

Exhibit G

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 23-cv-313-RM-KLM

FOX FACTORY, INC.,

Plaintiff,

vs.

SRAM LLC.,

Defendant.

REPORTER'S TRANSCRIPT

Preliminary Injunction Hearing

Proceedings before the HONORABLE RAYMOND MOORE, Judge,
United States District Court for the District of Colorado,
occurred at 9 a.m., on the 26th day of May, 2023, in Courtroom
A601, United States Courthouse, Denver, Colorado.

Proceeding Recorded by Mechanical Stenography, Transcription
Produced via Computer by Tammy Hoffschmidt, 901 19th Street,
Room A251, Denver, Colorado, 80294, (303) 292-1088

APPEARANCES

1 Robert F. McCauley, III, Arpita Bhattacharyya and
2 Robert M. Fernandes, Finnegan Henderson Farabow Garrett &
3 Dunner, 3300 Hillview Avenue, Stanford Research Park, Palo
4 Alto, CA 94304-1203, appearing for the Plaintiff.

5 Richard Bennett Walsh, Jr., Sarah Anne Milunski and
6 Michael John Hickey, Lewis Rice LLC, 600 Washington Avenue,
7 Suite 2500, St Louis, MO 63101-1311, Timothy R. Beyer, Bryan
8 Cave Leighton Paisner LLP, 1700 Lincoln Street, Suite 4100,
9 Denver, CO 80203-4541, appearing for the Defendant.

10 * * * * *

11 **PROCEEDINGS**

12 (In open court at 9:05 a.m.)

13 *THE COURT:* Please be seated. All right. Before I
14 take appearances, I will concede, that was weird, in that I
15 crawled under the bench. I'm just letting you know, what's
16 going on. I had a rather substantial injury, and if I don't
17 have heat, this isn't going to work.

18 So that's what I was crawling under the desk to do,
19 was to plug in. I am not taking any medication. I do not
20 promise to be the most patient person in the world.

21 Let me take appearances.

22 *MR. McCAULEY:* Robert McCauley. We have some people
23 with us here today. I would like to start with Mr. Wesley
24 Allinger. He is the declarant and will also be a witness. He
25 is the executive vice president at Fox Factory, in charge of

1 the bike division. Also from Fox Factory with us here today,
2 is the vice president, and deputy general counsel, Michael
3 Leman, L E M A N, and also with me today is my partner,
4 Arpita Bhattacharyya, sitting to my right.

5 *THE COURT:* I'm going to butcher your name; I'm just
6 telling you, but I'm sure I'm not the first to butcher your
7 name.

8 *MS. BHATTACHARYYA:* It's okay, Your Honor.

9 *THE COURT:* You have advance apologies. Go ahead.

10 *MR. McCAULEY:* We made it easy, the other counsel is
11 another Robert. His last name is Fernandes. Your Honor, we
12 have a couple of experts who will be introduced to you later in
13 the course of today's proceedings.

14 *THE COURT:* That's fine.

15 *MR. WALSH:* Thank you, Your Honor. I'm Rick Walsh, on
16 behalf of SRAM, with me, as co-counsel, is Michael Hickey, also
17 with Lewis Rice; Sarah Milunski and Tim Beyer our local
18 counsel. Sitting at counsel table is corporate representative
19 Sander Rigney.

20 In the back of the room is Brian Gause, who is
21 in-house patent counsel for SRAM. To the left of him is Kevin
22 Wesley. He is a witness who will testify as an expert.

23 *THE COURT:* All right. Good morning to all of you.
24 Let me deal with some preliminary things. First, there is this
25 motion that was filed to seal things. Let me just say a couple

1 of things, as I understand it, and correct me if I'm wrong, the
2 testimony -- or the witness' testimony that the parties are
3 amenable to sealing are the respective business representatives
4 from each side. Do I have that right or wrong?

5 *MR. McCAULEY:* I believe that's correct, Your Honor.
6 Mr. Wash and I have not spoken about it. We have not had a
7 response to our proposal.

8 *MR. WALSH:* Your Honor, I don't think there's anything
9 that's highly confidential or secret that's going on here. I
10 don't see any need --

11 *THE COURT:* Look, I will tell you that I lean in your
12 direction, but rather than, at this early stage, engaging in a
13 battle over something that's not crucial, my reaction to the
14 request is this, I will allow the restriction level 1 for the
15 two witnesses. I'm not doing it for opening and closings.
16 Find a way, or just don't; doesn't make any difference to me.

17 In terms of exhibits, exhibits aren't kept by the
18 Court. You will keep your own exhibits, so there's no real
19 concern that I have with those being, kind of, I don't know,
20 finding their way into someone else's hands. So that's how I
21 want to go about it. I suppose, that I'm talking about
22 Allinger and Rigney. So I will butcher his name too.

23 What I really want to do is spend some time
24 understanding this a little better. What I'm doing is staring
25 at that bicycle saying, all right, I'm sure there's some value

1 to it. There's no value to it being 50 feet from me.

2 MR. WALSH: We will bring it up.

3 THE COURT: We will deal with it when we need to, but
4 let's get going. Let me have openings, unless there's
5 something else that we need to talk about, of course?

6 MR. McCAULEY: I don't think so, Your Honor. Although
7 it would help me if I could understand, do we need to move
8 exhibits into evidence here today?

9 THE COURT: Look, the rules don't apply. I don't
10 think that that's necessary. If there's some particular
11 objection to an exhibit, I will hear it; absent somebody
12 jumping up, just introduce the exhibit or refer to the exhibit
13 or put it in front of the witness and we're fine. If you are
14 asking me, do I want to admit all of them right now? Just kind
15 of, and then we will use them as we see fit, because you could
16 have attached any or all of them to an affidavit or other
17 document. I don't have any problem with that, either, although
18 it's much more difficult to figure out what -- what's
19 meaningful and what is hay, so to speak.

20 MR. McCAULEY: Understood, Your Honor. I want to make
21 sure that we comply with the Court's expectations. I don't
22 think that we, Fox Factory, need to move anything into
23 evidence. All of the evidence, or most of it anyway, that
24 we're relying on in the Court's docket already. So I'm fine
25 with that. I appreciate the clarification.

