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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:23-cv-00313-RM-KLM

FOX FACTORY, INC.,
Plaintiff,

vs.

SRAM, LLC,
Defendant.

VIDEO DEPOSITION OF MARIO GALASSO
Taken on behalf of the Defendant
March 7, 2023

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1 A. And to add to that I think part of
2 the novelty here is that it is manually operable,
3 you know, in this case without tools, so that a
4 rider isn't having to carry the tool around with
5 them necessarily. But what I mean is that if the
6 valve has two positions and some intermediate tool
7 can by hand achieve those two positions, you know,
8 I think that's probably off the cuff okay. A screw
9 that gets unscrewed and ends up, you know, ends up
10 having to be held and then reinstalled, that's
11 probably, I wouldn't think that that would apply
12 here.

13 Q. So, and let me just, you said a lot
14 in that answer and so I just want to make sure that
15 I understand it. And I don't have the text in
16 front of me --

17 A. Manually operable, you know, between
18 the two positions certainly is that the valve
19 itself is operable by hand. And then you asked if
20 there was a tool involved that could go between the
21 first and second position, you know, I think that
22 that is within what we're talking about here as
23 well.

24 Q. Okay. Would you agree that manually
25 operable valve in this context certainly could

1 refer to a valve that could be manipulated by hand
2 without tools?

3 A. To affect it between a first and
4 second position as further required.

5 Q. Yes. Between the first and second
6 position operable by hand without tools, I think
7 you could also have a valve that's operable between
8 the positions with an intermediate tool and I guess
9 it could even be, you know, if it was a screw and
10 an O-ring, if that was, you know, probably wouldn't
11 be the preferred way to go about it, but that could
12 achieve, you know, the same outcome. You could
13 unscrew a screw with an O-ring and vent the lower
14 leg without completely removing the screw.

15 A. Well, even if you did that could be
16 one position, right?

17 Q. Okay.

18 A. And the other position is fixed.

19 Q. Got it. Okay. And so let me ask you
20 further Mr. Galasso, when it refers to manually
21 operable valve having a first position
22 substantially closing said fluid passage what do
23 you understand substantially closing to mean in
24 this context? Previously, and maybe I just take a
25 step back for a second Mr. Galasso. We had this

1 discussion before, further up in Claim I where it
2 was sealing closed the gap and I asked if closed
3 meant something other than closed, if it could mean
4 substantially closed, et cetera. So now we're at
5 this part of Claim I, lines 64 and 65, where it
6 says the, well really 63, said manually operable
7 valve having a first position substantially closing
8 said fluid passage, so my question to you Mr.
9 Galasso is what do you understand that claim to
10 mean in context of Claim I in the .331 patent?

11 A. Well, I understand it to mean
12 assuming, let me see here, substantially closing,
13 substantially closing and, which is the line that
14 you're referring to, and sealing up above, which we
15 spent some time on, I think our, you know, one
16 skilled in the art recognizes those as kind of the
17 same thing.

18 Q. Okay. So when the manually operable
19 valve is in the first position substantially
20 closing the fluid passage, would you agree that
21 that permits, you know, at least on a molecular
22 level, some diffusion or transmission of fluid past
23 that seal?

24 A. I think that substantially closed and
25 sealing in the context of this Claim I are the same

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1 thing, and like we spent some time with up above on
2 sealing, you know, are these vacuum chamber level
3 seals, you know, in space? No. They're, you know,
4 these are end consumer products and have, you know,
5 performance and other considerations. The intent
6 is that, is that when this manually operable valve
7 is in the first position is that it's sealing that
8 fluid passage just like the lower leg seal up above
9 is sealing the gap between the upper fork and the
10 lower fork.

11 Q. So you were talking about consumer
12 products and I just want to bring it back to the
13 invention of Claim I. Is it your understanding as
14 one skilled in the art that in the context of this
15 patent, that closing and substantially closing
16 would mean the same thing?

17 A. Yes.

18 Q. Okay.

19 A. Can we also, it's a bit awkward for
20 me to keep saying as one skilled in the art. Can
21 we just for the record, you know, in my opinion
22 means that unless I say otherwise?

23 Q. Understood. I don't think you need
24 to keep restating that.

25 A. Okay.

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1 Q. I appreciate that though.

2 And then the second position allowing
3 the fluid to flow between said interior and said
4 exterior, the fluid -- well, let me take a step
5 back, which is when we were talking about the fluid
6 passage of the air bleed assembly you indicated
7 that because it's an air bleed assembly the fluid
8 passage, the fluid going through the fluid passage
9 would be air, but you said it also could be some
10 other fluid, is that right?

