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. IPR2023-00433
U.S. Patent No. 10,067,942

JOINT MOTION TO SEAL

I. Introduction

Pursuant to 37 C.F.R. § 42.54, the Board's scheduling order (Paper 18 at 3), the protective order governing this proceeding (Paper 9), and the Board's Order Denying Motion to Amend Protective Order dated April 11, 2024 (Paper 54 at 10) ("Decision"), the undersigned parties move to maintain under seal certain portions appearing on page 4 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 extend 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 10). 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 (PTAB 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) 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.
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> * * *
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> 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 Research, Ltd., IPR2017-01053, Paper 27, 4 (PTAB Jan. 19, 2018) (informative) (citing to 37 C.F.R. § 42.54(a)).

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

The redacted content on page 4 of the Decision are portions of confidential materials that have been previously filed and maintained under seal in this proceeding relating to confidential joint-defense and attorney-client relationships. Hence the Petitioners respectfully request to seal this content. The confidential information has been maintained in confidentiality by all parties. The content has no relevance to these proceedings or the public's interest in these proceedings. The 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 4 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: April 25, 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: *<u>/ Heidi L. Keefe /</u>*
Heidi L. Keefe
Reg. No. 40,673
Counsel for Petitioners

By: *<u>/ L. Roman Rachuba /</u>*
L. Roman Rachuba
Reg. No. 75,180
Counsel for Patent Owner

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 25th day of April, 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
Emails: rsaliba@sughrue.com
topia@sughrue.com
mdzwonczyk@sughrue.com
lrachuba@sughrue.com

DATED: April 25, 2024

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