpoena because it solely seeks information that is irrelevant to the instant proceedings under Federal Rule of Civil Procedure 26(b)(1), which only allows discovery of information “that is relevant to any party’s claim or defense.” Under the same rule, Ms. Keefe objects to the Subpoena because it solely seeks information for which “the burden

or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1). Although some courts have interpreted relevancy “broadly,” *Amini Innovation Corp. v. McFerran Home Furnishings, Inc.*, 300 F.R.D. 406, 409 (C.D. Cal. 2014), “[a] showing of relevance can be viewed as a showing of need; for the purpose of prosecuting or defending a specific pending civil action, one is presumed to have no need of a matter not ‘relevant to the subject matter involved in the pending action.’” *Meijer, Inc. v. Warner Chilcott Holdings Co., III, Ltd.*, 245 F.R.D. 26, 29-30 (D.D.C. 2007) (quoting *Friedman v. Bache Halsey Stuart Shields, Inc.*, 238 U.S. App. D.C. 190, 738 F.2d 1336, 1341 (D.C. Cir. 1984)) (citing Fed. R. Civ. P. 26(b)(1)). In addition, courts “must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or (iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1).” Fed. R. Civ. P. 26(b)(2)(C).

28. Ms. Keefe objects to the Subpoena under Federal Rule of Civil Procedure 45(d)(3) because it solely seeks information that is irrelevant to the instant proceedings, in contravention of Federal Rule of Civil Procedure 26(b)(1), and because Plaintiff has apparently made no effort whatsoever to seek the information from Defendant Egnyte, Inc.

29. Ms. Keefe objects to the Subpoena to the extent it seeks information regarding a potential theory or cause of action that is purely speculative. *See Micro Motion, Inc. v. Kane Steel Co., Inc.*, 894 F.2d 1318, 1320-26 (Fed. Cir. 1990) (holding that district court abused its discretion in denying a non-party’s motion to quash a discovery subpoena that was supposedly relevant to a damages theory that was speculative and solely based on a suspicion that the third-party’s product

infringed).

30. Ms. Keefe objects to the Subpoena to the extent it seeks information in this Court that should instead be sought before the Patent Trial and Appeal Board and because the Subpoena is attempting to circumvent the discovery procedures set forth by the Patent Trial and Appeal Board. *MedIdea, L.L.C. v. DePuy Orthopaedics, Inc.*, No. CV 17-11172-LTS, 2018 WL 4039359, at *5 (D. Mass. Aug. 23, 2018) (granting motion to quash subpoena that was an “improper attempt to gather information [the plaintiff] wishe[d] to use in [a] pending IPR proceedings (where it is not generally entitled to discover such information)”).

II. SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENTS REQUESTED

Without waiving or limiting in any manner any of the foregoing General Objections and Responses, but rather incorporating them into each of the following responses to the extent applicable, Ms. Keefe responds to Plaintiff’s Requests as follows:

REQUEST NO. 1:

A copy of the transcript of the June 20, 2023 deposition of Heidi Keefe in Case Numbers IPR2023-00427, 00433, 00432, 00431, 00430, and 00429, and all exhibits introduced during this deposition.

RESPONSE TO REQUEST NO. 1:

Ms. Keefe incorporates by reference her General Objections and Responses as though fully set forth herein.

Ms. Keefe objects to this Request to the extent it seeks information not in Ms. Keefe’s possession, custody, or control and/or information that is otherwise equally accessible to Plaintiff. Ms. Keefe is responding on behalf of Ms. Keefe only, and no other individual or entity. Ms. Keefe objects to this Request because Plaintiff is already in possession of the information sought in the Request, given that Plaintiff took the referenced deposition and already obtained copies of the

deposition transcript and exhibits introduced during the deposition. Ms. Keefe objects to the Request because it solely seeks information that is not relevant to the instant case. Ms. Keefe objects to this Request because it is duplicative of discovery that Plaintiff sought and/or could have sought, subject to objections, at the Patent Trial and Appeal Board and improperly seeks to circumvent the discovery procedures set forth by the Patent Trial and Appeal Board.

REQUEST NO. 2:

All documents relating to the June 20, 2023 deposition of Heidi Keefe in Case Numbers IPR2023-00427, 00433, 00432, 00431, 00430, and 00429.

RESPONSE TO REQUEST NO. 1:

Ms. Keefe incorporates by reference her General Objections and Responses as though fully set forth herein.

Ms. Keefe objects to this Request to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, common interest privilege, joint defense privilege, or any other applicable law, privilege, protection or immunity. Ms. Keefe objects to this Request's use of the phrase "relating to" as overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, unintelligible, and uncertain language. Ms. Keefe objects to this Request to the extent it seeks information not in Ms. Keefe's possession, custody, or control and/or information that is otherwise equally accessible to Plaintiff. Ms. Keefe is responding on behalf of Ms. Keefe only, and no other individual or entity. Ms. Keefe objects to this Request on the grounds that it seeks discovery that is unduly burdensome, not relevant, and not proportional to the needs of the case insofar as the requested discovery has no demonstrated relevance to the instant case. Ms. Keefe objects to this Request because it is duplicative of discovery that Plaintiff sought and/or could have sought,

subject to objections, at the Patent Trial and Appeal Board and improperly seeks to circumvent the discovery procedures set forth by the Patent Trial and Appeal Board.

