

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TOPIA TECHNOLOGY, INC.,)
)
Plaintiff,) C.A. No. 21-1821-CJB
)
v.)
)
EGNYTE, INC.,)
)
Defendant.)

Monday, March 6, 2023
10:00 a.m.

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE CHRISTOPHER J. BURKE
United States District Court Judge

APPEARANCES:

RICHARDS, LAYTON & FINGER, P.A.
BY: GRIFFIN SCHOENBAUM, ESQ.

-and-

SUGHRUE MION, PLLC
BY: L. ROMAN RACHUBA, ESQ.
BY: RAJA N. SALIBA, ESQ.
BY: J. WARREN LYTTLE, JR., ESQ.

Counsel for the Plaintiff

1 APPEARANCES CONTINUED:

2 FISHER BROYLES, LLP

3 BY: CARL D. NEFF, ESQ.

4 BY: RYAN BEARD, ESQ.

5 BY: CHRISTOPHER R. KINKADE, ESQ.

6 Counsel for the Defendant

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1 THE COURT: Good morning,
2 everyone. It's Judge Burke here. And I know we
3 have our court reporter with us and we thank our
4 court reporter for their service and I know we
5 have the parties with us as well. So why don't
6 we go on the record and let me just then say a
7 few things for the record, which is that we're
8 here this morning by way of video conference in
9 the matter of Topia technology, Inc., versus
10 Egnyte, Inc. It's civil action number
11 21-1821-CJB here in our court. And we're here
12 today for argument on the motion to stay filed
13 by the defendant in this case.

14 Before we go further, let's have
15 counsel for each side identify themselves for
16 the record. We'll start first with counsel for
17 the plaintiff's side and we'll begin there with
18 Delaware counsel.

19 MR. SCHOENBAUM: Good morning,
20 Your Honor. Griffing Schoenbaum from Richards,
21 Layton & Finger for plaintiff Topia Technology.
22 I'd like to introduce my co-counsel from Sughrue
23 Mion, Raja Saliba and Roman Rachuba. And as
24 indicated to the Court, Mr. Rachuba will be

1 presenting for Topia today.

2 THE COURT: Okay. Very good.

3 Thank you. And let's do the same for counsel on
4 defendant's side --

5 MR. LYTLE: Excuse me, Your Honor.
6 Jay Lytle for Topia Technology. I'm here with
7 Mr. Rachuba.

8 THE COURT: Okay. Thank you, Mr.
9 Lytle.

10 All right. Let's do the same for
11 counsel on defendant's side. Again we'll begin
12 with Delaware counsel.

13 MR. NEFF: Yes. Good morning,
14 Your Honor. Carl Neff of the law firm of
15 FisherBroyles on behalf of defendant Egnyte,
16 Inc. With me on the video call are my partners,
17 Ryan Beard and Chris Kinkade also of the law
18 firm of FisherBroyles and who each have been
19 admitted pro hac vice. Mr. Kinkade will be
20 taking the lead for Egnyte.

21 THE COURT: Okay. Very good.
22 Since it's defendant's motion, let me turn first
23 to their counsel. Mr. Kinkade, I'll give you
24 the chance to make some brief argument and I'll

1 jump in with a couple questions and after we're
2 finished, we'll turn to your colleague on the
3 other side, okay?

4 MR. KINKADE: Thank you, Your
5 Honor. Good morning to the Court and counsel.
6 May it please the Court. Egnyte respectfully
7 requests that the Court stay this proceeding
8 except for the pending and fully briefed 101
9 motions under rule 12(c) pending the completion
10 of the IPRs that have been filed by Unified
11 Patents and the Box and Dropbox defendants in
12 co-pending litigation.

13 Your Honor, now is the most
14 logical time for the Court to stay the case.
15 We're before all the major discovery events in
16 the case. We're just prior to the start of
17 claim construction briefing, with that to
18 commence later this month and a hearing in about
19 three month's time. We're before expert
20 discovery and the most significant discovery and
21 claim construction events are on the horizon.
22 And this court and others have routinely
23 recognized that stay should be implemented when
24 the most significant events are yet to come.

1 For example, the Ioengine case made that quite
2 clear.

3 THE COURT: Mr. Kinkade, let me
4 jump in and ask exactly where we stand in
5 discovery date-wise. Seems like we're fairly
6 far along. I know -- I think I read something
7 in the briefs that deposition discovery has not
8 really started in earnest, but exactly where do
9 we stand at least with document discovery? How
10 close are we to the end of that phase?

11 MR. KINKADE: You're correct, Your
12 Honor. We have not started any depositions.
13 Written discovery has been served. Documents
14 are being produced. Document production will be
15 substantially complete in the near future. But
16 that's really not the measure of significance
17 here. You know, if we had put a number on it,
18 I'd say only about 20 percent of the actual
19 discovery substance is done. You know,
20 documents will be produced in any event, but we
21 haven't got to any fact witnesses, any expert
22 witnesses. When, in fact, in the Unified
23 Patents IPR there's already substantive
24 arguments now being made by plaintiff. Just

1 within the last two weeks they've submitted some
2 substantive arguments to the PTAB. So there's
3 going to be more substantive developments coming
4 out of that that we will need to address both in
5 claim construction and fact and expert discovery
6 in this case. So I would submit that even
7 though we have gone forward with document
8 discovery, the most actual substantive
9 significance is still yet to come. And, you
10 know, Topia does take some issue with that, both
11 saying that we filed too soon and too late. Too
12 soon because the Box/Dropbox IPRs have not been
13 instituted yet and too late because Unified
14 Patents filed their IPR back in April of last
15 year. I would submit that we filed at exactly
16 the right time. As the Court's aware, we had
17 moved under rule 12(c) that all the asserted
18 patents are invalid under 101. Your Honor
19 initially held two of them invalid and ordered
20 supplemental briefing and that was in December
21 of last year. And that was only a few weeks
22 after the Unified Patents IPR was instituted, so
23 it was logical for us to await the Court's
24 hearing on that, since it was fully briefed,

1 await the Court's decision and await Topia's
2 motion for leave to amend which was filed in
3 January.

4 THE COURT: Mr. Kinkade, is there
5 anything you want to say -- obviously one of the
6 issues that's come up in terms of simplification
7 is the fact that your client itself is pursuing
8 these IPRs that you're asking me to stay the
9 case in favor of, so that has some potential
10 implications in terms of estoppel. Anything you
11 want to say about why it is that Egnyte didn't
12 file a petition for IPR on its own?