1 THE COURT: Mr. Walsh, where do you stand on this?

2 MR. WALSH: We don't have, obviously, the physical
3 exhibits, Your Honor, but I think that's not an issue. The
4 other ones we will talk about as they come up. I don't think
5 there's very many. We have some additional ones that we talked
6 about, the recent email et cetera, and if there's specific
7 patents depending how cross-examination goes, we will --

8 THE COURT: All right. Let's go.

9 **OPENING STATEMENT**

10 MR. McCAULEY: Good morning, Your Honor.

11 THE COURT: Good morning.

12 MR. McCAULEY: Robert McCauley on behalf of Fox
13 Factory. Thank you for scheduling the hearing today. Fox
14 greatly appreciates it. We will try to move quickly, given
15 Your Honor's injury. Sorry to hear about that.

16 THE COURT: Not as sorry as I am, but don't go fast
17 because of me.

18 MR. McCAULEY: I'm sure. Next slide please. My
19 colleague, Mr. Fernandez is driving over there, because we have
20 some sound.

21 This first slide that we're showing you gives you an
22 overview of the invention of the '331 patent, this is often
23 called the Lower Leg Bleeder Valve Patent, or simply the
24 Bleeder Valve Patent. We would like to emphasize this patent
25 is not simply to just a valve, or to just a bleeder valve,

1 because a lot of the arguments that you are going to be hearing
2 from the other side, Well, this is just a valve, and a valve is
3 a valve. Your patent is only to a valve. And that's not
4 correct. You have to look at the entire claim, and the entire
5 claim says a lot more than just a valve.

6 I won't go through all of the elements right now, but
7 there's an air-bleed system, it's in a lower leg of the
8 telescopic fork, and it's configured to equalize pressure in
9 the lower leg to the atmospheric pressure, and none of that is
10 in the prior art.

11 In any event, getting back to our first slide, you can
12 see how on the left there's a diagram, and this is meant to
13 demonstrate that the pressure inside the lower legs of the
14 fork, which I will grab. Just a moment.

15 *THE COURT:* I'm glad it's not a car case.

16 *MR. McCAULEY:* It's not a car case.

17 *MR. McCAULEY:* May I come closer?

18 *THE COURT:* Um, yeah.

19 *MR. McCAULEY:* Your Honor, this is a Fox 36 fork, this
20 is -- these are the lower --

21 *THE COURT:* Hold on, hold on. Audrey.

22 *THE LAW CLERK:* Yes.

23 *THE COURT:* Now I'm taking you away from my law clerk.
24 So we are going to have a good old meeting. If you want to
25 come up closer, that's fine.

1 MR. McCAULEY: This is a telescopic fork leg -- excuse
2 me -- fork. These are the lower fork legs, which are actually
3 bigger, wider than the upper fork legs, and the patent dispute
4 is about these lower fork legs. These bleeder valves that are
5 on the back of the legs that you can see here in the upper
6 fork.

7 THE COURT: Go ahead.

8 MR. McCAULEY: In the upper two fork legs there's an
9 air spring, in one of the legs, that's -- it's sealed. It
10 doesn't communicate with the air in the lower leg. The air
11 spring is a pressurized chamber in that one upper leg. In the
12 other upper leg there's a damping system, which has oil and
13 there's shims and other things in there, that's also separate
14 and sealed from the lower leg, and so what the patent is
15 talking about, is if you take this fork, up on a chairlift to a
16 riding park, which is very popular, such as in Whistler, it's
17 the most popular riding park in the world, 5,000 feet above sea
18 level, I think. The pressure in here starts to exceed the
19 ambient pressure. It's a relative issue. And when the
20 pressure in these lower legs builds up, a couple of things
21 happen -- a lot of things happen, but just simply stated, the
22 fork doesn't compress as well. The pressure in that prevents
23 the fork from compressing, that's called travel, and actually
24 ... would you like me to go back, Your Honor?

25 THE COURT: Yeah, yeah, please. I mean, I have got a

1 sense of it now, so to speak.

2 MR. McCAULEY: I actually just used the word prevents
3 travel, that word it actually in our slide and now that I think
4 about it, it actually doesn't prevent travel, but it inhibits
5 it. It makes it harder for this fork to squish down. If you
6 take a fork like this up to the top of Whistler, if you don't
7 bleed it, it's very hard to push down on the fork, it inhibits
8 the ride, it inhibits the premium fork feel, which is exactly
9 what both sides are --

10 THE COURT: So to equalize what do you do, turn the
11 valve?

12 MR. McCAULEY: You push the valves with these valve
13 buttons.

14 THE COURT: And then what happens, the air escapes?

15 MR. McCAULEY: Yes, Your Honor.

16 THE COURT: Does it stop on its own when it equalizes?

17 MR. McCAULEY: Yes, Your Honor, it's automatic.

18 THE COURT: What happens if you need more air on the
19 inside?

20 MR. McCAULEY: Well, you don't.

21 THE COURT: Because you have gone back down lower.

22 MR. McCAULEY: Okay. If you go down, then you push
23 the button again and the air goes back in. It equalizes again.
24 It's the same mechanism with a screw. There's a dispute in
25 this case about whether a screw valve, which is included on the

1 forks, that we've also accused, it's the lower -- I hesitate to
2 call them lower-end forks or premium forks, because they all
3 cost a thousand-dollars plus at retail. But on the, we will
4 say, the less high-end or lower high-end forks, sometimes you
5 call them the mid-range or medium forks, what SRAM has done is
6 they still have the same channel board into their lower fork
7 legs, in exactly the same position. It's exactly the same way.
8 Instead of having this button there, they have installed a
9 screw with an O-ring on it, that's airtight. You can equalize
10 the same way, you just need to use a tool. You crank it open a
11 little bit, the air comes out or goes in and then you close it
12 up again and you have equalized. It's -- that's, essentially,
13 the invention. And it's very useful, because it quickly and
14 easily restores optimum fork feel, which is what customers want
15 when they buy a fork that costs a thousand dollars, and that's
16 why SRAM wants this technology.

17 There's been a lot of arguments in the papers, *This is*
18 *just a silly little valve; it doesn't mean anything. People*
19 *don't really want it.* Well, that's not true, and I would like
20 to prove that with some objective evidence, not from anybody
21 paid, not from any witness, but from a Vital MTB interview,
22 from July 2020, which was mentioned several times in our
23 papers, never mentioned in SRAM's papers. They doesn't touch
24 this, because they can't.

25 Can we go to the next slide, please? Or the next one

1 after that. Vital MTB is a mountain bike media company that
2 it's basically staffed with hardcore mountain bike riders and
3 reviewers, and they ride all the time. You can listen to this
4 entire interview. It's clear the guy who is doing the
5 interviewing does some riding or does a lot of riding. He
6 knows the fork. He knows the technology. He is one who really
7 understands what people want with forks, and in July of 2020,
8 after Fox was selling their 36 and 38 forks, with these
9 patented bleeder valves, there was a real embarrassing position
10 from SRAM's position that was asked in a Podcast, and we have
11 the relevant clip here that we would like to play here for you,
12 Your Honor.