REQUEST NO. 3:

All documents relating to communications between Heidi Keefe and Affiliates and Egnyte, Inc. as defined above, which includes but is not limited to Egnyte, Inc.'s counsel.

RESPONSE TO REQUEST NO. 3:

Ms. Keefe incorporates by reference her General Objections and Responses as though fully set forth herein.

Ms. Keefe objects to this Request to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, common interest privilege, joint defense privilege, or any other applicable law, privilege, protection or immunity. Ms. Keefe objects to this Request's use of the phrase "relating to" as overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, unintelligible, and uncertain language. Ms. Keefe objects to this Request to the extent it seeks information not in Ms. Keefe's possession, custody, or control and/or information that is otherwise equally accessible to Plaintiff. Ms. Keefe is responding on behalf of Ms. Keefe only, and no other individual or entity. Ms. Keefe objects to this Request on the grounds that it seeks discovery that is unduly burdensome, not relevant, and not proportional to the needs of the case insofar as the requested discovery has no demonstrated relevance to the instant case. Ms. Keefe objects to this Request because it is duplicative of discovery that Plaintiff sought and/or could have sought, subject to objections, at the Patent Trial and Appeal Board and improperly seeks to circumvent the discovery procedures set forth by the Patent Trial and Appeal Board.

REQUEST NO. 4:

All documents relating to communications between Egnyte, Inc. as defined above, which includes but is not limited to Egnyte, Inc.'s counsel, and Box.

RESPONSE TO REQUEST NO. 4:

Ms. Keefe incorporates by reference her General Objections and Responses as though fully set forth herein.

Ms. Keefe objects to this Request to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, common interest privilege, joint defense privilege, or any other applicable law, privilege, protection or immunity. Ms. Keefe objects to this Request's use of the phrase "relating to" as overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, unintelligible, and uncertain language. Ms. Keefe objects to this Request to the extent it seeks information not in Ms. Keefe's possession, custody, or control and/or information that is otherwise equally accessible to Plaintiff. Ms. Keefe is responding on behalf of Ms. Keefe only, and no other individual or entity. Ms. Keefe objects to this Request on the grounds that it seeks discovery that is unduly burdensome, not relevant, and not proportional to the needs of the case insofar as the requested discovery has no demonstrated relevance to the instant case. Ms. Keefe objects to this Request because it is duplicative of discovery that Plaintiff sought and/or could have sought, subject to objections, at the Patent Trial and Appeal Board and improperly seeks to circumvent the discovery procedures set forth by the Patent Trial and Appeal Board.

REQUEST NO. 5:

All documents relating to communications between Egnyte, Inc. as defined above, which includes but is not limited to Egnyte, Inc.'s counsel, and DropBox.

RESPONSE TO REQUEST NO. 5:

Ms. Keefe incorporates by reference her General Objections and Responses as though fully set forth herein.

Ms. Keefe objects to this Request to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, common interest privilege, joint defense privilege, or any other applicable law, privilege, protection or immunity. Ms. Keefe objects to this Request's use of the phrase "relating to" as overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, unintelligible, and uncertain language. Ms. Keefe objects to this Request to the extent it seeks information not in Ms. Keefe's possession, custody, or control and/or information that is otherwise equally accessible to Plaintiff. Ms. Keefe is responding on behalf of Ms. Keefe only, and no other individual or entity. Ms. Keefe objects to this Request on the grounds that it seeks discovery that is unduly burdensome, not relevant, and not proportional to the needs of the case insofar as the requested discovery has no demonstrated relevance to the instant case. Ms. Keefe objects to this Request because it is duplicative of discovery that Plaintiff sought and/or could have sought, subject to objections, at the Patent Trial and Appeal Board and improperly seeks to circumvent the discovery procedures set forth by the Patent Trial and Appeal Board.

REQUEST NO. 6:

All documents relating to the scope of representation of Egnyte, Inc. by Cooley LLP.

RESPONSE TO REQUEST NO. 6:

Ms. Keefe incorporates by reference her General Objections and Responses as though fully set forth herein.

Ms. Keefe objects to this Request to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, common interest privilege, joint defense privilege, or any other applicable law, privilege, protection or immunity. Ms. Keefe objects to this Request's use of the phrase "scope of representation" as overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, unintelligible, and uncertain language. Ms. Keefe objects to this Request to the extent it seeks information not in Ms. Keefe's possession, custody, or control and/or information that is otherwise equally accessible to Plaintiff. Ms. Keefe is responding on behalf of Ms. Keefe only, and no other individual or entity. Ms. Keefe objects to this Request on the grounds that it seeks discovery that is unduly burdensome, not relevant, and not proportional to the needs of the case insofar as the requested discovery has no demonstrated relevance to the instant case. Ms. Keefe objects to this Request because it is duplicative of discovery that Plaintiff sought and/or could have sought, subject to objections, at the Patent Trial and Appeal Board and improperly seeks to circumvent the discovery procedures set forth by the Patent Trial and Appeal Board.

