

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

PETITIONERS' UNOPPOSED MOTION TO SEAL

I. Introduction

Pursuant to 37 C.F.R. § 42.54, the Board’s scheduling order (Paper 18 at 3), and the protective order governing this proceeding (Paper 9), Petitioners move to maintain under seal certain portions of Petitioners’ Reply (Paper 35) appearing on pages 1-3. Concurrent with this motion, Petitioners are filing a redacted version of Petitioners’ Reply (Paper 35). Below, Petitioners explain that good cause exists for maintaining this content under seal. Patent Owner previously agreed that it would not oppose a motion to seal substantively identical content via email on November 22, 2023.

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) 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 to 37 C.F.R. § 42.54(a)).

III. Good Cause Exists for Sealing the Redacted Portions of the Patent Owner's Response

The redacted content on pages 1-3 of Petitioners' Reply relates to a confidential arrangement between Egnyte, Inc. ("Egnyte") and Ms. Keefe and terms of a confidential Joint Defense Agreement ("JDA") that Petitioners are prohibited from revealing to the public (by the terms of the JDA itself). 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 and terms of the JDA that the parties to the JDA intended to maintain, and have maintained, in confidence. The confidential information has been maintained in confidentiality by all parties. Aside from describing the relationship between Ms. Keefe and Egnyte and the terms of the JDA, the content 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 1-3 of Petitioners' Reply 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, Petitioners respectfully request that the above-described portions of Patent Owner’s Response be treated as confidential information and maintained under seal.

Dated: February 20, 2024

Respectfully submitted,

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