13 *THE COURT:* Go.

14 (Clip was played for the court.)

15 *MR. McCAULEY:* Your Honor, there's no statement there
16 that this is not -- this is not a feature that anybody wants.
17 He explained the only reasons SRAM didn't have these on the
18 forks in 2020 is because they were blocked by a patent and
19 that's obviously Fox's patent.

20 Almost two years later, they launch the accused
21 products, in this case. They were commercially available
22 beginning in April of 2022. It was a, kind of, a very high-end
23 very special fork, and you had to buy a whole bike to get it.
24 It was called Flight Attendant; it's very high-end, very
25 electronic, space age kind of bike, that not a lot of people

1 are going to buy, but Fox really needed to see, was were they
2 going to include the same bleeder valves, on the Pike, the
3 Lyrik, ZEB Forks, which are the three fork lines that come in
4 four different models each. At least they wanted to see if
5 they were going to include the bleeder valves on those, and
6 indeed they did; that was confirmed in May, on May 26th of
7 2022, and that's shown on this timeline on the fence.

8 Your Honor, we don't have all day and, in view of the
9 Court's injury and such, we are going to try to make the best
10 use of time we can. So I'm not going to read every thing on
11 this timeline slide, but it does show the salient points in
12 time that we think are most relevant. The reason we put this
13 together is SRAM has argued in their papers that Fox has unduly
14 delayed bringing this case, in bringing this PI motion; that's
15 simply just not true.

16 You can see on the left of this timeline, in early
17 2020, Fox launched it's 36 and 38 forks with patented bleeder
18 valves. This was significant, because this 36 fork, that I'm
19 holding here, and another fork called 38, a much more
20 versatile, lightweight forks than the first forks that Fox
21 included, those were on downhill bikes. Downhill bikes are
22 very different than Enduro and all mountain kind of bikes.
23 They are very specialized, not a lot of people were riding
24 them. It was a different market.

25 A downhill bike is heavy. It's basically, kind of,

1 like a mini motorcycle without a motor. It's heavy duty. You
2 point the bike downhill and you go. People used to use those
3 in bike parks, and race from the top of the mountain to the
4 bottom, try to get down alive. That's a totally different kind
5 of scenario, where Fox first started using these bleeder
6 valves, but around 2020 Fox realized bicycle technology had
7 changed.

8 Mr. Allinger is going to tell you that he would go to
9 Whistler and he would see more and more people bringing Enduro
10 and all mountain, lighter-style bikes up to the bike parks. It
11 wasn't just these downhill bikes that were being used in the
12 bike parks anymore. Fox saw, there is a real opportunity here,
13 because we have the same problem with these Enduro and all
14 mountain bikes that used to only exist with the downhills. So
15 they incorporated the bleeder valves into their 36 and 38,
16 downhill and Enduro forks, and that's basically where the start
17 of this timeline, starts on the left.

18 We have the interview that you just heard, in July
19 2020, with SRAM RockShox. By the way, RockShox is a brand name
20 under which SRAM sells these forks. RockShox that was also a
21 separate company that was selling telescopic scopes for a long
22 time. SRAM acquired them in 2001, and they were selling
23 telescopic forks for at least a decade before that, I think,
24 that's all very relevant, because RockShox and SRAM didn't
25 include any of these bleeder valves on any of these forks until

1 the events in question.

2 In October of 2021, SRAM announced that it's going to
3 be releasing RockShox forks with bleeder valves. Those
4 products weren't available for examination, to see whether they
5 infringed Fox's patent. It was just an announcement. There
6 was a magazine article. Fox couldn't act on that. It needed
7 to actually buy the products, and it started trying to buy the
8 products in around October of 2021. It couldn't get them until
9 April and May of 2022, because they were not released. Fox
10 couldn't buy them until that time.

11 Fox filed the suit on July 13th, 2022. There was a
12 lot of consideration that went into whether Fox should file
13 this suit. They didn't take it lightly. One of the reasons
14 was there was a huge litigation between Fox and SRAM, that
15 started in December of 2015, and it ended, with a settlement
16 agreement in December of 2021. There was a declaration that
17 was filed when this case was in the Central District of
18 California, that mistakenly referred to that settlement as
19 having occurred in April of 2022; that's not correct. We fixed
20 that in the current papers. The actual date is December of
21 2021 for the settlement. So that's not too far in the rear
22 view mirror. So Fox had to be careful about filing this suit.
23 Fox filed the suit in July of 2022 and immediately started
24 settlement discussions, with Brian Gause. He is sitting here.
25 He has had multiple conversations with Foxes GC, essentially,

1 our top legal counsel. They talked every month but one,
2 between July and December of 2022, and they exchanged multiple
3 emails that were not even talking to -- or not even talking
4 about.

5 Fox always said, *We want you to stop*, but that was not
6 negotiable; SRAM would not do that. And so, Fox then said,
7 *Well let's talk about plan B*. We couldn't agree on a plan B;
8 that's why we're here.

9 THE COURT: Let me just ask you, there's some earlier
10 litigation, there are settlement discussions, you said to me
11 that you had to be careful, because of those -- of that
12 settlement in the prior litigation. I'm not tracking.

13 MR. McCAULEY: Thank you for the question, Your Honor.
14 The reason is that was a big, expensive, distracting lawsuit
15 and Fox did not want to get into another litigation without
16 thoroughly kicking the tires on whether it should do it; that's
17 all I mean.

18 There was nothing about the prior litigation that
19 prevented or inhibited this litigation from proceeding. It's
20 just, *We've just got out of the this big expensive battle; do*
21 *we really want to get in another one?* Fox knows SRAM is pretty
22 litigious; that's another factor that went into this
23 discussion, but in any event...

24 THE COURT: There's no 12 in the box.

25 MR. McCAULEY: Okay, Your Honor. So settlement

1 negotiations go on between July and December. They are
2 unsuccessful. As you have read in the papers, the busy season,
3 for spec wins, that's for OEM spec wins, really starts in the
4 early part of the year. Twenty-twenty-two was a weird year.
5 We were just coming out of the COVID pandemic, there were a lot
6 of supply-and-chain issues. Mr. Ellinger testified to this in
7 his declaration. I am sure he will mention it today. But what
8 ended up happening was there was a big explosion of bike sales
9 during the pandemic and a lot of people -- excuse me -- a lot
10 of OEMs were buying up inventory, but they ended up getting out
11 of sync with their inventory. They had lots of certain parts,
12 but not other parts. So they couldn't actually build all of
13 the bikes they wanted to build and get out on the dealer
14 floors, and there was a bottleneck.