REQUEST NO. 7:

All documents relating to the scope of representation of Egnyte, Inc. by Heidi Keefe.

RESPONSE TO REQUEST NO. 7:

Ms. Keefe incorporates by reference its General Objections and Responses as though fully set forth herein.

Ms. Keefe objects to this Request to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, common interest privilege, joint defense privilege, or any other applicable law, privilege, protection or immunity. Ms. Keefe objects to this Request's use of the phrase "scope of representation" as overly broad, unduly

burdensome, not reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, unintelligible, and uncertain language. Ms. Keefe objects to this Request to the extent it seeks information not in Ms. Keefe's possession, custody, or control and/or information that is otherwise equally accessible to Plaintiff. Ms. Keefe is responding on behalf of Ms. Keefe only, and no other individual or entity. Ms. Keefe objects to this Request on the grounds that it seeks discovery that is unduly burdensome, not relevant, and not proportional to the needs of the case insofar as the requested discovery has no demonstrated relevance to the instant case. Ms. Keefe objects to this Request because it is duplicative of discovery that Plaintiff sought and/or could have sought, subject to objections, at the Patent Trial and Appeal Board and improperly seeks to circumvent the discovery procedures set forth by the Patent Trial and Appeal Board.

REQUEST NO. 8:

All documents relating to the scope of representation of Egnyte, Inc. by Heidi Keefe and Affiliates.

RESPONSE TO REQUEST NO. 8:

Ms. Keefe incorporates by reference her General Objections and Responses as though fully set forth herein.

Ms. Keefe objects to this Request to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, common interest privilege, joint defense privilege, or any other applicable law, privilege, protection or immunity. Ms. Keefe objects to this Request's use of the word "Affiliates" and the phrase "scope of representation" as overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, unintelligible, and uncertain language. Ms. Keefe objects to this Request to the extent it seeks information not in Ms. Keefe's possession, custody, or control and/or

information that is otherwise equally accessible to Plaintiff. Ms. Keefe is responding on behalf of Ms. Keefe only, and no other individual or entity. Ms. Keefe objects to this Request on the grounds that it seeks discovery that is unduly burdensome, not relevant, and not proportional to the needs of the case insofar as the requested discovery has no demonstrated relevance to the instant case. Ms. Keefe objects to this Request because it is duplicative of discovery that Plaintiff sought and/or could have sought, subject to objections, at the Patent Trial and Appeal Board and improperly seeks to circumvent the discovery procedures set forth by the Patent Trial and Appeal Board.

Dated: October 12, 2023

COOLEY LLP

/s/ Lowell D. Mead

COOLEY LLP

Lowell D. Mead

3175 Hanover Street

Palo Alto, CA 94304-1130

(650) 843-5000

Attorneys for Heidi Keefe

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on October 12, 2023, this document was served on persons listed below via email:

Geoff Mason
gmason@sughrue.com
Gughrue Mion, PLLC
2000 Pennsylvania Ave., Suite 9000
Washington, DC 20006



Tracy Gibbs

UNITED STATES DISTRICT COURT

for the
District of Delaware

Topia Technology, Inc.

Plaintiff

v.

Egnyte, Inc.

Defendant

Civil Action No. 1:21-cv-01821-CJB

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Box, Inc. at 900 Jefferson Ave Redwood City, CA 94063

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Schedule A

Place: Knobbe Martens 333 Bush Street, 21st Floor
San Francisco, CA 94104 or mutually agreeable
location

Date and Time:

11/20/2023 9:00 am

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 11/03/2023

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Roman Rachuba

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Plaintiff
Topia Technology, Inc; Roman Rachuba; Sughrue Mion, PLLC, who issues or requests this subpoena, are:
2000 Pennsylvania Ave, NW Suite 9000 Washington 20006; lrachuba@sughrue.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 1:21-cv-01821-CJB

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Schedule A

Definitions

1. As used herein, the term “Box” means jointly and severally Box Inc., its officers, directors, managers, employees, divisions, parent companies, subsidiaries, affiliates, predecessors or successors-in-interest, any joint venture to which one or more of them may be a party, consultants, agents, and accountants, including any person who served in any such capacity at any time to Box Inc.

2. As used herein, the term “Cooley LLP” means jointly and severally Cooley LLP, its officers, directors, managers, employees, divisions, parent companies, subsidiaries, affiliates, predecessors or successors-in-interest, any joint venture to which one or more of them may be a party, consultants, agents, and accountants, including any person who served in any such capacity at any time to Cooley LLP.