13 MR. KINKADE: Well, yeah.
14 Obviously without going into all of our legal
15 strategies, Your Honor, we felt strongly about
16 our 101 arguments. We were aware, of course, of
17 the Unified Patents IPR, but we made, based on a
18 value proposition in our case, the decision not
19 to pursue the IPRs directly. We weren't
20 involved in the preparation of the IPRs by the
21 Box and Dropbox defendants in the other case.
22 So we don't think it's right that Egnyte should
23 have to agree or be bound by any estoppel
24 provisions, because as the the Court knows,

1 estoppel is very broad in the IPR context and we
2 didn't have any opportunity to even consider
3 what references would be asserted in those IPRs.

4 THE COURT: And I typically have
5 not -- in fact, I don't know that I've ever kind
6 of, you know, issued one of those orders that
7 says, well, you could have a stay so long as you
8 agree to be bound by X or Y. You know, I tend
9 to agree it's certainly you and your client's
10 choice about how to litigate the case and that
11 you control. I guess there was some suggestion,
12 I thought in the briefing, that maybe there's
13 some coordination between counsel for Egnyte and
14 counsel for at least one of the two third-party
15 IPR petitioners. Am I wrong about that? Is
16 there some overlap or am I messing that up?

17 MR. KINKADE: Your Honor, there is
18 a joint defense group that's been formed by the
19 defendants in some of the co-pending
20 litigations, but that is related to issues in
21 the litigations. And so while we've exchanged
22 some materials related to our common defenses,
23 like non-infringement, invalidity, we did not
24 participate in any of their meetings related to

1 the IPR process. I think the other alleged
2 coordination that plaintiff has raised is that
3 counsel who argued the 101 motions for EgnYTE at
4 Cooley is also representing the Box/Dropbox
5 defendants in the IPRs that they filed. I can
6 disclose to the Court that EgnYTE has a long
7 history with Cooley. Cooley has been EgnYTE's
8 long-time corporate counsel, so there's already
9 existing engagements there. Obviously Cooley's
10 representing another defendant in our joint
11 defense group. And Ms. O'Keefe, I believe, has
12 extensive experience before Your Honor, before
13 this court in similar issues, so that's why the
14 decision was made to have her argue the 101
15 motions. It was not related to any coordination
16 with respect to the IPRs.

17 THE COURT: I mean, just on that
18 point, I think -- because I think earlier what
19 you said as EgnYTE, we don't have any say or
20 control over what Box or Dropbox puts forward or
21 doesn't put forward in the IPRs. And from what
22 you're saying, that's literally the case.
23 Obviously EgnYTE itself can't tell Box or
24 Dropbox, hey, you know, I want you to make this

1 argument or, you know, don't press these
2 arguments about these prior publications or
3 whatever. But I guess the other side is saying
4 well, that's true, but counsel for Egnyte in
5 this case is the counsel in the IPRs for Box and
6 Dropbox who is helping these entities make their
7 decisions about what part to put forward and
8 what part not to and why. So that's technically
9 true that Egnyte can't make the decisions, but
10 it's about as close as you can get in terms of
11 coordinating and understanding, et cetera, as
12 you might. Anything wrong with looking at it
13 that way?

14 MR. KINKADE: I hear what Your
15 Honor is saying and I don't disagree that
16 counsel is overlapping. But the fact that we
17 haven't actually contributed to any of the
18 expenses, any of the briefing, any of the claim
19 charting in the IPR process and that Ms.
20 O'Keefe's representation was solely for purposes
21 of the 101 hearing, which the IPRs were not a
22 part of, they had not yet been filed. So I
23 think the two events on the timeline can
24 certainly be separated as well. And that also

1 feeds back into the timeline I was discussing on
2 the timeliness of our request, which of course
3 was within about three weeks of the Box/Dropbox
4 IPRs being filed. Some of those took several
5 weeks, I think even by the end of January a
6 few -- two of the IPRs had not yet been publicly
7 docketed, so that was part of the delay on our
8 part. We had heard they had been filed, but we
9 were waiting for them to be docketed at the PTAB
10 while we had briefed out motion. And I think it
11 was even the Princeton Digital case that we
12 cited to the Court where only one of several
13 defendants had filed IPRs and the Court still
14 stayed the litigations against all the
15 defendants based on the IPRs that had been
16 filed.

17 THE COURT: Though Princeton
18 Digital is the only case in which I've stayed a
19 case prior to the institution decision on the
20 IPRs at issue and that case was, as you can see,
21 almost 10 years old, at a time when the PTAB was
22 instituting on something like over 90 percent of
23 all petitions.

24 That said, and just in terms of

1 simplification, couple questions there. The
2 other side says that if ultimately what the PTAB
3 does is institute on some of the Box and Dropbox
4 art, you know, maybe that might be relevant to
5 some of the patents that it's attempting to put
6 in IPR, but doesn't institute on other patents,
7 that that won't have much of a material impact
8 on discovery in this case because there's going
9 to be great overlap between the discovery, at
10 least the five patents other than the '942, that
11 are being sought to have been the PTAB take up
12 an IPR. What's your response to that?

13 MR. KINKADE: Yes, Your Honor.
14 And that's why I believe that the existence of
15 document discovery to date is not a significant
16 factor, because I agree that if some of the
17 patents are not instituted against or if some of
18 the patents survive, of course we already have
19 the one institution. So unlike Princeton
20 Digital, there actually is one institution now
21 with Unified Patents, makes it likely the PTAB's
22 probably going to institute more. But if not
23 all the patents are instituted, I would agree
24 that most of the document discovery is going to

1 be substantially the same. But it's when we get
2 into the witness testimony, the inventor
3 testimony on issues of claim construction,
4 infringement, validity, experts, that's where a
5 lot of what Topia does during the IPR process is
6 going to be critical for us. We don't want a
7 situation where we come back to the Court and
8 need a second claim construction hearing. We
9 don't want to go through with the first claim
10 construction hearing on terms that maybe we
11 don't need construction anymore after we see the
12 positions they take or maybe those claim terms
13 change during amendments during the IPR process.
14 And plaintiff has pointed out that Egnyte may be
15 the only party who's affirmatively requesting
16 claim construction here. So it certainly could
17 be an efficiency that's gained if something
18 changes in the IPR process and we no longer need
19 certain claim construction or there might be
20 other terms we need.

