

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

**PETITIONERS' UNOPPOSED MOTION TO EXTEND PETITIONERS'
DEADLINE TO FILE A MOTION TO EXPUNGE AND TO
MAINTAIN CONFIDENTIAL INFORMATION UNDER SEAL**

Pursuant to 37 CFR §§ 42.54 and 42.56, and the protective order governing this proceeding, Petitioners Box, Inc. and Dropbox, Inc. (“Petitioners”) respectfully move for an order that confidential documents maintained under seal in this proceeding remain under seal and that Petitioners’ deadline to file a motion to expunge such documents be extended until 60 business days after final disposition of Patent Owner Topia Technology, Inc.’s (“Patent Owner”) appeal of the Board’s Final Written Decision to the United States Court of Appeals for the Federal Circuit. *See Novartis Pharmaceuticals Corp. v. Shilpa Pharma, Inc.*, IPR2022-00886, Paper 81 at 7-8 (P.T.A.B. Dec. 1, 2023) (“the time period for filing a motion to expunge is extended and the information sealed in this proceeding shall remain under seal, and the record preserved, until any and all appeals are resolved; the time period shall be extended until 60 business days after final disposition of any and all appeals”). Petitioners conferred with Patent Owner and confirmed that Patent Owner does not oppose this motion. However, Patent Owner indicated that it does not endorse or otherwise agree with Petitioners’ arguments as to why the confidential information should be maintained under seal.

I. Background

On June 8, 2023, Petitioners filed an unopposed motion to enter a Protective Order in this proceeding and seal portions of Exhibit 1029 (Declaration of Heidi L. Keefe in Support of Petitioners’ Preliminary Reply) and Exhibit 1030 (Joint Defense

and Information Sharing Agreement), because the exhibits contained Petitioners' and/or third parties' confidential information. *See* Paper 9.

On June 22, 2023, Patent Owner filed an unopposed motion to seal portions of its Sur-Reply to Petitioners' Preliminary Reply (Paper 14) and portions of the Official Transcript of the Deposition of Heidi L. Keefe, taken on June 20, 2023 (Exhibit 2018), because the exhibits contained Petitioners' and/or third parties' confidential information. *See* Paper 13.

On August 4, 2023, the Board granted the pending motions to seal in its Institution Decision. *See* Paper 17 at 46-47. The Board stated:

We have reviewed these motions and the documents at issue and have considered the explanations of the confidential nature of the materials for which sealing is sought. We find there is good cause and therefore we grant the motions to seal and the associated request to enter the parties' agreed protective order.

Paper 17 at 46. The Institution Decision also stated:

FURTHER ORDERED that, no later than ten business days after the issuance of this Institution Decision, the parties may file a joint motion to seal portions of this Institution Decision, explaining why portions of it should remain under seal, and including as an attachment

a redacted version of the Institution Decision that can be made publicly available[.]

Paper 17 at 47. Pursuant to this order, Petitioners filed an unopposed motion to seal portions of the Board’s Institution Decision that quoted or related to paragraph 6 of Ms. Keefe’s declaration (Exhibit 1029), which the Board had previously authorized to be maintained under seal. *See* Paper 19.

On August 18, 2023, Patent Owner filed a Request for Director Review of Institution Decision (“Request for Director Review”). *See* Paper 21 (filed under seal). On August 29, 2023, Patent Owner filed an unopposed motion to seal certain portions of pages 3, 6-7, 9-12, and 15 of its Request for Director Review, which discussed confidential information related to Ms. Keefe’s relationship with and representation of Egnyte, Inc. (“Egnyte”) and a confidential Joint Defense and Information Sharing Agreement (“JDA”). *See* Paper 22.

On November 21, 2023, Patent Owner filed its Patent Owner’s Response under seal. *See* Paper 30. On November 28, 2023, Petitioners filed an unopposed motion to seal certain portions of Patent Owner’s Response on page 3 related to a confidential arrangement between Egnyte and Ms. Keefe. *See* Paper 31.

On February 20, 2024, Petitioners filed their Reply in Support of Petition for *Inter Partes* Review (“Reply”) under seal. *See* Paper 37. Concurrently, Petitioners filed an unopposed motion to seal portions of pages 1-2 of the Reply related to the

confidential arrangement between Egnyte and Ms. Keefe and terms of the JDA. *See* Paper 35.