15 So, what ended up happening was a lot of the OEM
16 customers -- by OEMs, we are talking big names, we are talking
17 Specialized and Trek and mountain bike companies like. That
18 they were not eager to be buying new forks in 2022 -- or
19 speccing new forks, I should say, in 2022, because of that
20 problem.

21 So there was a relative lull period between July and
22 December of 2022. Settlement negotiations weren't going
23 anywhere. The 2023 season was heating up. Fox filed its
24 motion in mid January of 2022.

25 Okay. Could we go a couple more slides? Your Honor,

1 I'm not going to walk through all of this. It's in our papers,
2 but we briefed, extensively, why a preliminary injunction,
3 which we acknowledge is extraordinary remedy, it's appropriate
4 in this case. We have shown a reasonable likelihood of success
5 on the merits. We have demonstrated that Fox is going to
6 suffer irreparable harm under controlling Federal Circuit case
7 law, without an injunction. The balance of the equities,
8 excuse me, also, tips in favor of Fox. Particularly, in view
9 of that -- excuse me -- that interview that you just heard.
10 SRAM is willfully infringing in this case. They knew about our
11 patent, and they chose to go, damn the torpedoes and straight
12 ahead, and granting the injunction is in the public's
13 interests.

14 Next slide, please. Your Honor, we have a reasonable
15 likelihood of success on the merits. I'm not going to take the
16 time to walk through all of the claim elements that are
17 identified on this slide. We have an expert, Dr. Alex Slocum
18 from M.I.T., who is going to walk through and explain to you,
19 why all of the elements in the patent are met -- forks, SRAM
20 forks have been accused of infringement.

21 Suffice it to say again, Fox's patent is not just
22 simply to a valve or a bleeder valve. It's a specific
23 air-bleed assembly, for equalizing air pressure; equalizing is
24 important; inside the lower fork tube, that's important, to
25 ambient pressure, ambient pressure outside of the fork. Those

1 three different pieces in that simple element. It's not in the
2 prior art. And as you can see we have bolded, lower down on
3 the slide, the claims are talking about an air-bleed assembly
4 for equalizing pressure.

5 SRAM's approach is to try to sort of ignore all of
6 those details, and just talk about *A valve, is a valve is a*
7 *valve*; that's not what this case is about.

8 Next slide, please. Your Honor, there's lots of
9 examples of irreparable harm in federal circuit controlling
10 case law, and our case is on all squares with a lot of it,
11 which is why we brought this motion, which is why we are here.

12 Fox has a reputation as innovator. Fox started in the
13 1970s, and they have been focused on suspension systems for all
14 kinds of off-road bikes, vehicles, ATVs, motorcycles,
15 snowmobiles. They are the premium name in suspension systems,
16 and Mr. Allinger will tell you about that.

17 SRAM's infringement is costing -- it's already costing
18 Fox irrecoverable business or irreparable harm that's very hard
19 to quantify. A sale by SRAM is essentially a sale lost by Fox
20 in this OEM market. Why do we know that? The reason we know
21 that is because the parties both agree that they have somewhere
22 in the neighborhood of 80 to 85 percent of the OEM bike market
23 for medium- to high-end forks on mountain bikes. This is,
24 essentially, not completely, but it's essentially, a
25 two-supplier market, which is very significant.

1 Just like we briefed in our papers, we lost spec
2 positions to Santa Cruz that we had for years. We knew SRAM
3 took it, because there is nobody else who could take it. Santa
4 Cruz has only bought forks from Fox and SRAM for at least six
5 years, and fast forward, several months later, we were right.

6 We have confirmed, I think it's 16 fork positions,
7 actually, went to SRAM with the accused's forks, high-end SRAM
8 forks with bleeder valves. We still have not quite confirmed
9 four more, but we are confident those have gone to SRAM, as
10 well.

11 Your Honor, it's very significant, under Federal
12 Circuit law that in this industry, in the OEM market, we're
13 talking about what's called a design-win-kind-of-sales. What
14 the companies are both doing is they are trying to lock in spec
15 positions in advance. The spec positions that the companies
16 are battling for right now, means, if they win now, the OEM
17 companies are going to be putting their forks on bikes and
18 selling them in about a year from now. So, the company's
19 current market share, and the company's current sales, are
20 based on spec wins from about a year or even a year and a half
21 ago.

22 These spec wins are incredibly important. This is
23 also very significant, because some of the arguments that SRAM
24 has made in its papers, about some statements Fox's CEO has
25 recently made, are not relevant to what we're talking about,

1 because Fox's current sales and current market share are based
2 on spec wins, et cetera, that happened a year to a year and a
3 half ago. What we're talking about, mostly in this case, are
4 spec wins in the future, and spec wins carry a whole bunch of
5 advantages to the winner of the spec win, either Fox or SRAM,
6 because they are sticky.

7 If you get an incumbent position or incumbency
8 position with an OEM bike provider, like Specialized or Trek,
9 it builds in a relationship; it's harder to get knocked off the
10 pedestal later; it translates into future sales. And one spec
11 win can translate into thousand of individual fork sales,
12 because model of these bikes that get spec with either a Fox or
13 a SRAM fork, sells for thousands of bikes. So it's not just
14 one little win. When you are talking about a spec win, it's
15 very significant. This lock in exacerbates the irreparable
16 harm to the patentee. The *Broadcom* case is right on all fours
17 with exactly what we're talking about.

18 We spent significant time briefing *Broadcom* in our
19 papers. SRAM didn't touch it, because they don't have an
20 answer to it. It shows irreparable harm, just on the *Broadcom*
21 factors.

22 Fox is also expecting to and experienced downward
23 pricing pressure as a result of what we're talking about, of
24 this infringement, and there's also a causal nexus between
25 infringement and harm.

1 SRAM has tried to blur the requirement for showing
2 causal nexus, and they have outright misstated it at some
3 points. The case law, and we have briefed this extensively in
4 our papers, for a causal nexus, you don't have to show that the
5 reason -- the only reason somebody bought a fork, is because of
6 a bleeder valve; nobody could show that. We are not claiming
7 we can show that. We never claimed to say that. What we're
8 saying is, the market has come to want and expect bleeder
9 valves, and that's demonstrated by that Vital MTB article, and
10 some other articles that are already in the record. The market
11 wants and expects these things, which is why SRAM has put them
12 on all of their high-end forks; all of them. Yet they want to
13 belittle it and tell you it's not worth anything.