21 I would also briefly reference the
22 prejudice factor. There's no prejudice to Topia
23 here. We're not competitors in the space. They
24 didn't seek a preliminary injunction here, which

1 the Softview and Virtual Agility courts
2 recognized as being very indicative of a lack of
3 prejudice from a brief stay. And we're here
4 talking about maybe a four- or five-month delay
5 in ultimate resolution of the case when Topia
6 delayed at least two years, two and a half years
7 in filing suit after they sent Egnyte an
8 original cease and desist letter in June of 2019
9 and then didn't file suit until December of
10 2021. Risking another four- or five-month delay
11 when monetary damages is the only real remedy
12 being sought here would not be significant. If
13 it's all for nought, then they'll be covered by
14 interest. And I think it was the '454
15 LifeSciences case which Topia cited to in their
16 papers as well as Ioengine that explicitly
17 referenced that delay alone is not sufficient to
18 find prejudice.

19 And then also bouncing back to
20 Your Honor's previous question or statement
21 about Princeton Digital being one of the few
22 cases pre institution where you granted a stay,
23 I would also point out that many of the cases,
24 if not all, that were cited by Topia, such as

1 Universal Secure, Invensys Corp case and I think
2 there was another one, Advanced Microscopy, the
3 Court specifically noted in those cases that the
4 petition would be acted on by the PTAB prior to
5 any of the significant events, so either prior
6 to the claim construction briefing commencing,
7 prior to depositions. So in there it was kind
8 of safe to delay the decision because those
9 events would still come after the institution
10 decision. And so those were all denied without
11 prejudice of course pending the institution
12 decision. Here, you know, the most efficiency
13 will be gained now before we spend the next
14 three to four months doing heavy claim
15 construction and depositions.

16 THE COURT: Do you recall when
17 Egnyte -- had Egnyte sought to file for IPR,
18 when your one-year deadline would have been? Am
19 I right it would have been like sometime in
20 December of 2022?

21 MR. KINKADE: Yeah. It would have
22 been December because this case was filed
23 towards the end of December 2021.

24 THE COURT: Obviously I think part

1 of the argument just then was look, the way
2 things are going to go in the next four or five
3 or six months here, there's going to be
4 significant work, you know, work for the Court
5 with regard to markman, work for the parties.
6 We're not going to hear from the PTAB on
7 institution with regard to the Box and Dropbox
8 IPRs until after that happens, sometime in the
9 summer. So the other side might push back and
10 say well, you know, that's because the defendant
11 here is kind of trying to free ride off of those
12 other parties' IPR petitions. Maybe the
13 defendant here should have gone to the PTAB if
14 they wanted to seek, you know, the benefits of
15 simplification. So that made me think, well,
16 what would the outcome have been if Egnyte had
17 went to the PTAB and would it effect the timing
18 at all. I guess, I suppose you could have
19 waited until December, that you could have filed
20 earlier. Couldn't you have -- had you gone to
21 the PTAB yourselves, might we have been able to
22 avoid getting too close to markman here, putting
23 you in a better spot to argue for efficiency?

24 MR. KINKADE: Your Honor, yes.

1 And a lot of courts have of course recognized
2 that waiting until even right up to that one
3 year deadline is not unreasonable delay in
4 filing. Had we done that, hypothetically, we
5 only would have been a couple of weeks earlier
6 than the Box/Dropbox IPRs. We're talking three
7 to four weeks. Over the holidays and of course
8 and after having just come out of Your Honor's
9 101 hearing which we wanted to hear the result
10 of first too. So obviously it was a little bit
11 of, you know, decision making on our part and
12 with our client directly without regard to what
13 the other parties are doing had made the
14 decision, well, we've already got the oldest
15 patent in the case subject to the Unified
16 Patents IPR, which would be the most significant
17 event for past damages here and then we're
18 challenging the rest of them under 101, so we
19 made the strategic decision to just follow
20 through with those courses of action. But then
21 once the other defendants filed their IPRs,
22 subsequent to our statutory deadline, so it was
23 no longer an option for us, it just made it seem
24 that it was most efficient that we should wait

1 in a money damages case until all the IPRs are
2 acted upon.

3 THE COURT: I guess two other
4 questions and one relates to that which is, you
5 know, there's a way to look at this as, look,
6 understandably Egnyte kind of made a choice. It
7 knew there were other third parties that might
8 well be filing IPRs. There could certainly be
9 some benefit to it were those IPRs to work out
10 in a certain way, because they involved the same
11 patents, but Egnyte kind of made its choice.
12 Its choice was the best way for it to go, the
13 most efficient way was to press an early 101
14 motion in our court to see if it could either
15 eliminate the case or narrow it. That's where
16 it put its resources and where you asked the
17 Court to put its resources. And the Court did.
18 We had that hearing and at least as of now,
19 status quo, Egnyte cut the case by a third, you
20 know, which will stay the case and which will
21 continue to be the case unless the other side is
22 successful with their motion to amend. So,
23 okay. Like Egnyte made its choice. Didn't work
24 out entirely the way they had hoped, but it

1 worked out partially the way it hoped, so it's
2 got to live with that choice in a sense. You
3 know, otherwise I think the plaintiff might say,
4 Egnyte is trying to have it both ways. Made its
5 own choice about what to pursue and how that
6 might work. And now having not been entirely
7 successful at stay in this case through that
8 path, it's going to option number two trying to
9 rely on third parties in a way that it doesn't
10 want to agree to estoppel, so not going to
11 generate potentially enough efficiency with that
12 path number two. How come that line of
13 thinking, that kind of Egnyte, you know, put its
14 eggs in one basket and should have to live with
15 that basket?

16 MR. KINKADE: I would answer in
17 two parts, Your Honor. First, it's just in
18 general a changed circumstance that I think
19 benefits all the parties. I know plaintiffs
20 always want to press forward with their case, so
21 that alone shouldn't count as prejudice when the
22 plaintiffs, the Court and the defendant can
23 otherwise conserve resources, because the
24 general circumstances of the case have changed

1 as if something had happened to a witness, you
2 know, being hospitalized that causes delay or
3 some other event that might cause the parties to
4 reconfigure their litigation positions. And
5 then secondly -- sorry, I've talked myself out
6 of my second thought, but --

7 THE COURT: I talked too long with
8 my question, Mr. Kinkade. Probably had both
9 thoughts right in your head and then the judge
10 kept talking, one minute questions, probably
11 made you lose it. If it comes back, let me
12 know.