3. As used herein, the term “DropBox” means jointly and severally DropBox Inc., its officers, directors, managers, employees, divisions, parent companies, subsidiaries, affiliates, predecessors or successors-in-interest, any joint venture to which one or more of them may be a party, consultants, agents, and accountants, including any person who served in any such capacity at any time to DropBox Inc.

4. As used herein, the term “Egnyte Inc.” means jointly and severally Egnyte Inc., its officers, directors, managers, employees, divisions, parent companies, subsidiaries, affiliates, predecessors or successors-in-interest, any joint venture to which one or more of them may be a party, consultants, agents, and accountants, including any person who served in any such capacity at any time to Egnyte Inc.

5. As used herein, the term Heidi Keefe and Affiliates means Ms. Heidi Keefe deposed on June 20, 2023 in Case Numbers IPR2023-00427, 00433, 00432, 00431, 00430, and 00429, any affiliates, any joint venture to which Ms. Keefe or her affiliates may be a party,

consultants, agents, and accountants, including any person who served in any such capacity at any time to Ms. Keefe.

Requests

1. A copy of the transcript of the June 20, 2023 deposition of Heidi Keefe in Case Numbers IPR2023-00427, 00433, 00432, 00431, 00430, and 00429, and all exhibits introduced during this deposition.
2. All documents relating to the June 20, 2023 deposition of Heidi Keefe in Case Numbers IPR2023-00427, 00433, 00432, 00431, 00430, and 00429.
3. All documents relating to communications between Heidi Keefe and Affiliates and Egnyte, Inc. as defined above, which includes but is not limited to Egnyte, Inc.'s counsel.
4. All documents relating to communications between Egnyte, Inc. as defined above, which includes but is not limited to Egnyte, Inc.'s counsel, and Box.
5. All documents relating to communications between Egnyte, Inc. as defined above, which includes but is not limited to Egnyte, Inc.'s counsel, and DropBox.
6. All documents relating to the scope of representation of Egnyte, Inc. by Cooley LLP.
7. All documents relating to the scope of representation of Egnyte, Inc. by Heidi Keefe.
8. All documents relating to the scope of representation of Egnyte, Inc. by Heidi Keefe and Affiliates.

UNITED STATES DISTRICT COURT

for the
District of Delaware

Topia Technology, Inc.

Plaintiff

v.

Egnyte, Inc.

Defendant

Civil Action No. 1:21-cv-01821-CJB

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Dropbox, Inc. at 1800 Owens St, San Francisco, CA 94158

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Schedule A

Place: Sughrue Mion, PLLC
2000 Pennsylvania Ave, NW Suite 9000 Washington
DC 20006 or mutually agreeable location

Date and Time:

11/20/2023 9:00 am

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 11/03/2023

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Roman Rachuba

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Plaintiff
Topia Technology, Inc; Roman Rachuba; Sughrue Mion, PLLC, who issues or requests this subpoena, are:
2000 Pennsylvania Ave, NW Suite 9000 Washington 20006; lrachuba@sughrue.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 1:21-cv-01821-CJB

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Schedule A

Definitions

1. As used herein, the term “Box” means jointly and severally Box Inc., its officers, directors, managers, employees, divisions, parent companies, subsidiaries, affiliates, predecessors or successors-in-interest, any joint venture to which one or more of them may be a party, consultants, agents, and accountants, including any person who served in any such capacity at any time to Box Inc.

2. As used herein, the term “Cooley LLP” means jointly and severally Cooley LLP, its officers, directors, managers, employees, divisions, parent companies, subsidiaries, affiliates, predecessors or successors-in-interest, any joint venture to which one or more of them may be a party, consultants, agents, and accountants, including any person who served in any such capacity at any time to Cooley LLP.

3. As used herein, the term “DropBox” means jointly and severally DropBox Inc., its officers, directors, managers, employees, divisions, parent companies, subsidiaries, affiliates, predecessors or successors-in-interest, any joint venture to which one or more of them may be a party, consultants, agents, and accountants, including any person who served in any such capacity at any time to DropBox Inc.

4. As used herein, the term “Egnyte Inc.” means jointly and severally Egnyte Inc., its officers, directors, managers, employees, divisions, parent companies, subsidiaries, affiliates, predecessors or successors-in-interest, any joint venture to which one or more of them may be a party, consultants, agents, and accountants, including any person who served in any such capacity at any time to Egnyte Inc.

5. As used herein, the term Heidi Keefe and Affiliates means Ms. Heidi Keefe deposed on June 20, 2023 in Case Numbers IPR2023-00427, 00433, 00432, 00431, 00430, and 00429, any affiliates, any joint venture to which Ms. Keefe or her affiliates may be a party,

consultants, agents, and accountants, including any person who served in any such capacity at any time to Ms. Keefe.

