

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. IPR2023-00432
U.S. Patent No. 10,754,823

**DECLARATION OF HEIDI L. KEEFE IN SUPPORT OF
PETITIONERS' PRELIMINARY REPLY¹**

¹ This declaration was authorized by the Board's Order of June 1, 2023 (Paper 8).

Only paragraph 6 contains HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
ONLY.

I, Heidi L. Keefe, declare as follows:

1. I am an attorney with Cooley LLP and lead counsel for Petitioners in IPR Nos. IPR2023-00427, IPR2023-00429, IPR2023-00430, IPR2023-00431, IPR2023-00432, and IPR2023-00433 (“IPRs”). I make this declaration in support of the Preliminary Reply of Petitioners to be filed in the foregoing IPR proceedings in response to Patent Owner’s (“PO”) Preliminary Responses (“POPRs”) filed in the IPRs. I have personal knowledge of the facts contained within this declaration, and if called as a witness, could testify competently to the matters contained herein.

2. I am aware that PO sued Egnyte, Inc. (“Egnyte”) in the District of Delaware, asserting infringement of the same patents challenged in the above-referenced IPRs. Complaint, *Topia Technology, Inc. v. Egnyte, Inc.*, Case No. 1:21-cv-1821 (D. Del. Dec. 27, 2021), Dkt. No. 1 (“Egnyte Complaint”).

3. On July 11, 2022, Egnyte filed a motion for judgment on the pleadings for invalidity under 35 U.S.C. § 101 (“Section 101 motion”). Opening Brief in Support of Motion for Judgment on the Pleadings, *Topia Technology, Inc. v. Egnyte, Inc.*, Case No. 1:21-cv-1821 (D. Del. July 11, 2022), Dkt. No. 40.

4. I have extensive experience arguing Section 101 motions in the District of Delaware, and it was agreed that I would argue the Section 101 motion on behalf of Egnyte. On December 9, 2022, Judge Burke granted my motion for *pro hac vice* appearance in the *Egnyte* litigation, and on December 20, 2022, I argued the Section

101 motion before Judge Burke. Motion and Proposed Order for Admission *Pro Hac Vice*, *Topia Technology, Inc. v. Egnyte, Inc.*, Case No. 1:21-cv-1821 (D. Del. Dec. 8, 2022), Dkt. No. 60 (“So Ordered” by Judge Burke on December 9, 2022 (Dkt. No. 61)).

5. My oral argument on the Section 101 motion was the full extent of my representation of Egnyte. Neither I nor any other counsel for Petitioners involved in these IPRs have represented Egnyte on any other issue.

6. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7. Parties to the JDA identified a large set of dozens of publicly available prior art references, including prior art referenced in Petitioners' invalidity contentions served in their respective district court cases. All of the prior art exchanged between the parties to the JDA and provided with Petitioners' invalidity contentions was publicly available and would have been discoverable in the respective district court proceedings involving Topia and the parties to the JDA.

8. On July 14, 2022, Petitioners served preliminary invalidity contentions, including invalidity claim charts for 29 different references, including 17 printed publications (including patents and published patent applications) and 12 system references. EX2004, 6-7. Only five of the 17 printed publications (Sigurdsson (EX1017), Rao (EX1019), Shappell (EX1020), Brown (EX1025), and Hesselink (EX1026)) have been asserted in the prior art grounds of the IPRs. *Id.*

9. Counsel for Petitioners shared a copy of their preliminary invalidity contentions with counsel for Egnyte.

10. The invalidity arguments present in Petitioners' preliminary invalidity contentions in district court are not "the same invalidity challenges" presented in the IPRs. Petitioners' preliminary invalidity contentions include 12 system prior art references that cannot be presented as grounds for invalidity in the IPRs and 12 additional printed publication references that are not relied upon in the IPRs.

11. Exhibit 2003, submitted with the POPRs, appears to indicate that on September 2, 2022, over one month after Petitioners served their preliminary invalidity contentions, Egnyte served preliminary invalidity contentions that appear to be substantially identical to Petitioners' invalidity contentions. *See generally* EX2003. Neither I nor anyone else at Cooley LLP advised Egnyte regarding what to include in its preliminary invalidity contentions.

12. All costs related to the IPRs—including filing fees, attorney fees, and

all other costs—have been paid by Petitioners. Petitioners did not receive any funding from Egnyte related to the IPRs.