13 MR. KINKADE: Thank you, Your
14 Honor.

15 THE COURT: I have one other
16 question for you related to simplification and
17 the estoppel issue. The other side said
18 something to the affect of the following, which
19 is, look, there are a certain number of
20 references that are at issue in the Box and
21 Dropbox petitions, but if you factor them out,
22 it still leaves, I think they cited like 29
23 different references that Egnyte is pressing in
24 their invalidity contentions in this case that

1 aren't going to be touched by the PTAB. Now, in
2 response I think you said something like, look,
3 we have a big chunk of our invalidity case that
4 couldn't be at issue in the PTAB, you know, non
5 prior publication art and rule 112 defenses, et
6 cetera. But if we just focus on 102, 103 prior
7 publication art, is it right to say that, you
8 know, you all have put roughly 32 references at
9 issue in this case and 29 of them, roughly,
10 aren't going to be discussed by the PTAB in the
11 Box and Dropbox petitions?

12 MR. KINKADE: Yes, Your Honor.
13 And thank you also for getting me back to my
14 other response, which was that the non printed
15 publication prior art that we're going to rely
16 on, which could not be subject to the IPR
17 anyway, so that's kind of outside the purviews
18 of any estoppel discussion. And we believe it
19 will play a significant role here. As to the
20 other prior art references, I would agree
21 there's only four or five references between the
22 primary and secondary references being addressed
23 in the Box and Dropbox IPRs. But again, what
24 the PTAB does with those references, what Topia

1 does to distinguish itself, amend its claims
2 around those references could be very relevant
3 to the remaining prior art that we plan to
4 assert. And half of those may no longer be
5 relevant. There may be new prior art references
6 we now need to find because of narrowing
7 amendments that are made during the IPR process.
8 So it's a little bit too speculative now to know
9 what exactly we'll ultimately be relying on at
10 trial.

11 THE COURT: All right. Thank you.
12 Anything further before I turn to your
13 colleagues on the other side?

14 MR. KINKADE: No. Thank you, Your
15 Honor.

16 THE COURT: All right. Let me do
17 that. And Mr. Rachuba, you're going to be
18 taking this for the plaintiff's side?

19 MR. RACHUBA: Yes, I am, Your
20 Honor.

21 THE COURT: All right. Let me let
22 you begin and again I'll jump in with some
23 questions before we're finished.

24 MR. RACHUBA: Thank you, Your

1 Honor. It's Topia's position that Egnyte's
2 motion to stay should be denied for three
3 primary reasons. First, the motion is
4 premature. There's no indication that any of
5 the most recent Box/Dropbox IPRs would be
6 instituted or that any of the IPRs, including
7 the Unified IPRs, would result in any
8 cancellation of any claims. Second, Topia would
9 be prejudiced by a stay because of Egnyte's
10 refusal to be estopped in any way and the way in
11 this litigation that results in a stay. And
12 third, a stay would not substantially simplify
13 any of the issues in this litigation which has
14 already progressed to a meaningful degree. And
15 additionally, the six most recent Box and
16 Dropbox IPRs would not receive a final written
17 decision until after trial in this case.

18 Now, with respect to Egnyte's
19 motion being premature, the Box and Dropbox IPRs
20 have not been instituted and there will be no
21 institution decision until middle of August this
22 year actually. But despite that, there's no
23 evidence that those IPRs will even be
24 instituted. So with respect to the Unified IPR

1 on the '942 Patent, that IPR has absolutely no
2 bearing whatsoever on five of the six Box and
3 Dropbox IPRs, excluding the common '942 IPR.

4 THE COURT: And the '942, that is
5 at least currently not moving forward in this
6 case pending the decision on the motion to
7 amend, right? So in some ways if you look at it
8 a certain way, right now this case is a
9 four-patent case, not a six-patent case and the
10 '942, which is the one patent that's at issue in
11 the IPRs, is one of those two patents that is
12 not currently moving forward in that court.
13 Have I gotten that right?

14 MR. RACHUBA: That's correct, Your
15 Honor, subject to our motion to amend.

16 THE COURT: Sure. Understood.

17 MR. RACHUBA: Now, with respect to
18 the patents being distinct, each of the six
19 patents at issue are different. It's black
20 letter law that the patent claims, not the
21 specification, define the invention and each set
22 of claims is what is examined in the IPR, not
23 the patents themselves, not the overall patents,
24 but the specification. Indeed, as you just

1 mentioned, this Court has found that four of the
2 six patents are distinct from the two patents
3 that were presently held invalid under 101.

4 So in sum, even if Unified's IPR
5 provided some evidence of institution that one
6 of the Box/Dropbox IPRs would be instituted, the
7 '942 Patent, there's zero evidence that that
8 institution is relevant to the remaining five.

9 THE COURT: Mr. Rachuba, though,
10 aren't you in some ways trying to have it both
11 ways there? Weren't you trying to convince me
12 in another context about how related all these
13 patents are? In other words, you were noting to
14 me that even if the PTAB instituted on some of
15 the petitions but not all, that Box and Dropbox
16 had put forward, the patents are still related,
17 they share a common spec across all or at least
18 similar language such that, you know, document
19 discovery is not going to be much different
20 between them. And so if like two of the four
21 remaining patents going forward in our case were
22 instituted on and two weren't, your point there
23 was the patents are so related that we're going
24 to have the same discovery anyway, which you and

1 Mr. Kinkade, I think, agreed with. Now you're
2 emphasizing the differences between those
3 patents in terms of your claims. Isn't that
4 trying to have it both ways?

5 MR. RACHUBA: Your Honor, the
6 point is a little more nuanced than that. So
7 with respect to IPR institutions, it's based on
8 the patent claims, which are not -- which are
9 separate and distinct and not similar. Now, the
10 specifications of the patents we agree are
11 similar. And the specifications, which will be
12 used to more guide discovery, because they're
13 broader than the individual patent claims. And
14 because the general disclosure -- general
15 specification disclosure is similar and because
16 the inventors are all the same across all the
17 patents, discovery will be not significantly
18 reduced based on elimination of a certain patent
19 or certain patent claims.

20 THE COURT: I don't know, right,
21 Mr. Kinkade was focusing on how discovery might
22 well be different once we got past document
23 discovery, presumably because, tell me if I'm
24 wrong, you know, when we get to deposition

1 discovery, at some point someone is going to be
2 asking some questions that relate to certain
3 differences between the claims. I mean, the
4 claims weren't -- if the claims weren't
5 different, we wouldn't have different patents.
6 So the scope is different. Wouldn't deposition
7 discovery at least be likely to add some
8 expected difference in terms of what's pressed
9 or pursued with regard to the patents in suit
10 and/or with regard to an invalidity case as to
11 their scope?