Requests

1. A copy of the transcript of the June 20, 2023 deposition of Heidi Keefe in Case Numbers IPR2023-00427, 00433, 00432, 00431, 00430, and 00429, and all exhibits introduced during this deposition.
2. All documents relating to the June 20, 2023 deposition of Heidi Keefe in Case Numbers IPR2023-00427, 00433, 00432, 00431, 00430, and 00429.
3. All documents relating to communications between Heidi Keefe and Affiliates and Egnyte, Inc. as defined above, which includes but is not limited to Egnyte, Inc.'s counsel.
4. All documents relating to communications between Egnyte, Inc. as defined above, which includes but is not limited to Egnyte, Inc.'s counsel, and Box.
5. All documents relating to communications between Egnyte, Inc. as defined above, which includes but is not limited to Egnyte, Inc.'s counsel, and DropBox.
6. All documents relating to the scope of representation of Egnyte, Inc. by Cooley LLP.
7. All documents relating to the scope of representation of Egnyte, Inc. by Heidi Keefe.
8. All documents relating to the scope of representation of Egnyte, Inc. by Heidi Keefe and Affiliates.

UNITED STATES DISTRICT COURT

for the
District of Delaware

Topia Technology, Inc.

Plaintiff

v.

Egnyte, Inc.

Defendant

Civil Action No. 1:21-cv-01821-CJB

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Heidi Keefe, Cooley LLP at 3175 Hanover Street Palo Alto, CA 94304

(Name of person to whom this subpoena is directed)

I Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must promptly confer in good faith with the party serving this subpoena about the following matters, or those set forth in an attachment, and you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about these matters:

Place: Knobbe Martens
333 Bush Street, 21st Floor
San Francisco, CA 94104

Date and Time:
11/30/2023 9:00 am

The deposition will be recorded by this method: video, audio, and/or real-time computer

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 11/15/2023

CLERK OF COURT

OR

Geoffrey C. Mason

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Plaintiff
Topia Technology, Inc; Geoff Mason; Sughrue Mion, PLLC, who issues or requests this subpoena, are:
2000 Pennsylvania Ave, NW Suite 9000 Washington 20006; gmason@sughrue.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 1:21-cv-01821-CJB

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TOPIA TECHNOLOGY, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No.: 1:21-CV-01821-CJB
	)	
EGNYTE, INC.,	)	
	)	
Defendant.	)	

**BOX, INC.'S OBJECTIONS AND RESPONSES TO PLAINTIFF'S SUBPOENA TO
PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO
PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, by and through the undersigned counsel, Box, Inc. ("Box") serves the following Objections and Responses to Plaintiff Topia Technology, Inc.'s ("Plaintiff") Document Requests attached to the Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action, served November 8, 2023 ("Subpoena" or "Requests" collectively and "Request" individually). Box's response is made to the best of its present knowledge, information, and belief. Box reserves the right to supplement or amend these objections and responses to the extent allowed by the Federal Rules of Civil Procedure and the Local Rules of this Court.

I. GENERAL OBJECTIONS AND RESPONSES

The following objections apply to each and every Topic.

1. The following General Responses and Objections apply to each individual response to Plaintiff's Requests, as if fully set forth therein. The failure to mention any of the following General Objections in the specific responses below shall not be deemed a waiver of such objection or limitation.

2. Box objects to the time and place of production referenced in the Requests. Box

will produce responsive documents, if at all, within a reasonable time and to a mutually agreed upon location.

3. Box objects to all instructions, definitions, and Requests to the extent they seek documents or things not currently in Box's possession, custody, or control, or refer to persons, entities, or events not known to Box.

4. Box objects to each Request to the extent it seeks information or documents that are available from public sources, records, or other third parties, or that are otherwise readily available to Plaintiff.

5. Box objects to any and all factual characterizations stated or implied by the Requests. By responding, Box does not accept or admit any of Plaintiff's factual characterizations.

6. Box objects to these Requests to the extent they call for legal opinions or conclusions or expert opinion.

7. Neither Box's objections and responses, nor the provisions of information or production of documents in response to any Requests, are an admission or indication that such information and documents are relevant to any legal theory.

8. Box objects to the Requests to the extent they seek information or things that are not relevant to the claims or defenses asserted in this litigation or not proportional to the needs of the case.

9. Box objects to each Request to the extent that the Request is not properly limited in subject matter, scope, and/or time on the grounds that such Requests are overbroad, unduly burdensome, and seek information that is not relevant to the subject matter of this action or reasonably calculated to lead to the discovery of admissible evidence.

10. Box objects to all definitions, instructions, and Requests to the extent they seek

information that requires extensive and unreasonable investigative work on the part of Box.

11. Box objects to the introductory definitions and instructions and any and all Requests to the extent they contain vague, ambiguous, unintelligible, overbroad, or uncertain language.

12. Box objects to each Request to the extent that it seeks documents or information that is private, confidential, commercially sensitive, proprietary, trade secret, or otherwise protected from disclosure.

