

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BOX, INC. and DROPBOX, INC.,
Petitioners,

v.

TOPIA TECHNOLOGY, INC.,
Patent Owner.

Case No. IPR2023-00427
U.S. Patent No. 9,143,561

JOINT MOTION TO SEAL

I. Introduction

Pursuant to 37 C.F.R. § 42.54, the Board’s Final Written Decision (Paper 64 at 61) (“Decision”), and the protective order governing this proceeding (Paper 9), the undersigned parties move to maintain under seal certain portions appearing on pages 10, 12-14, and 18-19 of the Decision. Concurrent with this motion, the parties are filing a redacted version of the Decision.

Petitioners explain below that good cause exists for maintaining this content under seal. Patent Owner does not oppose this motion and joins this motion only to the extent necessary as a procedural matter pursuant to the Board’s direction that any motion to seal portions of the Decision should be filed jointly by the parties (Decision at 61). Patent Owner does not necessarily endorse or agree with the statements made by Petitioners in this motion.

II. Applicable Legal Principles for Sealing Confidential Information

“There is a strong public policy for making all information filed in an administrative proceeding open to the public, especially in an *inter partes* review which determines the patentability of claims in a patent and therefore affects the rights of the public.” *St. Jude Med., Cardiology Div., Inc. v. Volcano Corp.*, IPR2013-00258, Paper 28, 2 (P.T.A.B. Aug. 12, 2013). “Under 35 U.S.C. § 316(a)(1), the default rule is that all papers filed in an *inter partes* review are open and available for access by the public; and a party may file a concurrent motion to

seal and the information at issue is sealed pending the outcome of the motion.” *Id.*

However, “confidential information” may be protected from disclosure. 35 U.S.C. § 316(a)(7) (“The Director shall prescribe regulations . . . providing for protective orders governing the exchange and submission of confidential information”). In that regard, the Patent Trial and Appeal Board Consolidated Trial Practice Guide (Nov. 2019) at Section I.E provides:

The rules aim to strike a balance between the public’s interest in maintaining a complete and understandable file history and the parties’ interest in protecting truly sensitive information.

* * *

Confidential Information: The rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information. 37 C.F.R. § 42.54.

The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54.

The Board has applied a four-pronged test in assessing motions to seal:

a movant to seal must demonstrate adequately that (1) the information sought to be sealed is truly confidential, (2) a concrete harm would result upon public disclosure, (3) there exists a genuine need to rely in the trial on the specific information sought to be sealed, and (4), on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open record.

Argentum Pharm. LLC v. Alcon Rsch., Ltd., IPR2017-01053, Paper 27, 4

(P.T.A.B. Jan. 19, 2018) (informative) (citing 37 C.F.R. § 42.54(a)).

III. Good Cause Exists for Sealing the Redacted Portions of the Decision

The redacted content on pages 10, 18 and the top of page 19 of the Decision relates to a confidential arrangement between Egnyte, Inc. (“Egnyte”) and Ms. Keefe. Petitioners respectfully request to seal this content because it describes an arrangement that Ms. Keefe and Egnyte intended to maintain, and have maintained, in confidence. The confidential information is commercially sensitive and has been maintained in confidence by all parties. Aside from describing the relationship between Ms. Keefe and Egnyte, the content has no relevance to these proceedings or the public’s interest in these proceedings. Public disclosure of the confidential arrangement would result in a concrete harm to Egnyte. Petitioners’ interests in maintaining confidentiality therefore outweigh the strong public interest in having an open record. For the foregoing reasons, Petitioners seek to maintain the redacted content on pages 10, 18 and the top of page 19 of the Decision under seal.

The redacted content on pages 12-13 and at the bottom of page 19 of the Decision quotes or relates to a Joint Defense and Information Sharing Agreement (Ex. 1030) (“JDA”) that has been filed under seal and paragraph 6 of the Declaration of Heidi Keefe (Ex. 1029) (“Keefe Decl.”), which has been maintained under seal because it describes in detail provisions of the JDA. The content also includes

deposition testimony of Ms. Keefe (Ex. 2018) about the provisions of the JDA. Petitioners respectfully request to maintain this content under seal as it comprises confidential information of third parties and in view of Petitioners' contractual obligations to use all reasonable efforts to maintain confidentiality of this information. Ex. 1030, § 2.2.4. The confidential information includes details about the nature of the JDA that, to Petitioners' knowledge, has been maintained in confidentiality by all parties to the agreement. Public disclosure of the content of the JDA would cause a concrete harm to the parties to the agreement, as explained in the JDA itself. *Id.*, §§ 2.2.4, 2.3. Aside from addressing arguments regarding the nature of the JDA, the Board's discussion of the JDA has no relevance to these proceedings or the public's interest in these proceedings. Petitioners' interests in maintaining confidentiality therefore outweigh the strong public interest in having an open record. For the foregoing reasons, Petitioners seek to maintain the redacted content on pages 12-13 and at the bottom of page 19 of the Decision under seal.

The redacted content on page 14 of the Decision relates to a confidential engagement letter between Egnyte and Cooley LLP ("Cooley"). Petitioners respectfully request to seal this content because it quotes confidential language of the engagement letter and describes the nature of Cooley's representation of Egnyte in matters that are unrelated to this proceeding. Cooley and Egnyte intended to maintain, and have maintained, this engagement letter in confidence. The

confidential information is commercially sensitive and has been maintained in confidence by all parties. Public disclosure of this information would result in a concrete harm to Egnyte. Petitioners' interests in maintaining confidentiality therefore outweigh the strong public interest in having an open record. For the foregoing reasons, Petitioners seek to maintain the redacted content on page 14 of the Decision under seal.

IV. Certification of Non-Publication

To the best of Petitioners' knowledge, the information sought to be sealed has not been published or otherwise made public and the confidentiality of this information has been consistently maintained by the Petitioners.

Under the protective order (Paper 9), the information sought to be sealed herein has been designated as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information for the reasons described above.

Should the Board be inclined to deny the present Motion to Seal, Petitioners respectfully request a conference call with the Board to discuss any concerns prior to the Board issuing a decision on the Motion.

V. Conclusion

For the above reasons, the parties respectfully request that the above-described portions of the Decision be treated as confidential information and maintained under seal.

Dated: August 14, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify, pursuant to 37 C.F.R. Section 42.6, that a complete copy of the attached **JOINT MOTION TO SEAL** is being served on the 14th day of August, 2024, via electronic mail upon counsel of record for the Patent Owner as follows:

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DATED: August 14, 2024

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