11 A. So practically when you activate this
12 manually operable valve and then, or equalize the
13 internal pressure to ambient pressure.

14 Q. Yep.

15 A. It's possible that a mist, you know,
16 I'm not going to qualify it heavy mist, light mist,
17 barely, you know, identifiable mist, but it's
18 possible that a mist of oil bath oil can be part of
19 that equalization process.

20 Q. Understood. And so I assume then
21 your answer would be the same then with respect to
22 this second position allowing a fluid to flow
23 between said interior and said exterior, that that
24 fluid primarily is going to be air but practically
25 speaking could also be this, some oil from the oil

1 high air pressure compared to the outside ambient
2 air pressure, and if somebody slightly, you know,
3 pulled on the airplane door and just kind of
4 cracked it open eventually that air pressure would
5 equalize probably causing everybody to pass out,
6 but, or they could just fully open the door and it
7 would equalize quicker. Correct?

8 MS. BATTACHRYYA: Objection,
9 incomplete hypothetical.

10 A. Yeah. I get in your airplane, you
11 know, example, I agree. I'm not sure you could
12 hold the door back once it's cracked open.

13 Q. (BY MR. HICKEY) Yeah.

14 A. You know, I think we discussed early
15 on what's a manually operable valve. I don't
16 remember exactly the line of questioning or where
17 we ended up there, but I believe, and you said, you
18 know, a valve with a turn dial, you gave a couple
19 of other manually operable valve examples.

20 Q. Yeah.

21 A. And would it be considered a valve if
22 there was a, this is my term, an intermediate tool
23 involved in the actuation, and I believe I said,
24 you know, if that, if that tool went from one
25 position, you know, allowed you to go from one

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1 position to the next for instance, sometimes you
2 want a low profile something and then, you know,
3 tube goes into it. But not a screw that, you know,
4 you could eventually end up in your hand, right?
5 Some of that is desired practice and practicality,
6 yep, you could crack the airplane door open but
7 that would be a bad day because the rest of it
8 would just keep on going. Even though those would
9 be two positions and so --

10 Q. But for the screw in Ceriani you
11 wouldn't have to completely unscrew and take it out
12 in order for oil or air to leak out, is that right?

13 MS. BATTACHRYYA: Objection, form,
14 incomplete hypothetical.

15 A. Sorry, go ahead again.

16 Q. (BY MR. HICKEY) In, with respect to
17 the screw, the unmarked screw in Ceriani, is it
18 your opinion that the screw would need to be
19 completely unscrewed and taken out of the fork in
20 order to have air or oil leak out of the lower
21 fork?

22 MS. BATTACHRYYA: Same objection.

23 A. Yeah. So in my opinion, in my
24 opinion there would be a point where you could
25 probably, especially if it was air, you know, get

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1 some transfer between the inside of the fork to the
2 outside of the fork, but again, I go back to and
3 contend that there's oil above that, above that
4 screw, in which case if you did crack it or go a
5 third of the way out or multiple positions like you
6 could do with a screw thread you would be leaking
7 oil. That oil communicates with the damping
8 chambers below, I don't know how much oil, you
9 know, is in there, we can't know right now and it's
10 not described, there isn't a 20 to 50 ccs, you
11 know, in a typical lower leg oil bath or anything
12 described like that. So in all of our
13 hypotheticals it's hypothetically possible to
14 unscrew that unnamed, unmarked, undefined screw
15 some amount and have some fluid leak out of it, oil
16 would leak out of it slower than the gas probably,
17 right? But it's my belief that that, that that
18 screw, the unmarked, unnamed, undefined screw is
19 within an oil bath.

20 Q. Okay. And is there anything in Claim
21 I of the .331 patent that requires the pressure
22 equalization to occur while the rider is operating
23 the fork?

24 A. While the rider is operating the
25 fork. I don't understand.

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1 Q. Either while you're on -- for
2 example if the fork is on a motorcycle or a bicycle
3 is it your opinion that that pressure equalization
4 has to has while the rider is riding the motorcycle
5 or bicycle?

6 A. It's my opinion that if the rider
7 attempted to perform that equalization process
8 while riding that wouldn't be a good decision.

9 Q. Okay. So it's your opinion that the
10 operation of that manually operable valve can, and,
11 you know, visibly should occur when the rider is
12 not operating the vehicle, or riding the vehicle.