13. Box objects to the definition of “Box” as overbroad. Box will construe this term to mean Box, Inc.

14. Box objects to the definition of “Cooley LLP” as overbroad. Box will construe this term to mean Cooley LLP.

15. Box objects to the definition of “DropBox” as overbroad. Box will construe this term to mean Dropbox, Inc.

16. Box objects to the definition of “Egnyte Inc.” as overbroad. Box will construe this term to mean Egnyte, Inc.

17. Box objects to the definition of “Heidi Keefe and Affiliates” as overbroad, vague, ambiguous, unintelligible, and uncertain language. Box will construe this term to mean Heidi Keefe.

18. Box objects to each and every use of the word “document” to the extent it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, insofar as it purports to require Box to search any and all electronically stored information within its possession, custody, or control beyond what is required under the Federal Rules of Civil Procedure. Box further objects to each and every use of the word “document” as

overbroad and unduly burdensome, especially to the extent it encompasses emails, text messages, instant messages, and other electronic messages.

19. Box objects to each and every use of the word “communication” to the extent it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, insofar as it purports to require Box to search any and all communications within its possession, custody, or control beyond what is required under the Federal Rules of Civil Procedure. Box further objects to each and every use of the word “communication” as overbroad and unduly burdensome, especially to the extent it encompasses emails, text messages, instant messages, and other electronic messages.

20. Box objects to each and every use of the phrase “scope of representation” to the extent it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, insofar as it purports to require Box to search for documents and/or communications beyond what is required under the Federal Rules of Civil Procedure. Box further objects to each and every use of the phrase “scope of representation” as vague, ambiguous, unintelligible, and uncertain language.

21. Box objects to each Request that seeks documents “relating to” as overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, and unintelligible. Without waiving this objection, and subject to all other applicable objections stated herein, Box will provide, in response to any Request seeking information “relating to” a given subject, responses that expressly reflect or refer to information relevant to the Request.

22. Box objects to each Request to the extent that it relies on use of the singular versus the plural, “any” versus “all,” and the disjunctive versus the conjunctive. Plaintiff’s usage of such

instructions would render the task of interpreting Plaintiff's Requests unduly burdensome and would render Plaintiff's Requests vague, ambiguous, or unintelligible. Box will respond to each Request according to its ordinary meaning, without reference to Plaintiff's instructions.

23. Box objects to each Request to the extent that it seeks information protected by the attorney-client privilege, the attorney work product doctrine, common interest privilege, joint defense privilege, or any other applicable law, privilege, protection or immunity.

24. Box objects to each Request to the extent that it purports to impose discovery obligations on Box that are broader than, or inconsistent with, the Federal Rules of Civil Procedure, Federal Rules of Evidence, or any other applicable court rule or statute.

25. Box objects to each Request to the extent that it seeks information that is already in Plaintiff's possession, equally accessible to Plaintiff, or reasonably obtainable through other means that are less burdensome on non-party Box.

26. Box objects to the Subpoena on the grounds that it is invalid and unenforceable insofar as Plaintiff failed to comply with Federal Rule of Civil Procedure 45(a)(4) ("If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served on the person to whom it is directed, a notice and a copy of the subpoena must be served on each party.").

27. Box objects to the Subpoena because it solely seeks information that is irrelevant to the instant proceedings under Federal Rule of Civil Procedure 26(b)(1), which only allows discovery of information "that is relevant to any party's claim or defense." Under the same rule, Box objects to the Subpoena because it solely seeks information for which "the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1). Although some courts have interpreted relevancy "broadly," *Amini Innovation Corp. v. McFerran Home*

Furnishings, Inc., 300 F.R.D. 406, 409 (C.D. Cal. 2014), “[a] showing of relevance can be viewed as a showing of need; for the purpose of prosecuting or defending a specific pending civil action, one is presumed to have no need of a matter not ‘relevant to the subject matter involved in the pending action.’” *Meijer, Inc. v. Warner Chilcott Holdings Co., III, Ltd.*, 245 F.R.D. 26, 29-30 (D.D.C. 2007) (quoting *Friedman v. Bache Halsey Stuart Shields, Inc.*, 238 U.S. App. D.C. 190, 738 F.2d 1336, 1341 (D.C. Cir. 1984)) (citing Fed. R. Civ. P. 26(b)(1)). In addition, courts “must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or (iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1).” Fed. R. Civ. P. 26(b)(2)(C).

28. Box objects to the Subpoena under Federal Rule of Civil Procedure 45(d)(3) because it solely seeks information that is irrelevant to the instant proceedings, in contravention of Federal Rule of Civil Procedure 26(b)(1).

29. Box objects to the Subpoena to the extent it seeks information regarding a potential theory or cause of action that is purely speculative. *See Micro Motion, Inc. v. Kane Steel Co., Inc.*, 894 F.2d 1318, 1320-26 (Fed. Cir. 1990) (holding that district court abused its discretion in denying a non-party’s motion to quash a discovery subpoena that was supposedly relevant to a damages theory that was speculative and solely based on a suspicion that the third-party’s product infringed).