13. Egnyte has not exercised control over the preparation of any filings in these IPRs, and had no involvement in or awareness of the grounds that Petitioners were presenting in the IPRs before they were filed. Egnyte did not draft or contribute to any of the content that appears in any of the IPR Petitions and was never informed prior to the filing of the IPRs as to the invalidity grounds that the IPR Petitions presented.

14. PO is accusing different products of infringement in the Egnyte litigation from those accused in the litigations involving Petitioners. *E.g.*, EX1031, Egnyte Complaint, ¶¶ 15-24; EX1033, Compl. for Patent Infringement, ¶¶ 25-36, *Topia Technology, Inc. v. Dropbox, Inc.*, Case No. 6:21-cv-01373 (W.D. Tex. Dec. 29, 2021), Dkt. No. 1; EX1032, Compl. for Patent Infringement, ¶¶ 25-37, *Topia Technology, Inc. v. Box, Inc.*, Case No. 6:21-cv-01372 (W.D. Tex. Dec. 29, 2021), Dkt. No. 1.

15. Petitioners have not agreed to be bound by any result from the *Egnyte* litigation.

16. PO states in its POPR:² “Because Ms. Keefe also represents Egnyte in

² All citations are to the POPR for IPR2023-00427 (Paper 7).

the parallel district court case, Petitioners are constrained by Egnyte's interests in this proceeding, as discussed above with reference to Factor (d)." POPR, 14. This is incorrect. My representation in *Egnyte* was limited to preparing for and arguing Egnyte's Section 101 motion, as noted above. I do not represent Egnyte with respect to any IPR proceeding. As such, I am not "constrained by Egnyte's interests in this proceeding." *Id.*

17. PO asserts that Egnyte and Petitioners are "pursuing a single and unified invalidity defense strategy in all forums." POPR, 5. That is incorrect. Egnyte was not involved in preparing the IPRs, and Petitioners were not involved in Egnyte's decisions as to what to include or not include in its invalidity contentions. None of the specific IPR obviousness combinations or arguments were presented in Petitioners' invalidity contentions in the same way that they appear in the IPRs.

18. It is also incorrect that the grounds of the Petitioners "are the direct product of the identical grounds Egnyte raises in the District Court via the same counsel." *Id.*, 6. To the contrary, as noted above, the specific IPR grounds do not appear in the invalidity contentions and neither I nor any other counsel for Petitioners in these IPRs have represented Egnyte in district court with respect to any invalidity issues under 35 U.S.C. §§ 102 or 103.

19. PO incorrectly states that the "lead grounds" of Petitioners' invalidity contentions "are the same as in the instant Petition[s]." *Id.*, 4. To the contrary, none

of the specific grounds developed for the IPRs were stated in the same way in Petitioners' invalidity contentions, and Petitioners' invalidity contentions did not set forth any so-called "lead grounds" that prioritized any particular references or grounds over other grounds.

20. Petitioners independently prepared, funded, and filed the IPRs for their own benefit, without considering Egnyte's interests and with no input from Egnyte.

21. In the district court litigations, Petitioners served their invalidity contentions before Egnyte. Counsel for Petitioners were not involved in Egnyte's preparation and service of its invalidity contentions. If Egnyte served the same contentions that Petitioners served, that would mean that Egnyte independently chose to copy Petitioners' invalidity contentions.

22. There has been no overlap between my representations in the IPRs and my representation of Egnyte in the district court litigation where I represented Egnyte only with respect to its Section 101 motion hearing.

23. Petitioners and Egnyte are competitors, share no board members, and had no pre-filing communications regarding the potential content of Petitioners' IPR petitions. Petitioners and Egnyte did not collaborate in any way in developing Petitioners' IPRs.

24. I do not have "intimate knowledge of Egnyte's interests and attendant invalidity strategies" (POPR, 9), aside from my representation regarding the Section

101 motion hearing that is not at issue in the IPRs, as discussed above.

25. The IPRs were not controlled by Egnyte in any way, and Petitioners did not file the IPRs at the behest of Egnyte.

26. I am not aware of any privity relationship between Egnyte and Petitioners arising from the JDA or any other agreement.

27. As far as I am aware, neither of the Petitioners received prior notice of the petition for IPR filed by Unified Patents. To my knowledge, Petitioners did not know it was going to be filed or what it would contain, and did not rely upon it to prepare their Petitions.

I declare that all statements made herein of my knowledge are true, and that all statements made on information and belief are believed to be true, and that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Executed on June 8, 2023.

By: / Heidi L. Keefe /
Heidi L. Keefe