13 A. Yeah. Claim I doesn't talk about it,
14 I don't that it's spoken about at all in .331,
15 that's just sort of, you know, practice. However,
16 I think also not spoken in .331 it's advantageous
17 to not have to carry tools around whether you're on
18 the bike or off the bike. Especially in sort of
19 this elevation equalization moment where you're not
20 at the base of your truck or, you know, don't have
21 access to tools, get off the top you like to
22 equalize and then do your run or continue your
23 ride. So. I don't think it speaks about good
24 practice in either sense, but certainly
25 advantageous to not have to use a tool.

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1 the air pressure.

2 Q. Depending on the level of that oil
3 bath?

4 A. Depending on the level while still
5 maintaining a positive pressure and not completely
6 venting.

7 Q. Right. And 148, that's a polymer
8 bumper, right? I think that's in that same
9 paragraph column 6.

10 A. Bumpers 128 and 148.

11 Yep.

12 Q. And would you understand that polymer
13 bumper to be compressible?

14 A. Yes.

15 Q. And valve 129 and the similar valve
16 interacting with chamber 146, would you regard
17 those to be manually operable valves?

18 A. I think they're just called valves,
19 right.

20 Q. Yeah.

21 A. Valve 129, valve 146 to the leap of
22 faith that a human interacts with it then manually
23 operable is probably, would probably be some kind
24 of a pump.

25 Q. Or I guess either a pump or it could

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1 be, I mean it could be a Schroeder valve.

2 A. Well, that valve is, you know, is
3 likely a Schroeder valve type thing. Yeah.

4 Q. And a Schroeder valve, obviously you
5 could have a pump or a tool that interacts with it
6 but Schroeder valve you could hit with your finger
7 or a pin to relieve air pressure as well, right?

8 A. That is right.

9 Q. I think that's all the questions that
10 I have at this time.

11 MS. BATTACHRYYA: I'll do a redirect.

12 EXAMINATION

13 QUESTIONS BY MS. BATTACHRYYA:

14 Q. Mr. Galasso, since you have the Hoose
15 reference in front of you I'll start from there.

16 So Mr. Hickey spent some time talking
17 to you about the, what you referred to as the lower
18 fork 140 and shock chamber 146. You recall that,
19 right?

20 A. Yes.

21 Q. Earlier you discussed there could be
22 some oil in that shock chamber 146 but Hoose does
23 not provide a level of that oil bath in chamber
24 146, correct?

25 A. That's correct.

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1 Q. So reading Hoose and understanding it
2 from the perspective of a person of ordinary skill
3 in the art, can you tell if the valve that is
4 similar to valve 129 is above or below any oil that
5 may or may not be present in shock chamber 146?

6 A. Not based on what Hoose seems to
7 teach us.

8 Q. In the .331 patent, Claim I, the air
9 bleed assembly is required to be above the level of
10 the oil bath lubrication, correct?

11 A. That's correct.

12 Q. Does not teach an air bleed assembly
13 in shock chamber 146 that is above an oil bath
14 lubrication, correct?

15 A. Correct.

16 Q. In fact Hoose does not talk about an
17 air bleed assembly at all, right?

18 A. That's correct. Because this
19 invention is a unique construction of sort of multi
20 chamber oil damper and multi chamber air stream.
21 Venting is not part of the practice of this
22 invention, positive pressure in 146 and 126 are
23 required for the fork to, you know, work properly
24 on the vehicle.

25 Q. Would a person of ordinary skill in

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1 the art reading Hoose consider the valve that is
2 similar to the valve 129 as an air bleed assembly
3 for equalizing air pressure inside the shock
4 chamber 146 to the ambient?

5 A. No.

6 Q. If you did use a valve that is
7 similar to valve 129 to equalize air pressure
8 inside that lower shock chamber 146 to the ambient,
9 the operation of Hoose's fork system would
10 substantially degrade, correct?

11 A. Correct. Tube 112, the end of tube
12 112 would enter into chamber 146 and likely come to
13 rest on bumper 148.

14 Q. To the Ceriani reference, and again,
15 you have access to the reference, I believe it's
16 Exhibit 20, please open it up if you want to refer
17 to it as I ask questions.

18 A. I have a clean copy of this.

19 Q. All right.

20 A. Okay. I have it.

21 Q. Okay. So earlier Mr. Hickey asked
22 you several questions about an unmarked type valve
23 in the Ceriani suspension fork.

24 Do you recall that?

25 A. Yes, I do.

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1 Q. Do you agree that the valve that Mr.
2 Hickey referred to is, it's an oil sealed port or
3 just a port to set the oil type level in the fork?

4 A. I think that unmarked, unnamed screw
5 does have to do with oil fit and is in direct
6 communication with oil because I believe that
7 there's oil above sort of the damping circuits and
8 chambers that are described in the patent, and it's
9 my opinion that there's oil above that, you know,
10 that unmarked and unnamed screw. So that's my
11 opinion, Ceriani doesn't really speak to it in any
12 way so I guess, you know, I guess we'll not know
13 unless we went to talk to him, but that's my
14 opinion and I don't consider that a valve for
15 venting internal, internal air pressure to ambient
16 pressure.