30. Box objects to the Subpoena to the extent it seeks information in this Court that should instead be sought before the Patent Trial and Appeal Board and because the Subpoena is

attempting to circumvent the discovery procedures set forth by the Patent Trial and Appeal Board. *MedIdea, L.L.C. v. DePuy Orthopaedics, Inc.*, No. CV 17-11172-LTS, 2018 WL 4039359, at *5 (D. Mass. Aug. 23, 2018) (granting motion to quash subpoena that was an “improper attempt to gather information [the plaintiff] wishe[d] to use in [a] pending IPR proceedings (where it is not generally entitled to discover such information)”).

II. SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENTS REQUESTED

Without waiving or limiting in any manner any of the foregoing General Objections and Responses, but rather incorporating them into each of the following responses to the extent applicable, Box responds to Plaintiff’s Requests as follows:

REQUEST NO. 1:

A copy of the transcript of the June 20, 2023 deposition of Heidi Keefe in Case Numbers IPR2023-00427, 00433, 00432, 00431, 00430, and 00429, and all exhibits introduced during this deposition.

RESPONSE TO REQUEST NO. 1:

Box incorporates by reference its General Objections and Responses as though fully set forth herein.

Box objects to this Request to the extent it seeks information not in Box’s possession, custody, or control and/or information that is otherwise equally accessible to Plaintiff. Box is responding on behalf of Box only, and no other entity. Box objects to this Request because Plaintiff is already in possession of the information sought in the Request, given that Plaintiff took the referenced deposition and already obtained copies of the deposition transcript and exhibits introduced during the deposition. Box objects to the Request because it solely seeks information that is not relevant to the instant case. Box objects to this Request because it is duplicative of discovery that Plaintiff sought and/or could have sought, subject to objections, at the Patent Trial

and Appeal Board and improperly seeks to circumvent the discovery procedures set forth by the Patent Trial and Appeal Board.

REQUEST NO. 2:

All documents relating to the June 20, 2023 deposition of Heidi Keefe in Case Numbers IPR2023-00427, 00433, 00432, 00431, 00430, and 00429.

RESPONSE TO REQUEST NO. 1:

Box incorporates by reference its General Objections and Responses as though fully set forth herein.

Box objects to this Request to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, common interest privilege, joint defense privilege, or any other applicable law, privilege, protection or immunity. Box objects to this Request's use of the phrase "relating to" as overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, unintelligible, and uncertain language. Box objects to this Request to the extent it seeks information not in Box's possession, custody, or control and/or information that is otherwise equally accessible to Plaintiff. Box is responding on behalf of Box only, and no other entity. Box objects to this Request on the grounds that it seeks discovery that is unduly burdensome, not relevant, and not proportional to the needs of the case insofar as the requested discovery has no demonstrated relevance to the instant case. Box objects to this Request because it is duplicative of discovery that Plaintiff sought and/or could have sought, subject to objections, at the Patent Trial and Appeal Board and improperly seeks to circumvent the discovery procedures set forth by the Patent Trial and Appeal Board.

REQUEST NO. 3:

All documents relating to communications between Heidi Keefe and Affiliates and Egnyte, Inc. as defined above, which includes but is not limited to Egnyte, Inc.'s counsel.

RESPONSE TO REQUEST NO. 3:

Box incorporates by reference its General Objections and Responses as though fully set forth herein.

Box objects to this Request to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, common interest privilege, joint defense privilege, or any other applicable law, privilege, protection or immunity. Box objects to this Request's use of the phrase "relating to" as overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, unintelligible, and uncertain language. Box objects to this Request to the extent it seeks information not in Box's possession, custody, or control and/or information that is otherwise equally accessible to Plaintiff. Box is responding on behalf of Box only, and no other entity. Box objects to this Request on the grounds that it seeks discovery that is unduly burdensome, not relevant, and not proportional to the needs of the case insofar as the requested discovery has no demonstrated relevance to the instant case. Box objects to this Request because it is duplicative of discovery that Plaintiff sought and/or could have sought, subject to objections, at the Patent Trial and Appeal Board and improperly seeks to circumvent the discovery procedures set forth by the Patent Trial and Appeal Board.

REQUEST NO. 4:

All documents relating to communications between Egnyte, Inc. as defined above, which includes but is not limited to Egnyte, Inc.'s counsel, and Box.

RESPONSE TO REQUEST NO. 4:

Box incorporates by reference its General Objections and Responses as though fully set forth herein.

Box objects to this Request to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, common interest privilege, joint defense privilege, or any other applicable law, privilege, protection or immunity. Box objects to this Request's use of the phrase "relating to" as overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, unintelligible, and uncertain language. Box objects to this Request to the extent it seeks information not in Box's possession, custody, or control and/or information that is otherwise equally accessible to Plaintiff. Box is responding on behalf of Box only, and no other entity. Box objects to this Request on the grounds that it seeks discovery that is unduly burdensome, not relevant, and not proportional to the needs of the case insofar as the requested discovery has no demonstrated relevance to the instant case. Box objects to this Request because it is duplicative of discovery that Plaintiff sought and/or could have sought, subject to objections, at the Patent Trial and Appeal Board and improperly seeks to circumvent the discovery procedures set forth by the Patent Trial and Appeal Board.