12 MR. RACHUBA: Your Honor, I do not
13 believe so, because the inventors for all six
14 patents are the same, so it's not like we have a
15 case where Egnyte would question one inventor of
16 one patent and another inventor of another
17 patent about the differences between the
18 patents. You would take a deposition of the
19 inventors --

20 THE COURT: Sure, you have to
21 depose the same people, but in terms of the
22 scope of what's covered, I mean, I don't see how
23 it makes sense to say that deposition discovery
24 would be essentially no different if this were a

1 six-patent case versus a two-patent case or a
2 one-patent case or a three-patent case. I mean,
3 at some point the differences in patents and the
4 scope of the claims have to have some impact,
5 don't they, on the scope of discovery?

6 MR. RACHUBA: Sure. Sure. We
7 don't deny that. But as I mentioned earlier,
8 you know, whether or not the specific scope of
9 the deposition testimony will be reduced I think
10 is less of an issue than the fact that the
11 actual deponents themselves will be the same.

12 THE COURT: I guess your point is
13 that, you know, of course there will be some
14 difference, but to a significant degree a pretty
15 darn decent degree there would be a fair amount
16 of overlap amongst these patents and so if some
17 are instituted on and some are not, maybe not as
18 big efficiency gain as you see in other cases
19 where you have very different patents, very
20 different specs and very different kind of prior
21 art.

22 MR. RACHUBA: Exactly, Your Honor.

23 THE COURT: Let me let you
24 continue.

1 MR. RACHUBA: Okay. So -- thank
2 you. As I was mentioning, the institution of
3 the Unified IPR on the '942 Patent has no
4 bearing on five of six IPRs because the claims
5 are different. But in addition to the claims
6 being different, the Unified IPR relies on
7 completely different prior art than the IPR
8 petitions that Box and Dropbox rely on. Unified
9 relies on four references, Strong, Prezac,
10 Comedi and Elvin, while Box and Dropbox rely on
11 Chigarzan, Chapel, Raul, Brown and Hessalic. So
12 because they rely on different prior art and
13 because the claims are different, the Unified
14 IPR does not provide any insight of whether the
15 Box and Dropbox IPRs will be instituted. In
16 fact, it actually shows that the Box and Dropbox
17 petitioners have a low confidence in the prior
18 art that was cited by Unified, otherwise they
19 would have used the same prior art.

20 And relatedly, Egnyte's reliance
21 on the institution statistics and claim
22 cancellations in the PTAB are not dispositive
23 and not particularly helpful. So for example,
24 Egnyte cites to the fact that in the fiscal year

1 2022 the PTAB instituted IPRs on a 67% basis.
2 This is an outlier year. In the fiscal year
3 '21, institution was on a 59% basis and 2020 was
4 a 56% basis. These past results are not
5 indicative of future institution rates.

6 THE COURT: Mr. Rachuba, as you've
7 noted, the last few years we were getting to a
8 closer to a 50/50 kind of split in terms of
9 institution rates. I think the stats you're
10 citing are by petition as opposed to by patent,
11 slightly better for the movant on a by patent
12 basis. But we were getting closer to a 50/50
13 percent split and now we went up in the 60s in
14 2022. Any view about why that may be happening,
15 why it's truly an outlier as opposed to a trend?

16 MR. RACHUBA: I don't have any
17 specific insights on the ongoings in the PTAB.
18 Also I don't necessarily have the statistical
19 analysis prowess to understand or give any
20 insight as to whether that's an actual trend or
21 whether it's just an individual data point.

22 THE COURT: If either one of us
23 did truly know, we could make a lot of money.

24 MR. RACHUBA: You're probably

1 right, Your Honor.

2 THE COURT: All right. Let me let
3 you continue.

4 MR. RACHUBA: Okay. My overall
5 point was that institution is highly fact
6 dependent on specific patent claims and
7 specifically applied and cited prior art. So I
8 don't think these broad statistics are very
9 helpful when we have a highly dependent fact set
10 before us now.

11 I also wanted to bring Your
12 Honor's attention to a court case, Invensys Corp
13 v Samsung Electronics, 2018 Delaware case, about
14 statistical analysis for PTAB institution and
15 I'll briefly read a quote from that case. The
16 more that a statistical likelihood of a PTAB
17 instituting review on any petition seems less
18 like a near certainty and more like a fair
19 probability, the less reasonable it seems to
20 stop a district court proceeding after it has
21 started.

22 THE COURT: That sounds like
23 something I wrote.

24 MR. RACHUBA: I believe it was,

1 Your Honor, but I do not have -- I do not have
2 that information.

3 THE COURT: I guess, Mr. Rachuba,
4 to go back to simplification, though, am I
5 right, you have said that roughly when it comes
6 to the prior publication art that it's at play
7 with regard to defendant's invalidity
8 contentions in this case, as you compare that to
9 the prior publication art that has been put
10 forward in the Box and Dropbox IPR petitions, I
11 think you said something like, if I'm
12 remembering right, it was, you know, there may
13 be some few pieces of art that overlap, but then
14 there's largely like in the high 20's in terms
15 of references that don't. I think Mr. Kinkade
16 roughly agreed, but am I getting the statistics
17 right in terms of what you were trying to put
18 forward?

19 MR. RACHUBA: Yes, Your Honor. I
20 don't know the exact number of references that
21 overlapped in Egnyte's invalidity contentions.
22 I do know that it's in the 30's. I'm not sure
23 which ones specifically overlap with Unified,
24 Box and Dropbox, but obviously given the number

1 of references that they cited, regardless if
2 there's even pure overlap, there will be
3 remaining references.

4 THE COURT: I guess in terms of
5 simplification then and also this may relate to
6 status of the case factor too, you know, Mr.
7 Kinkade makes a good point, which is this is a
8 fairly large case you brought. Patentee gets to
9 choose what kind of a case to bring and, as many
10 do, it put six patents at issue and so with that
11 comes complexity and demands on the Court and
12 the accused infringer and the plaintiff. And,
13 you know, kind of the larger the case, the more
14 sprawling, the more understandable it is for the
15 Court to start to look for ways to try to
16 streamline and avoid work. Now, one way we
17 attempted that is we did an early 101 motion at
18 the pleading stage, which the defendants sought,
19 which for now has narrowed the case, but
20 certainly a good chunk of it still remains. Mr.
21 Kinkade notes that in the next six months or
22 five months until we're likely to hear from the
23 PTAB in the Box and Dropbox petitions there will
24 be quite a lot of work including a lot of work

1 for the Court at the claim construction stage.
2 And if I'm thinking about and trying to maximize
3 the Court's resources, shouldn't that start to
4 come into my mind in terms of how to manage this
5 case and whether some kind of a stay is
6 appropriate?