14 Next slide, please. This is more irreparable harm,
15 and it's also balancing of the equities. Fox is being forced
16 to compete with its own patented invention. The injunction
17 that we are seeking will preserve the status quo, at the time
18 we filed our papers, back in January. The notice and the
19 request is for an injunction that will prevent sales beyond
20 January 15, 2023, that was -- that was stated, when we filed
21 our papers in mid January. So, we're trying to preserve the
22 status quo with this motion.

23 It's very important that SRAM took a knowing and
24 calculated risk for an infringement suit when it launched these
25 products. There's no inequity in enjoining them, under these

1 circumstances.

2 Next slide, please. The public interest also favors a
3 preliminary injunction. I won't go through all of this,
4 Your Honor. It's in our papers. But, suffice it to say, that
5 there's ample Federal Circuit case law that says society
6 benefits from patents and inventions and they should be
7 respected and honored, and if you have a valid patent, you
8 should -- you should enjoy your period of exclusivity and
9 that's all that Fox is asking for here.

10 Next slide, please. Your Honor, we will go into this
11 in some detail. I won't spend a lot of time on it, but SRAM
12 points to various prior art to try to say it would have been
13 obvious for somebody of ordinary skill to arrive at Fox's
14 patented invention, even though, critically, SRAM didn't do it,
15 RockShox didn't do it, nobody else did it before Fox did, yet
16 they want you to believe this was obvious. If you look at the
17 real world, it completely unends. It pulls the rug out from
18 underneath all of these arguments that they have.

19 All of the prior art references that SRAM is relying
20 on are either pressurization valves; meaning, it's like a bike
21 tire or a car tire, where you are pressing air in, the product
22 won't work if it's not pressurized, or oil ports. But those
23 are not the kind of -- that's not the kind of equalization
24 valve that we're talking about in this case.

25 There's no reference that teaches what we claim in our

1 patent, which is, again, an equalization of air in the lower
2 fork leg to the ambient pressure.

3 Next slide, please. SRAM, in making their arguments,
4 is relying on impermissible hindsight. The Federal Circuit has
5 a lot of case law on this, and I'm not going to spend time now
6 going through it, but I don't know if Your Honor has seen the
7 movie, *An Incredible Mind*, where there's this scene where this
8 woman is looking at the sky. She see as bunch of stars,
9 nothing else, and then the star, I'm blanking on his name right
10 now, he was a gladiator, draws out an umbrella, and then he
11 draws out a rabbit in the stars, and then she says, *Oh, it's*
12 *miraculous, I can see it now*; that's how inventions are.
13 Inventions always look obvious and simple when there are
14 combinations of known elements. It's not enough to make out an
15 obviousness case by just saying, *All of these individual*
16 *elements were in the prior art somewhere*. You have to do more
17 than that, and they have not done it, because they can't.

18 Next slide, please. Your Honor, they have argued that
19 even though the claims don't say that these valves must be --
20 these pressure relief valves must be in a particular place on
21 the fork, even though the claims, claim one in particular, for
22 purposes of this proceeding, it doesn't say that. They plucked
23 two statements out of the prosecution history to try to argue
24 they must be interpreted that way. This is called prosecution
25 disclaimer and prosecution history estoppel. It's a very heavy

1 burden for them to meet that, and they have not met it here,
2 because they have to show that the challenged statements are
3 ambiguous or amenable -- excuse me -- they have to show, by
4 evidence that is clear and unambiguous, a complete disavow of
5 claim scope, which they can't. Because if the challenged
6 statements are ambiguous or amenable to multiple reasonable
7 interpretations --

8 THE COURT: All right. So what is the challenged
9 statement?

10 MR. McCAULEY: Pardon me, Your Honor.

11 THE COURT: What's the challenged statement?

12 MR. McCAULEY: Well, on the next two slides, there's
13 yellow portions in highlights, that SRAM is relying on, and
14 SRAM is saying that based on these snippets of these
15 paragraphs, that there's prosecution history estoppel, and we
16 will go into this in detail with our experts, but our point is
17 that's not true. If you read the paragraphs in their entirety,
18 it's clear, that the claims aren't limited in the way SRAM is
19 arguing that they are, or it's at least ambiguous. So they
20 can't establish prosecution history estoppel. And on this
21 slide, you can see, about halfway through, there's a sentence,
22 in blue, that starts, *Thus, the air-bleed system, including the*
23 *manually operable valve is located below the lower leg seal*
24 *that is attached to the outmost edge of the second end of the*
25 *lower fork tube, wherein the second end of the lower fork is*

1 *configured to receive an upper fork telescopically therein;*
2 *that's consistent with our position; it's inconsistent with*
3 *SRAM's.*

4 Can we go to the next slide, please. Same thing on
5 this slide, Your Honor. SRAM is relying on the yellow, Fox is
6 saying, *You are ignoring the blue*, and the blue here says,
7 *Thus, in sum, the air-bleed assembly 300 is located below*
8 *applicant's lower leg seal and far enough away from the oil*
9 *bath lubrication, such that a substantial portion of the oil*
10 *bath lubrication is enabled to remain within the lower fork*
11 *tube, even when air is being released from the lower fork tube,*
12 *through the vent hole, et cetera...*

13 So when you read these statements as a whole, SRAM
14 can't meet its burden; that is our argument and our experts
15 will testify about this. If you read the full quotes in
16 context with all of the surrounding text and the prosecution
17 history, they establish that the air-bleed assembly has to be
18 on the lower fork, above the resting level of the oil bath, and
19 below the lower leg seal, which is what the claim says.

20 Next slide. Your Honor, enjoining SRAM is
21 appropriate, because again, we have clicked off all of our
22 burdens, all of the elements here on this last slide. I won't
23 walk through it. We appreciate your attention, Your Honor. We
24 appreciate your questions, and thank you.

25 *THE COURT:* Let me ask you two things before I move on

1 to the defendant. I'm very much aware of the fact that if I so
2 much as raise an eyebrow, people are trying to interpret it.
3 You really shouldn't do that. All right. I'm just asking
4 this, as much to see what I get from an answer, from a
5 curiosity point, as anything else.