REQUEST NO. 5:

All documents relating to communications between Egnyte, Inc. as defined above, which includes but is not limited to Egnyte, Inc.'s counsel, and DropBox.

RESPONSE TO REQUEST NO. 5:

Box incorporates by reference its General Objections and Responses as though fully set forth herein.

Box objects to this Request to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, common interest privilege, joint defense privilege, or any other applicable law, privilege, protection or immunity. Box objects to this Request's use of the phrase "relating to" as overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, unintelligible, and uncertain language. Box objects to this Request to the extent it seeks information not in Box's possession, custody, or control and/or information that is otherwise equally accessible to Plaintiff. Box is responding on behalf of Box only, and no other entity. Box objects to this Request on the grounds that it seeks discovery that is unduly burdensome, not relevant, and not proportional to the needs of the case insofar as the requested discovery has no demonstrated relevance to the instant case. Box objects to this Request because it is duplicative of discovery that Plaintiff sought and/or could have sought, subject to objections, at the Patent Trial and Appeal Board and improperly seeks to circumvent the discovery procedures set forth by the Patent Trial and Appeal Board.

REQUEST NO. 6:

All documents relating to the scope of representation of Egnyte, Inc. by Cooley LLP.

RESPONSE TO REQUEST NO. 6:

Box incorporates by reference its General Objections and Responses as though fully set forth herein.

Box objects to this Request to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, common interest privilege, joint defense privilege, or any other applicable law, privilege, protection or immunity. Box objects to this Request's use of the phrase "scope of representation" as overly broad, unduly burdensome, not

reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, unintelligible, and uncertain language. Box objects to this Request to the extent it seeks information not in Box's possession, custody, or control and/or information that is otherwise equally accessible to Plaintiff. Box is responding on behalf of Box only, and no other entity. Box objects to this Request on the grounds that it seeks discovery that is unduly burdensome, not relevant, and not proportional to the needs of the case insofar as the requested discovery has no demonstrated relevance to the instant case. Box objects to this Request because it is duplicative of discovery that Plaintiff sought and/or could have sought, subject to objections, at the Patent Trial and Appeal Board and improperly seeks to circumvent the discovery procedures set forth by the Patent Trial and Appeal Board.

REQUEST NO. 7:

All documents relating to the scope of representation of Egnyte, Inc. by Heidi Keefe.

RESPONSE TO REQUEST NO. 7:

Box incorporates by reference its General Objections and Responses as though fully set forth herein.

Box objects to this Request to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, common interest privilege, joint defense privilege, or any other applicable law, privilege, protection or immunity. Box objects to this Request's use of the phrase "scope of representation" as overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, unintelligible, and uncertain language. Box objects to this Request to the extent it seeks information not in Box's possession, custody, or control and/or information that is otherwise equally accessible to Plaintiff. Box is responding on behalf of Box only, and no other entity. Box

objects to this Request on the grounds that it seeks discovery that is unduly burdensome, not relevant, and not proportional to the needs of the case insofar as the requested discovery has no demonstrated relevance to the instant case. Box objects to this Request because it is duplicative of discovery that Plaintiff sought and/or could have sought, subject to objections, at the Patent Trial and Appeal Board and improperly seeks to circumvent the discovery procedures set forth by the Patent Trial and Appeal Board.

REQUEST NO. 8:

All documents relating to the scope of representation of Egnyte, Inc. by Heidi Keefe and Affiliates.

RESPONSE TO REQUEST NO. 8:

Box incorporates by reference its General Objections and Responses as though fully set forth herein.

Box objects to this Request to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, common interest privilege, joint defense privilege, or any other applicable law, privilege, protection or immunity. Box objects to this Request's use of the word "Affiliates" and the phrase "scope of representation" as overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, unintelligible, and uncertain language. Box objects to this Request to the extent it seeks information not in Box's possession, custody, or control and/or information that is otherwise equally accessible to Plaintiff. Box is responding on behalf of Box only, and no other entity. Box objects to this Request on the grounds that it seeks discovery that is unduly burdensome, not relevant, and not proportional to the needs of the case insofar as the requested discovery has no demonstrated relevance to the instant case. Box objects to this Request because

it is duplicative of discovery that Plaintiff sought and/or could have sought, subject to objections, at the Patent Trial and Appeal Board and improperly seeks to circumvent the discovery procedures set forth by the Patent Trial and Appeal Board.

Dated: November 19, 2023

/s/ Lowell D. Mead
COOLEY LLP
Lowell D. Mead
3175 Hanover Street
Palo Alto, CA 94304-1130
(650) 843-5000

Attorney for Box, Inc.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on November 19, 2023, this document was served
on persons listed below via email:

Geoff Mason
gmason@sughrue.com
Gughrue Mion, PLLC
2000 Pennsylvania Ave., Suite 9000
Washington, DC 20006

/s/ Lowell Mead

Lowell Mead