7 MR. RACHUBA: Two points in
8 response to that, Your Honor. With respect to
9 the claim construction issue, none of the
10 parties in the IPR are even requesting a
11 construction for any term. So we do not see how
12 claim construction in this case would be
13 impacted or simplified, rather.

14 THE COURT: I guess, you know,
15 maybe there the defendants really are talking
16 about simplification from the prospect of an
17 invalidity decision as to a patent. So for
18 example, I don't know if you know this, but in
19 terms of what's contemplated to be construed
20 right now for our markman hearing, I got to
21 believe it's the case that, you know, were
22 certain patents to go away, the number of terms
23 at issue, I don't know if it's seven, I may be
24 mixing this up with another case, but whether

1 it's seven terms or something like that, some of
2 those terms likely fall away, don't they, if
3 some of those patents look like they'll fall
4 away at the PTAB?

5 MR. RACHUBA: Your Honor, there's
6 a lot of overlap with the terms, so I'm not
7 specifically sure which patents, which
8 combination of patents would need to be
9 completely invalidated in order to remove a
10 disputed term.

11 THE COURT: So it may not be as
12 simple as oh, we've got seven terms and if the,
13 you know, the '561 Patent or, you know, whatever
14 it is, you know, ends up going into IPR and
15 maybe getting invalidated, we're going to go
16 from seven to four or something like that. May
17 not be as easy as that is what you're saying?

18 MR. RACHUBA: Exactly, Your Honor.

19 THE COURT: All right. Let me let
20 you continue.

21 MR. RACHUBA: To follow up on your
22 question and to provide a little more insight on
23 simplification, with respect to the remaining
24 references that Egnyte might have that are not

1 overlapped with Box and Dropbox and Unified
2 right now Egnyte refuses to be bound by any
3 estoppel provisions, so those same references
4 that Box/Dropbox and Unified raise in an
5 invalidity context can be raised in the same way
6 by Egnyte later on. So short of a complete and
7 total grand slam where every single claim of
8 every asserted patent is invalidated and those
9 decisions are upheld in the federal circuit, we
10 do not see a substantial simplification of
11 issues in this case.

12 THE COURT: Let's move on to talk
13 about undue prejudice. And there Mr. Kinkade
14 notes that this is not a traditional direct
15 competition kind of case. And so, you know, I
16 think the defendant's point would be well, undue
17 prejudice we win that factor if it comes down to
18 it. Can you say anything different?

19 MR. RACHUBA: Sure. I will say
20 first of all the fact that Topia and Egnyte may
21 not be in direct competition is not dispositive
22 on the prejudice factor. The delay in this
23 litigation, it's going to be inherently
24 prejudice to Topia, but more importantly on the

1 broader issue, Egnyte wants to see how Topia
2 argues validity based on two different sets of
3 prior art on multiple different grounds without
4 committing itself to any of the arguments that
5 are raised by Box or Dropbox or Unified.
6 Essentially Egnyte is attempting an end run
7 around the IPR estoppel rules and is attempting
8 to get three bites at the apple to invalidate
9 the asserted patents on ultimate prior art
10 grounds. As you mentioned earlier, Your Honor,
11 Egnyte did not file its own IPR but waited until
12 Box and Dropbox filed theirs. They could have
13 at any point up until December 27th, I believe,
14 filed their own IPR. So it appears that Egnyte
15 would rather others file IPRs so that Egnyte can
16 obtain the benefit of seeing Topia's argument
17 but not commit itself to any of the arguments
18 Topia is arguing in response to. This coupled
19 with what appears to be a high degree of
20 coordination with Box/Dropbox and Egnyte seems
21 to show that Egnyte wants to have its cake and
22 eat it too. It wants to be able to, you know,
23 preview the arguments that Topia made and craft
24 its invalidity contentions later on based on

1 those arguments, but not be bound by any of the
2 positions the other party has taken.

3 THE COURT: Understood. I think
4 it doesn't seem like you're suggesting, though,
5 you know, sometimes in the undue prejudice
6 analysis the Court asks if the movant is seeking
7 some kind of inappropriate tactical advantage by
8 way of the way it has litigated the case and the
9 way it is now pursuing this motion to stay. Are
10 you suggesting that something that defendant
11 here has done amounts to seeking an
12 inappropriate tactical advantage that in some
13 way favors you on the undue prejudice factor or
14 can you not say that here?

15 MR. RACHUBA: I can't say that
16 right now, Your Honor. I will say that there
17 may well be yet an RPI issue in the Box/Dropbox
18 IPRs that Topia reserves the right to pursue in
19 discovery in those PTAB proceedings.

20 THE COURT: Okay. All right. Mr.
21 Rachuba, anything further that I need to be
22 addressing from plaintiff's perspective with
23 regard to this motion?

24 MR. RACHUBA: One moment, Your

1 Honor. Let me just -- one other point I wanted
2 to raise, Your Honor, is the timeline of facts.
3 So at this point in time we're over a year in
4 the litigation. Substantial document production
5 is a week and a half away and trial is scheduled
6 in this case after the deadline for the final
7 written decisions in the Box and Dropbox IPRs.
8 And likewise, close of fact discovery in this
9 litigation is only a few short weeks, would only
10 be filed a few short weeks from the institution
11 decisions in the Box and Dropbox IPRs.

12 THE COURT: Okay. Fair enough.
13 All right. Mr. Rachuba, thank you. Let me turn
14 back to Mr. Kinkade and give him a chance for
15 brief rebuttal. Mr. Kinkade, one question I
16 have for you is sometimes when parties file
17 these motions to stay prior to the institution
18 decisions on all or most of the patents that are
19 in the PTAB, part of the reason the party is
20 doing so is because it understands the PTAB may
21 perhaps at some point consider defensive factors
22 in determining whether to institute on a
23 discretionary basis and is asking the court to
24 kind of give a preview of what might happen with

1 regard to a stay if the PTAB were to institute
2 on some or all patents. Is that part of the
3 impetus for your motion here at this time or not
4 necessarily?

5 MR. KINKADE: Not necessarily,
6 Your Honor. It's more because we believe that
7 this truly is the best time to institute the
8 stay. The substantive progress in the case that
9 matters, not the filing date of the case, how
10 well it is and how long its been before the
11 Court. And I think that was the Sirona Dental
12 Systems case that made that point.