6 Every patent case involves, essentially, one side
7 saying, *They stole our stuff. They are using our stuff. They*
8 *don't have the right to. They are intruding on our exclusive*
9 *rights.* I'm over simplifying it; I get it. But what I'm
10 trying to figure out is, why is this so different than the
11 standard case that preliminary injunctions are called for?
12 Because I don't think that preliminary injunctions are the
13 standard response to the claim of breach and do -- give me
14 whatever your answer is to that, however you view that. Don't
15 read into it that I'm for you or against you. I'm just trying
16 to tease out some understandings.

17 *MR. McCAULEY:* Your Honor, we appreciate your
18 questions. I have been doing this a long time, and I would
19 much rather have a dialogue with you. So thank you for asking
20 the questions.

21 *THE COURT:* You are going to have a dialogue whether
22 you want to or not; it is what it is, but go ahead.

23 *MR. McCAULEY:* True. But I honestly appreciate it.
24 What I would say, Your Honor, in the last case you are right.
25 There was no filing for an injunction, even though we were

1 battling it out for six years or so. But in this case, we are
2 looking at a situation with classic, irreparable harm, where
3 Fox will be damaged. It's already been damaged, by the way.
4 We briefed that in our papers. These spec positions that we've
5 already lost to Santa Cruz is very significant. Santa Cruz is
6 a very trendsetting client; Mr. Allinger will tell you about
7 that; but in any event, we're trying to stop the bleeding,
8 because you can't put Genie back in the bottle.

9 THE COURT: No pun intended.

10 MR. McCAULEY: That's right. We are trying to stop
11 the bleeding, because what would end up happening with this
12 case, Your Honor, if we go through to trial, is the first thing
13 SRAM is going to say is, *Well, you don't know what your market*
14 *share is.* Both sides agree that we don't know exactly what the
15 market share is, and we concede that. We have been saying that
16 all along. We only -- we do our best with the data that we
17 have, and you know, I deposed Mr. Rigney, I represented Mr.
18 Allinger, both sides are saying the same thing. We think it's
19 about 80 percent of the OEM market for medium- to high-end
20 bikes, and we have it. You know it goes back and forth a
21 little bit from year to year, but that's basically what we
22 have.

23 But when we get into trial, they're going to argue,
24 *Well, you don't have reliable market-sharing information,* and
25 the other point that I make, because I jumped straight to

1 irreparable harm. Infringement and validity in this case are
2 very clear. This is not a complicated case. I mean Finnegan
3 handles all kind of patent cases, that's what we do. This is a
4 really simple patent. It doesn't take a lot of time to try to
5 figure it out. Now, the arguments are something else, that I
6 concede. The patent, itself, this is not a circuit or a
7 molecule; it's very simple, and because infringement and
8 validity, in this case, are clear, and we are looking at very
9 clear, irreparable harm under established Federal Circuit case
10 law, that's why we brought this.

11 Also because, three years down the line, four years
12 down the line, when we finally get to trial, Fox won't be made
13 whole by a damages award. There's going to be a huge fight
14 about it.

15 *THE COURT:* Bond is a word that I have not heard you
16 say.

17 *MR. McCAULEY:* We would have to post the bond, and I
18 would assume that if the Court enters in a preliminary
19 injunction, as we're requesting, we would then have a
20 subsequent hearing to talk about the matter of the bond and how
21 much it would cost, and SRAM, no doubt, would fight about that
22 too, but that's not something we briefed. It's not in the
23 scope of today's proceedings, but we're prepared to post a
24 bond. We know the bond would be expensive.

25 *THE COURT:* All right.

1 MR. McCAULEY: Thank you, Your Honor.

2 THE COURT: Counsel. Are you going to ride it up to
3 me or walk?

4 MR. WALSH: These guys could ride it up to you. I
5 think I would fall and break every bone that I have.

6 THE COURT: No, no, no. Come over here. Come over
7 here.

8 THE COURT: You can come up if you want to. What is
9 it that you want me to see?

10 MR. WALSH: I just want you to see the entire things,
11 Your Honor. What these are being put on, when they talk about
12 OEMs, being put on bikes. People in the United States are
13 buying a full bike, and so --

14 THE COURT: Hold on one second. Get your camera, if
15 you want to.

16 MR. WALSH: I can take a picture and send it to you.

17 THE COURT: I'm not sure that that means anything. I
18 just as soon keep the visualizations.

19 MR. WALSH: Right, right. The reason, Your Honor, is
20 that this isn't one little product; like sometimes a patent can
21 cover and entire thing, right?

22 THE COURT: Right.

23 MR. WALSH: But this is a very small part of a -- of a
24 piece of a entire bicycle. Okay. And I will talk about this
25 more, but it's basically like buying a car with a -- with one

1 feature on it. Go ahead and put this up here. You can leave
2 that right there. This is -- this is a fork, that has a
3 push-button bleeder valve, this doesn't; this just has a plug.
4 The plaintiffs want to call that a special bleeder valve, but
5 it's a plug. It's a hole in it and a plug. So that's the
6 purpose for bringing these two different bicycles.

7 *THE COURT:* All right.

8 *MR. McCAULEY:* I'm fine, Your Honor. I know what they
9 look like. Thank you.

10 *MR. WALSH:* I will lean them against here, so I can
11 reference.

12 *THE COURT:* Give it a second. I have got to do some
13 adjustment. I climbed down and I can put it back up. So ...
14 okay.

15 **OPENING STATEMENT**

16 *MR. WALSH:* Thank you, Your Honor. So I want to begin
17 with what I think you exactly hit on at the very end, which is
18 this is a request for an extraordinary remedy, to show that
19 it's completely outside the normal sphere of a patent case,
20 and, in fact, just the opposite is the truth. In fact, the
21 evidence of that is pretty clear, because plaintiffs agreed on
22 a scheduling program in the fall of 2022, that outlined when
23 claim construction occur, when briefs would occur, when experts
24 would be exchanged, et cetera. So they recognized that in the
25 fall of 2022. All of a sudden now, it's, *Hey, we need an*

1 *injunction*. But the reason they need an injunction is because
2 it's a business reason. They just want to be able to inflict
3 as much pain as quickly as possible.

4 *THE COURT:* Hold on. While we're talking about
5 inflicting pain, let me do something for myself.

6 *MR. WALSH:* Yes, sir.

7 *THE COURT:* All right. Go ahead.

8 *MR. WALSH:* And I think you already kind of see the
9 major aspects, which is, likely to succeed on the merits,
10 irreparable harm, and we will talk about what real irreparable
11 harm is, and I want to start with those, because there's no way
12 there's irreparable harm here. Then the balance of the
13 equities and the public interest.