17 Q. Would a person skilled in the art
18 understand that an unlabeled screw valve to be an
19 air bleed assembly for equalizing air pressure
20 inside the Ceriani lower fork to be ambient?

21 A. I don't believe so, no.

22 Q. And if that unlabeled screw valve was
23 indeed opened and air pressure inside Ceriani's
24 lower fork was allowed to equilibrate to the
25 ambient, would the performance of the fork degrade?

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1 Q. No. That should be good. I'll focus
2 on the claim termed preventing.

3 A. Okay.

4 Q. And the limitation says, preventing
5 an oil bath lubrication occupying an area of said
6 lower fork tube at the first end of the lower fork
7 tube from leaking from said lower fork.

8 Do you see that?

9 A. Yes.

10 Q. Does the term preventing here in the
11 context of the surrounding claim language mean that
12 100 percent of all oil and air in the lower fork is
13 prevented from escaping through the seal between
14 the upper and the lower forks?

15 A. No. Mr. Hickey and I spoke about
16 this as if that seal prevented all of everything
17 from exiting or entering the fork it would have
18 undesirable friction rendering, you know, the fork
19 performance not to be what's expected. So seals to
20 those skilled in the art in these situations and in
21 these products aren't absolute 100 percent seals,
22 you know, some air, minor, you know, and some oil,
23 which also helps lubricate these things, is
24 expected and known.

25 Q. So when the claim recites preventing

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1 an oil bath lubrication from leaking from said
2 lower fork, a person skilled in the art would
3 understand that to mean that substantially all of
4 the oil bath lubrication but not necessarily all
5 oil is prevented from leaking from the lower fork
6 by the seal that's between the upper and the lower
7 forks, correct?

8 A. I think that's, yeah, I think that's
9 accurate.

10 Q. Let's go to Exhibit 19 which is an
11 excerpt from the prosecution history from the 321
12 patent. If you need to open, I think you should
13 open Exhibit 19 because we'll look at specific
14 sentences there.

15 A. 19. Okay.

16 Q. Go to page 10 of Exhibit 19. See the
17 full paragraph that starts with in contrast to
18 Galasso?

19 A. Yes.

20 Q. Do you recall Mr. Hickey asking you
21 about the first sentence of that paragraph?

22 A. I do.

23 Q. And --

24 A. Yeah, I remember him asking about
25 that first sentence which is why I unfortunately

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1 got us a little sideways, because it's my belief
2 that you can't read that sentence which Mr. Wesling
3 tried to do in a vacuum. That paragraph needs to
4 be read all together.

5 Q. Would you agree that although the
6 first sentence in that paragraph which says in
7 contrast to Galasso, applicant's features, as
8 recited in newly amended Claim I, locate its air
9 bleed system in a lower fork, wherein the vent hold
10 is located between the lower leg seal and the
11 bushing that is attached thereto -- let me rephrase
12 my question.

13 Now that I have read that sentence,
14 if I recall correctly Mr. Hickey asked you is there
15 anything vague about that sentence by itself
16 isolated from the rest of the paragraph. Do you
17 recall that?

18 A. I do recall that and that's where I
19 go back to you can't read that isolated to itself.
20 It's that paragraph that has the overall meaning.

21 Q. So if that first sentence by itself,
22 by itself it's not vague, its meaning has to be
23 construed in the context of all the remaining
24 sentences in the paragraph.

25 Would you agree?

1 MR. HICKEY: Objection. Form.
2 Leading.

3 A. That's, you know, that's what I said
4 earlier. Yep. That sentence plus the other
5 sentences form the paragraph, and it's the
6 paragraph that has, that have the meaning, not any
7 one portion of it.

8 Q. (BY MS. BHATTACKRYYA) Does that
9 sentence that starts with in contrast to Galasso,
10 the first sentence of the paragraph in, on page 10
11 of Exhibit 19, limit the position of the air bleed
12 assembly claimed in Claim I of the .331 patent to
13 be between the lower leg seal and the bushing?

14 A. I don't believe so. The very next
15 sentence the manually operable valve is also
16 positioned between the lower leg seal and the first
17 end of the fork. So that's the air bleed system
18 including the manual operable valve is located
19 below the lower seal. Of note, an oil bath
20 lubrication is located within the first end of the
21 lower fork tube, the oil lubrication remaining in
22 such positive gravity. The applicant's
23 specification describes the necessity of such
24 positioning.