13 And I've heard a lot of issues
14 here I'll briefly address. And just like
15 Topia's accusing Egnyte of having it both it
16 seems to us that Topia wants to have it both
17 ways too, to litigate this case in a vacuum
18 without regard to claim amendments, expert
19 opinions, substantive arguments they might make
20 in the IPRs and get us to trial before, before
21 the final written decision, even though they've
22 played all their substantive cards by the time
23 trial comes around in this case.

24 We've heard now for the first time

1 now I believe today that there's possibly going
2 to be a real party in interest argument being
3 made in the IPRs. We're confident that Egnyte
4 won't be found to be a real party in interest,
5 but to me that indicates that there's some
6 issues that the IPR institution decision may
7 then effect on the progress in this court. So
8 if Topia wants estoppel to apply, if they're to
9 succeed, if that's their argument that Egnyte
10 should be a real party in interest, that will
11 resolve the estoppel issue, which if that were
12 to be the case, we don't think it will be, but
13 if that were the case, then why waste time now
14 on discovery and arguments related to prior art
15 that we're going to be estopped from raising
16 later. So to me that indicates a reason to wait
17 for the PTAB.

18 THE COURT: On that point, Mr.
19 Kinkade, assuming that there isn't a successful
20 IPR argument made, I think a lot of people would
21 say, you know, both PTAB judges and the district
22 court judges, look, we understand. When the IAA
23 came into play, I think the idea was, in general
24 it's not super efficient for patents that are

1 instituted on in the PTAB to be moving forward
2 in the district court. In an ideal world you'd
3 have one of those two parties who's going to
4 take its best shot in resolving invalidity
5 issues. And I think a decent part of the
6 thinking behind that is because it will resolve
7 those issues. Again, even if -- one way or the
8 other, it will resolve them. You know, if the
9 patents get invalidated in the PTAB, they're out
10 of the district court case. Even if they don't,
11 assuming the PTAB petitioner is the same party
12 as the accused infringer in the district court,
13 you know, those arguments have been made and
14 they've been considered and they've been
15 rejected, so they're out of the case. In a
16 situation like this where you're riding on the
17 coattails of third party IPR petitions, you
18 don't even get that result. You do have
19 simplification if the claims of course are
20 invalidated, but absent that, almost nothing is
21 simplified really. And isn't that the truth
22 like if Box and Dropbox don't ultimately get
23 these various claims instituted on and
24 invalidated, there's basically no simplification

1 that would happen at the district court level
2 absent maybe the PTAB saying something helpful
3 about its view of claim scope or something like
4 that?

5 MR. KINKADE: That's one example,
6 Your Honor. I would certainly agree that if
7 none of these six Box IPRs were instituted and
8 if Your Honor maintains your original 101
9 decision such that we don't need to rely on the
10 Unified Patents IPR, well, then, there's no
11 simplification from IPRs. But short of that, I
12 think there's a substantial likelihood,
13 significant likelihood of simplification because
14 it's not just what the PTAB says, it's what
15 Topia says and it's the claim amendments. Once
16 IPR has been instituted, again, we don't want to
17 speculate too much about statistics on other
18 cases, but statistically it is likely that there
19 will be substantive amendments.

20 And Your Honor had asked counsel
21 about some claim construction issues and we do
22 also agree that there's lot of overlap between
23 the claim construction. I also don't have the
24 positions in front of me, but there's a lot of

1 overlap between the various patents. But that
2 doesn't mean that if one patent is not
3 instituted or survives that it's all the same
4 claim construction because there might still be
5 amendments made to those claims that now either
6 some of those claim terms don't need to be
7 construed or it's a different term that needs to
8 be construed or the arguments might influence
9 the claim construction position the parties
10 take.

11 There was also some questions that
12 Your Honor asked about the specifications and
13 the claim scope. And yes, the specifications
14 across the six patents are very similar.
15 They're all in the same family. And I think
16 where Your Honor is going is yes, it is the
17 claims that control. You know, there's going to
18 be commonality of witnesses no matter how many
19 patents or which patents we're talking about
20 here, but it's really the claims that matter for
21 infringement and invalidity purposes. So having
22 that definitive claim scope is what's critical
23 as we get into the real meat of discovery and
24 certainly before we get to experts.

1 And then on the relatedness
2 between the claims, just looking back at how
3 Your Honor addressed some of the 101 issues, you
4 did note that four of the six patents had some,
5 we'll call plus factors that save them under the
6 Court's 101 analysis. But we don't believe that
7 claim limitation is like metadata or graphical
8 use or interfaces which have been, you know,
9 around and don't really give novelty to these
10 claims. It might save them from 101, but
11 doesn't give them novelty, is not going to be a
12 distinguishing factor for purposes of IPR. So
13 just having those additional claims, we still
14 believe the patents will rise or fall together
15 at least at the institution phase of the
16 process.

17 In conclusion, I come back to one
18 of our central themes, which is that if the
19 Court stays this case, the worst case scenario
20 for Topia is that we're looking at a five-month
21 delay which in the grand scheme of the length it
22 takes to get to trial plus the delay Topia had
23 of multiple years in bringing suit is not
24 sufficient to create any prejudice for

1 plaintiff. Thank you, Your Honor.

2 THE COURT: Mr. Kinkade, a
3 five-month delay until we get institution
4 decisions on the, you know, the six IPR
5 petitions, but then could be much longer delay,
6 obviously you'd say probably warranted if say
7 all the petitions were granted. If some were
8 and some weren't, you'd probably still seek that
9 the stay continue and that could mean long delay
10 too. But your point being, look, at least an
11 initial matter, five, six months until we hear
12 from the PTAB on the institution, the decision
13 itself, am I right?

14 MR. KINKADE: Correct, Your Honor.
15 There would be -- of course as they're
16 instituted there would be a longer stay as they
17 proceed. What I'm referring to is the worst
18 case scenario, if the Court would stay the case
19 now and none of them are instituted, what have
20 we lost? We've lost five months.

21 THE COURT: Fair enough. Okay.
22 All right. Thank you, Mr. Kinkade. Counsel, I
23 appreciate your arguments. They're helpful both
24 in terms of this motion and also more generally

1 for the Court to be thinking about these issues,
2 motions for a stay pending institution decisions
3 in the IPR or in the PTAB, so I appreciate
4 counsel's arguments in these regards. And I
5 mean, I have, you know, carefully reviewed the
6 papers and so in light of that and in light of
7 the arguments here today and knowing that the
8 parties need a decision so they can just know
9 whether they're moving forward or not, I'm going
10 to go ahead and provide a decision on the motion
11 today orally on our video conference and so
12 because I'm doing so, the transcript of today's
13 video conference will serve as the substance of
14 the Court's decision absent some further order
15 of the court.