14 Why is there no irreparable harm? The reason to show,
15 without going through anything else here, is that the head of
16 this company, specifically said in a public filing, a public
17 securities filing, so it's subject to penalties, under oath,
18 for lying to the public and lying to the investors, that even
19 the loss of this entire lawsuit, by them, will have no material
20 effect on the company; and yet, they are coming in here and
21 saying to you, *No, just, the grant of this injunction, if we*
22 *don't do it, we will be irreparably harmed.* Those are two
23 things that cannot be reconciled.

24 The hearing should stop, just because of that; that's
25 the admission by their CEO. It's not under oath, but it's

1 under penalty of perjury and subject to the Securities law.

2 The other thing, and the reason is that loss sales are
3 presumed to be compensatable through damages, and they admit
4 they have not listed even one customer that they've lost. What
5 they've said is there's some specs that have gone back and
6 forth, et cetera, and I am going to talk about one of those,
7 specifically, in a few minutes, because it's so --

8 THE COURT: Yeah, I mean, look, just to kind of bump
9 in, to be transparent, or some degree -- to some degree
10 transparent, you are saying, *They have lost no customers*, yet
11 they are saying, *Look the way this industry works, if you lose*
12 *a spec now, you lose a customer tomorrow*. If each of you rides
13 your respective *bicycle* in parallel to each other, both things
14 can be true, but which one I grasp is less clear to me.

15 MR. WALSH: I will start with their statement. Their
16 counsel said that, and I agree with that; that's not true. The
17 facts you are going to hear today are going to show that's
18 absolutely not true. The idea, if they base this, *Oh, it's*
19 *sticky. Once you change a spec, it will never change again.*
20 *You stay with that same. It won't change.* I can show you one
21 example that's very relevant. He talked about Santa Cruz. A
22 company that they like, et cetera, and last year, they spec'd
23 our product on a bike, called a Tallboy, that had a pressure
24 relief valve, and this year they went right -- they went to Fox
25 and they are spec'ing a Fox fork. Now, the interesting thing

1 about it, also is that they're saying, *Oh, there's customer*
2 *demand. People won't buy these without these pressure relief*
3 *valves, et cetera. It also belies that, because the fork from*
4 *Fox that they substituted for the one from SRAM with a pressure*
5 *relief valve, doesn't have a pressure relief valve. So all of*
6 *those things are simply not accurate.*

7 You are not going to see a customer come in here,
8 they've had all of the time in the world, I will go through
9 their timeline, they have had all of the time in the world,
10 there's not a customer that says, *We absolutely have to have*
11 *this*, and their actual actions show just the opposite. All
12 right. Just the opposite.

13 So there isn't any. And they have not come in here
14 and said, *Here is the price erosion. We have had to lower our*
15 *price from X to Y and it's this amount of money.* They have not
16 done that at all. They said they may have to do that in the
17 future, but they don't know.

18 The other glaring example of why there's no
19 irreparable harm is from Fox's own actions. Lot of time
20 talking about, oh, the parties, the reason we didn't file
21 preliminary injunction, is because the parties were going back
22 and forth, with respect to settlement. All right. Of course
23 there's no reason why you can't try to settle a case and file a
24 preliminary injunction on the same day. The Court knows that;
25 there's absolutely no reason.

1 The settlement they are talking about, the settlement
2 that we entered in Exhibit A-79, is that they want SRAM to pay
3 them a royalty for these forks; a few dollars per fork.

4 Now by definition, if you are willing to accept a
5 royalty for something, and have it out there in the
6 marketplace, there's no irreparable harm. That's the whole
7 point, Your Honor. Their actions belie this whole claim, that
8 there's any kind of irreparable harm. You can't do that,
9 either.

10 And then in addition to that --

11 *THE COURT:* Should I really be considering settlement
12 negotiations on substantive issues?

13 *MR. WALSH:* It's an interesting point, Your Honor,
14 because they specifically brought up the settlement discussions
15 eight different times in their papers, to show as a -- for a
16 substantive reason this is why we delayed coming in here for
17 our PI. And there's specific case law on point that show that
18 you absolutely should. It's exactly for this reason. We have
19 a bench brief, we can give it to you. The cases are Power
20 Integrators case, it's axiomatic -- I'm sorry, that's outside
21 of the United States. The *Qualcomm vs. Broadcom* case. They
22 talked about a *Broadcom* case, which is not, you know,
23 particular, and I'll talk about that in a minute. There's
24 *Titan* case and *Skybag* case, that says that you -- the *BitTitan*
25 case that says this is exactly what -- because 408 says you can

1 do it for other purposes. I didn't say the dollar amount. I'm
2 not showing it to prove one way or the other liability. I'm
3 showing it to prove that they don't have irreparable harm.
4 There are multiple cases that say this is the exact same thing.
5 That if you -- the specific terms of a settlement offer are
6 wholly inconsistent with and therefore fatal to a claim of
7 imminent, irreparable injury absent an injunction; that's
8 exactly what they are coming in here and asking you for, and
9 their settlement request they are saying, *Give us a few dollars*
10 *for this.*

11 It shows that it's not something that will effect
12 their representation. It's not something that will effect the
13 company forever, as understood by their chairman and chief
14 executive.

15 I want to briefly talk about --

16 *THE COURT:* I don't want to lose -- look, I know this
17 is in all of your papers. One of the things that happens in
18 patent cases is that you have parties on both sides who --
19 legal counsel at least -- who tend to be expert in the area,
20 and they rattle off these cases as if we were talking about, I
21 don't know ... some case that I should know off the top of my
22 head. I know it's there. Just save my clerk the trouble of
23 hunting it down. Can you give her the copy?

24 *MR. WALSH:* Yeah.

25 *THE COURT:* Go ahead.

1 MR. McCAULEY: Your Honor, we do have an objection on
2 this, but I can wait until the end if that's all right.

3 THE COURT: We will deal with it as we go along.
4 Let's go.

5 MR. WALSH: All right. So, the other thing I want to
6 talk about is, just their long delay, which there are a lot of
7 cases that say if you delay long enough it shows it's not
8 irreparable harm.

9 This slide shows the actual documentation. First of
10 all, this, what was called a miraculous invention, wasn't
11 patented in 2020, as they stated before. It's way back in --
12 it was filed in 2012. Okay. They first put it on their bikes
13 in 2012 or 2013, and they didn't put it on any other bike for
14 seven years. If this is something that is so miraculous and
15 all of this customer demand, they wouldn't have done that.