On March 25, 2024, Patent Owner filed a Motion to Modify the Protective Order under seal. *See* Paper 44. Concurrently, Patent Owner filed an unopposed motion to seal portions of a paragraph on page 1 of its Motion to Modify the Protective Order related to the JDA and work performed under the JDA. *See* Paper 43.

On April 2, 2024, Patent Owner filed a Sur-Reply under seal. *See* Paper 49. Concurrently, Patent Owner filed an unopposed motion to seal portions of pages 2 and 5 of the Sur-Reply related to Ms. Keefe's relationship with and representation of Egnyte and work performed under the JDA. *See* Paper 48.

On April 11, 2024, the Board issued under seal its Order Denying Motion to Amend Protective Order. *See* Paper 54. On April 25, 2024, the parties filed a Joint Motion to Seal certain portions of page 4 of this order related to joint-defense and attorney-client relationships. *See* Paper 58.

On August 1, 2024, the Board issued under seal its Final Written Decision in this proceeding, finding all claims unpatentable. *See* Paper 64. In its Final Written Decision, the Board granted the parties' Joint Motion to Seal (Paper 58) and stated:

FURTHER ORDERED that, no later than ten business days after
the issuance of this Final Written Decision, the parties may file a joint

motion to seal portions of this Decision, explaining why those portions should remain under seal, and including as an attachment a redacted version of this Decision that can be made publicly available[.]

Paper 64 at 61. Pursuant to this order, the parties' filed a Joint Motion to Seal certain portions of the Final Written Decision that appear on pages 10, 12-14, and 18-19 related to the confidential arrangement between Egnyte and Ms. Keefe, the terms of the JDA and work performed under it, and a confidential engagement letter between Egnyte and Cooley LLP. *See* Paper 67.

On August 14, 2024, Patent Owner filed a Notice of Appeal to the United States Court of Appeals for the Federal Circuit (Paper 65).

For the reasons set forth below, Petitioners respectfully request that the highly confidential business information in the above-referenced papers and documents be maintained under seal and that Petitioners' deadline to move to expunge such information from the record be extended until 60 business days after final disposition of Patent Owner's appeal to the Federal Circuit. Specifically, Petitioners request that the confidential (non-public) versions of the following papers and documents be maintained under seal and that Petitioners' deadline to move to expunge them from the record be extended until 60 business days after final disposition of Patent Owner's appeal as these documents contain Petitioners' and/or third parties' highly confidential business information:

- Papers 14, 17, 21, 30, 37, 44, 49, 54, 64
- Exhibits 1029, 1030, 2018

II. The Confidential Documents Filed Under Seal In This Proceeding Should Be Maintained Under Seal

Petitioners request that the confidential versions of Papers 14, 17, 21, 30, 37, 44, 49, 54, and 64 and Exhibits 1029, 1030, and 2018 be maintained under seal. Petitioners contend that the confidential nature of the documents and minimal impact that maintaining them under seal would have on the public’s understanding of the file history weigh in favor of granting this motion.

According to Patent Trial and Appeal Board practice, and as noted by the Board, “[c]onfidential information that is subject to a protective order ordinarily would become public 45 days after” the Board’s August 1, 2024 Final Written Decision (Paper 64). *See* Patent Trial and Appeal Consolidated Trial Practice Guide (November 2019) (“CTPG”) at 21-22. However, “[a] party seeking to maintain the confidentiality of information . . . may file a motion to expunge the information from the record prior to the information becoming public.” CTPG at 22; *see* 37 C.F.R. § 42.56.

Petitioners contend that the information sought to be maintained under seal constitutes confidential information for the reasons provided in the parties’ motions to seal (Papers 9, 13, 19, 22, 31, 35, 43, 48, 58, 67). For example, Petitioners contend

that the confidential information relates to the terms of the JDA, which comprises confidential information of third parties and contractually binds Petitioners to use all reasonable efforts to maintain confidentiality of the document. *See* Exhibit 1030, § 2.2.4. Petitioners contend that the confidential information includes confidential business information and details about the membership and nature of the JDA and work performed under the JDA. Petitioners contend that the confidential information also relates to a confidential arrangement between Egnyte and Ms. Keefe, and a confidential engagement letter between Egnyte and Cooley LLP.