16 And so, after having considered
17 the parties' arguments and the three stay
18 related factors, I'm going to deny the motion to
19 stay without prejudice to renew, largely for the
20 reasons that plaintiff asserts in its answering
21 brief and has asserted today during our video
22 conference.

23 Even if I consider the '942 and
24 the '561 patents to be out of the case for now

1 in light of the Court's prior ruling on the
2 section 101 related motion to dismiss and the
3 pendency of plaintiff's motion to amend as to
4 those patents, this would still be a four-patent
5 case that should be moving forward on our docket
6 under these circumstances.

7 The cases cited on page 2 of the
8 plaintiff's answering brief do a pretty good job
9 of explaining why, in a circumstance like this,
10 a stay at this time isn't warranted. That
11 largely has to do with the simplification of the
12 issues stay factor in the Court's opinion. Here
13 the event that would purportedly simplify this
14 case is the prospect that the PTAB would
15 ultimately invalidate most or all of the
16 asserted claims of these patents in suit. And
17 in a circumstance like this where the PTAB has
18 not even made the decision to institute IPR, we
19 have a circumstance where the event that would
20 provide simplification is kind of two steps away
21 from potentially occurring, because of course
22 first the PTAB has to decide to actually
23 institute on the patent and then PTAB would have
24 to make an ultimate decision that the asserted

1 claims in this case as to that patent are
2 invalid. And where, as here, the PTAB hasn't
3 determined that it will institute review on five
4 of the six patents in suit, an outcome that
5 depending on the year one looks at with regard
6 to PTAB institution initiation rates has
7 anywhere from a 35 to 50% chance of not
8 happening at all, the idea that the case will be
9 simplified by the occurrence of another future
10 event is just too hypothetical and uncertain in
11 my view to use as the basis for a stay.

12 That's even more so the case here
13 with regard to simplification where because the
14 IPRs at issue are being pursued by third
15 parties, the potential for an estoppel effect as
16 to defendant's invalidity case, were the IPRs to
17 move forward post institution is much reduced.
18 Here, at least with regard to prior publication
19 art, a great degree of the art that Egnyte is
20 putting forward in our case from a 102 or a 103
21 invalidity perspective I understand is not an
22 issue before the PTAB. So the impact of the
23 simplification factor here overall, that if were
24 the prospect that this case will be simplified

1 by a future event is unduly abstract and
2 uncertain is enough, in my view, on its own to
3 warrant denial of the motion without even
4 looking at the other two factors.

5 That said, though, I should say
6 that it's also not entirely clear to me that the
7 status of the case factor really strongly
8 supports or even supports a stay at all. To be
9 sure, there are many heavy lifting case events
10 still left, but we are almost half way through
11 this case, a case that was filed, after all,
12 about 15 months ago. I say that not only
13 because nearly all of document-related fact
14 discovery has occurred and because we're on the
15 cusp of the markman process proceeding to a
16 hearing, it's also because the Court, at
17 defendant's invitation, invested a significant
18 amount of time in the early section 101 motions
19 process in this case and made a decision on that
20 front. And having invested that time, having
21 the defendants ask that hey, this be the path
22 we'd like to choose for kind of our shot at
23 early case simplification and having required
24 quite a lot of the Court in terms of the effort

1 its put into the case so far, on the status of
2 the case factor, that has an impact. Whereas
3 typically if we were kind of pre markman, I
4 might say that the status of the case favors the
5 motion to stay. Now I think that's a pretty
6 close call in terms of the amount of time and
7 energy that not only the parties have put into
8 the case but the Court as well. And the more
9 that the Court invests in a case, the more it
10 kind of makes sense to see that through to a
11 conclusion from a efficiency perspective in my
12 view. So when you factor all that in, I think
13 the simplification factor alone strongly works
14 against a stay and would result in denial of the
15 motion, but I also think the status of the case
16 factor doesn't help the movant that much.

17 So even in this circumstance where
18 the undue prejudice factor may support the
19 motion to stay, I think the other factors
20 indicate that I should deny the motion without
21 prejudice at this stage and that's what I'm
22 intending to do.

23 Lastly I should say, I think one
24 of defendant's best arguments for a stay now is

1 to note that the parties aren't competitors, as
2 was mentioned, and that a lot of work remains to
3 be done in the next four to six months until we
4 hear back from the PTAB in the Box and Dropbox
5 petitions. And I understand that argument. I
6 understand why defendant's side made it here,
7 because there's going to be a fair amount of
8 work by the parties in those many months,
9 including work for the Court on things like the
10 markman process. But the truth is that, you
11 know, this Court's one where we litigate a lot
12 of patent cases and that comes with a lot of
13 work and were the Court to be staying cases due
14 to the prospect that some uncertain future event
15 might eliminate the need for it to do a lot of
16 work on the case, nearly all patent cases in our
17 court would be stayed and that would not be only
18 unfair to the plaintiffs in our court, but also
19 wouldn't be a very good way to run a district
20 court in a patent litigation heavy district like
21 this one.

22 So for all these reasons, I'm
23 going to order that the motion to stay be denied
24 without prejudice to renew on the defendant's

1 side pending what happens with the petitions in
2 the Box and Dropbox IPRs.

3 So having resolved the pending
4 motion, again, I want to say thanks to counsel
5 for their arguments today. Well done and very
6 helpful. I look forward and I know I have some
7 work in front of me with regard to the pending
8 motion to amend. I also intend very soon to put
9 out the written portion of the 101 12(b)(6)
10 decision which I've already made orally just so
11 we have it on the docket. And then of course I
12 know that the markman process will be getting
13 under way.

14 So with all that said, I wish
15 counsel a good day and a good week, continued
16 health and safety. Unless there's anything
17 further that I need to take up before we end our
18 video conference today, we can prepare to go off
19 the record and end our video conference. All
20 right. Thanks, counsel. Take care.

21 (End at 11:02 a.m.)
22
23
24

1 State of Delaware)
2)
3 New Castle County)
4

5 CERTIFICATE OF REPORTER
6

7 I, Stacy M. Ingram, Certified Court Reporter
8 and Notary Public, do hereby certify that the
9 foregoing record, Pages 1 to 55 inclusive, is a true
10 and accurate transcript of my stenographic notes
11 taken on March 6, 2023, in the above-captioned
12 matter.
13

14 IN WITNESS WHEREOF, I have hereunto set my
15 hand and seal this 6th day of March 2023, at
16 Wilmington.
17

18
19 /s/ Stacy M. Ingram

20 Stacy M. Ingram, CCR
21
22
23
24