25 So I think it's all that that

1 matters.

2 Q. So that whole paragraph taken
3 together and in context does not limit the position
4 of the air bleed assembly claimed in Claim I of the
5 .331 patent to be between the lower leg seal and
6 the bushing, correct?

7 A. I don't believe so.

8 Q. Let's set the record straight. You
9 do not believe it limits --

10 A. I'm sorry, I don't believe that this
11 paragraph read in its totality limits, I want to
12 get the terminology right, the manually operable
13 valve between the upper bushing and the fork seal.
14 I don't think that that paragraph does that. I
15 think what that paragraph does is put it between
16 the wheel end of the lower fork tube and the seal.
17 And above an oil bath.

18 Q. Let's go to page 11 of Exhibit 19.
19 And you may recall Mr. Hickey asking you questions
20 about the sentence that starts with however, and it
21 goes however, due to the positioning of applicant's
22 air bleed system being located directly below the
23 lower leg seal within the lower fork tube wherein
24 the lower fork tube is positioned further away from
25 the frame of the vehicle, then the upper fork tube,

1 and it goes on and on and on.

2 Do you recall reading that sentence?

3 A. I recall Mr. Hickey reading that
4 sentence.

5 Q. Even if that sentence in isolation
6 may not be vague that sentence taken in the context
7 of the entire paragraph does not limit the position
8 of the air bleed assembly that is claimed in Claim
9 I of the .331 patent to be directly below the lower
10 leg seal, correct?

11 A. I believe that to be true. Yep. I
12 believe it's got to be taken in context of the
13 entire paragraph and in the valves below the seal
14 and above the oil bath at the wheel end of the
15 fork.

16 Q. And in fact the last sentence of that
17 paragraph on page 11 of Exhibit 19, specifically
18 says thus in sum the air bleed assembly 300 if
19 located below applicant's lower leg seal and far
20 enough away from the oil bath lubrication such that
21 a substantial portion of the oil bath lubrication
22 is unable to remain in the lower fork tube even
23 when air is being released from the lower fork tube
24 through the vent hole of the air reassembly 300.

25 Do you see that?

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1 A. I do see that. That's why I say the
2 whole paragraph has to be read together.

3 Q. And when the whole paragraph is read
4 together it puts the air bleed assembly anywhere on
5 the lower fork between the lower leg seal and above
6 the oil bath level, correct?

7 A. That's correct.

8 Q. Let's go to page 8 of Exhibit 19.

9 A. Okay.

10 Q. Do you see how Claim I was amended
11 during prosecution?

12 Let me ask you this.

13 A. I see the cross outs and such.

14 Q. Did you understand what the cross
15 outs and underlining may mean in the context of the
16 patent prosecution?

17 A. Can you ask a different way?

18 Q. I just want to understand if you know
19 what a strike out in the claim and the underlining
20 mean, if you don't that's fine. I can explain that
21 to you.

22 A. I'm assuming that it's just
23 eliminating the word.

24 Q. Yes. Strike out means that word is
25 eliminated from the claim and words that are

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1 underlined means those are the words that are
2 introduced into the claim, through a claim
3 amendment process.

4 A. Okay.

5 Q. So my question to you is Claim I in
6 this response by applicant Fox deletes the word
7 system from the claim.

8 Do you see that?

9 A. I do.

10 Q. And if you take a look at Claim I of
11 the .331 patent the term air bleed system or the
12 term vendor do not appear anywhere in Claim I of
13 the .331 patent, correct?

14 A. Correct.

15 Q. Would you understand an air bleed
16 system to be broader than the term air bleed
17 assembly which is recited in Claim I of the .331
18 patent?

19 MR. HICKEY: Objection, form. Calls
20 for a legal conclusion.

21 A. Air bleed assembly versus air bleed
22 system. So the assembly I believe is, you know,
23 the stuff below it, right? The valve and the vent
24 from inside to outside and the lower leg, or the
25 lower tube. Fork and air bleed assembly

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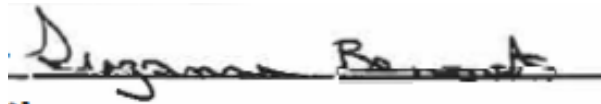
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I further certify that I am neither attorney nor counsel for nor related nor employed by any of the parties to the action in which this examination is taken; further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in this action.

Dated this 8th day of March, 2023.



Ms. Suzanne Benoist, RPR,
CCR-MO, CCR-KS, CSR-IL, CSR-IA

Notary Public No. 07541281

State of Missouri - Jefferson County

My commission expires: 5/10/2024