Petitioners contend that public disclosure of this information would cause a concrete harm to the Petitioners and third parties, including Egnyte and the parties to the JDA itself. *Id.*, §§ 2.2.4, 2.3. Aside from addressing Patent Owner's arguments regarding the nature of the JDA, Petitioners contend that Ms. Keefe's relationship and representation of Egnyte, and Egnyte's engagement letter with Cooley LLP, this information has no relevance to these proceedings or the public's interest in these proceedings. Petitioners contend that Petitioners' and the third parties' interests in maintaining confidentiality therefore outweigh the strong public interest in having an open record.

Petitioners contend that the information sought to be maintained under seal is not necessary to understand the Board's reasoning in its Final Written Decision. Patent Owner disagrees. Petitioners contend that the Board's citations to the

information sought to be maintained under seal are minimal, and the Board's reasoning related to the information sought to be maintained under seal is fully articulated in non-confidential portions of the Board's Final Written Decision. Patent Owner disagrees. Petitioners further contend that, in addition, in their respective briefing, Petitioners contend that the parties' have extensively described and summarized the information sought to be maintained under seal in connection with their arguments related to the real-party-in-interest issue. As such, the information should be maintained under seal and Petitioners' deadline to move to expunge such information should be extended until 60 business days following final disposition of Patent Owner's appeal. *See Novartis Pharmaceuticals Corp. v. Shilpa Pharma, Inc.*, IPR2022-00886, Paper 81 at 7-8 (P.T.A.B. Dec. 1, 2023) ("the time period for filing a motion to expunge is extended and the information sealed in this proceeding shall remain under seal, and the record preserved, until any and all appeals are resolved; the time period shall be extended until 60 business days after final disposition of any and all appeals").

These documents have been sealed from the public for the duration of this proceeding and were designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant to the Protective Order in this proceeding. The Board has already recognized the confidentiality of Papers 14, 17, 21, 30, 37, 44, 49, 54, and 64 and Exhibits 1029, 1030, and 2018 by either granting the parties' unopposed or

joint motions to seal the confidential versions of these documents or permitting the documents to be filed under seal, as summarized above. Because the Board has presumably already determined that there is good cause to maintain the confidential versions of these documents under seal, the Board should maintain the confidential versions of Papers 14, 17, 21, 30, 37, 44, 49, 54, and 64 and Exhibits 1029, 1030, and 2018 under seal and extend Petitioners' deadline to move to expunge such documents from the record until 60 business days following final disposition of Patent Owner's appeal.

III. Conclusion

For the reasons set forth above, Petitioners respectfully request that the Motion to Extend Petitioners' Deadline to File a Motion to Expunge and to Maintain Confidential Information Under Seal be granted.

Dated: September 16, 2024

Respectfully submitted,

COOLEY LLP

ATTN: Patent Group
1299 Pennsylvania Avenue NW
Suite 700
Washington, DC 20004
Tel: (650) 843-5001
Fax: (650) 849-7400

By: / Heidi L. Keefe /
Heidi L. Keefe
Reg. No. 40,673
Counsel for Petitioners

CERTIFICATE OF SERVICE

I hereby certify, pursuant to 37 C.F.R. Section 42.6, that a complete copy of the attached **PETITIONERS' UNOPPOSED MOTION TO EXTEND PETITIONERS' DEADLINE TO FILE A MOTION TO EXPUNGE AND TO MAINTAIN CONFIDENTIAL INFORMATION UNDER SEAL** is being served on this 16th day of September, 2024, via electronic mail upon counsel of record for the Patent Owner as follows:

Raja N. Saliba (Reg. No. 43,078)
Chidambaram S. Iyer (Reg. No. 43,355)
Michael R. Dzwonczyk (Reg. No. 36,787)
L. Roman Rachuba (Reg. No. 75,180)
SUGHRUE MION, PLLC

2000 Pennsylvania Ave NW
Suite 900
Washington, DC 20006
Tel: (202) 293-7060
Fax: (202) 293-7860

Emails: rsaliba@sughrue.com
 topia@sughrue.com
 mdzwonczyk@sughrue.com
 lrachuba@sughrue.com

DATED: September 16, 2024

/ Heidi L. Keefe /
Heidi L. Keefe
Reg. No. 40,673

COOLEY LLP
ATTN: Patent Docketing
1299 Pennsylvania Ave. NW,
Suite 700
Washington, D.C. 20004
Tel: (650) 843-5001
Fax: (650) 849-7400