16 But let's bring ourselves up to October 2022. First
17 of all, we had bleeder valves on bikes before that. They were
18 sold to customers in the summer of 2022. Our customers knew
19 it. The Fox people who compete with us for different products,
20 I'm certain, knew about it before then. We don't know that for
21 sure, Your Honor, because they refused to answer our discovery.
22 We have not gotten one piece of paper from them. Their
23 discovery was due like ten days ago. They refused to give us
24 any documentation or to meet and confer with us to be able to
25 prove these things. All of these concepts of when people knew

1 this. They have not given us one piece of paper concerning
2 that.

3 So we know for sure, they admit, in October of 2022,
4 they knew about this. They are right, that the longstanding
5 patent case that was resolved was in December of '21, right.
6 So three months later. They represented to the California
7 court in a declaration, that, oh, we were so concerned about
8 that case, and it didn't end until April, and that's why we
9 didn't file it until July. They admit now that's a mistake.
10 Okay. But it helped their position when they did it. The
11 irony of it is that they were fully engaged with SRAM, at that
12 point, and they never said anything about this. They never
13 said, *Are you doing this? Don't do this, because it's our*
14 *patent.* We could have sat down and said, *It's not your patent.*
15 *Your patent has it in a specific location. We design around*
16 *that. We put it below it.*

17 The reason that's important, Your Honor, is when they
18 talk about we're just trying to preserve the status quo, if
19 that had happened in October of; 21, then SRAM could have done
20 a lot of different things, designed something differently or
21 not done it at all; that's preserving the status quo. Instead,
22 they laid in wait, and they didn't do this. They waited all
23 this time, right. And then they didn't file their lawsuit till
24 July of 13 of 2022. So they waited all that time.

25 Now, the other thing I heard was that they finally got

1 this product in April. I thought he said May, but the papers
2 say in April. They got the product in April, and they didn't
3 file until July. A couple different inconsistent things,
4 Your Honor. First of all, they said that, *Oh, this is a very*
5 *simple patent. It's really easy for you to understand, et*
6 *cetera.* But it took them three months to look at this and try
7 to figure out if it infringed, when they had a physical -- when
8 they have known about it for nine months before that.

9 The other thing is, I was struck by their
10 opposition -- I mean their Reply, when they filed it with
11 respect to their motions to not have certain evidence in here.
12 They represented to the Court -- this is what they represented
13 to the Court about this case, about prior art references that
14 were actually included in the actual patent, and so they are
15 actually part of patent. They said, *Prior art references are*
16 *complex and each one requires substantial time to study and*
17 *understand, particularly for purposes of a disputed court*
18 *proceeding.* They said that they hadn't even had time to look
19 at -- they hadn't had the opportunity to study even the nine
20 references that were identified in SRAM's invalidity
21 contentions a month before that, and yet they are telling you,
22 today, *This is a really simple patent, and we want you to issue*
23 *something, immediately.*

24 They then waited seven months, after they filed it, to
25 file a preliminary injunction. Delay alone shows no

1 irreparable injury, Your Honor. It's not fair to force the
2 Court and the other litigants to do something immediately, when
3 they didn't do it and waited all that time.

4 There's also no causal nexus, okay. They have to show
5 a causal nexus between the actual patent and the demand that's
6 going on out there, and there isn't any. The only thing that
7 was referenced was we have objective evidence, we have a
8 mountain bike online magazine that -- where we ask somebody a
9 question. It didn't talk about consumer demand. It didn't say
10 they were driving sales from it. You're not going to hear
11 testimony about that. It's not in their papers or in their
12 depositions.

13 Their increased sales before that was admittedly a
14 part of COVID, and the -- and so were SRAM's. We did the same
15 rate, incredible, without any kind of bleeder valves, et
16 cetera.

17 And then, even now, we sell many more forks without
18 bleeder valves than we do with bleeder valves. So there isn't
19 a causal nexus.

20 That's the inside diagram, that kind of x-ray view of
21 what a fork looks like. There's an incredible amount that goes
22 into these forks. The left side, it's kind of in the blue, is
23 the damping portion, on the right side it is the spring
24 portion. They separate those things. So what I like to
25 describe it as, kind of like think of a pogo stick. You jump

1 on a pogo stick, go up the same amount. Something that you
2 have a suspension, if you hit a pothole, if you hit a log or
3 something, you want to come up and back, but you don't want to
4 be knocked off of the bike, especially if you are riding it,
5 opposed to in a motorcycle or a car.

6 By the way, this patent is not limited to bicycles.
7 It's any -- any vehicle. So you want to have a damper. What
8 that damper means is they have fluid or other ways to slow down
9 that process, so you don't get sprung all the way back up.
10 They have an incredible amount of adjustments features, et
11 cetera. The feel of what that is like is what really drives
12 demand. The -- and especially with our new products. It's not
13 like we kept our products the same and then we just came out
14 with a pressure relief valve. We came out with entirely new
15 product with all sorts of new things, and the world loved it
16 because of the way it felt, not because of pressure release
17 valves. So that's the -- I'm sorry, the reason why it's
18 longer.

19 Okay. We also don't think there's likelihood of
20 success, Your Honor; meaning they are not going to be able to
21 prove that we infringed this patent. We cited these cases in
22 our briefing, et cetera.

23 There is clear evidence that they confirmed what their
24 patent meant, and that's the only reason that they got it. And
25 our systems lacked those location things. I heard this

1 referenced in opening, as, *Oh, this is lower leg bleeder valve*
2 *patent, or the bleeder valve patent.* It's not. It has to be a
3 certain way and a particular location and that's why people
4 are --

5 THE COURT: So tell me about the location.

6 MR. WALSH: Okay. It is -- I will go through the
7 prosecution history, which were referenced before. Their first
8 application, Your Honor, they filed it, and they just said, *I*
9 *just want an air-bleed system;* that's on the right. They filed
10 for that. Okay. An air-bleed system for suspension, fork or
11 shock absorber with a fluid passage. The PTO comes back and
12 says, *No, it's rejected, because, air-bleed system for a*
13 *suspension fork or shock absorber has already been invented by*
14 *others.* If you look at the second thing underneath it, *Galasso*
15 *disclosed that the air-bleed system, et cetera,* so it was
16 rejected.

17 So what does Fox do? The next thing they do, they
18 don't disagree. They don't deny that it shows these air
19 bleeds; rather, they try to amend it. They try to add more
20 limitations to it. What does the patent Examiner do? Again,
21 rejects it, says *No. An air-bleed system has already been*
22 *invented.*

23 This goes on, Your Honor, not -- and again when they
24 come back, they try to amend. Again, they do not deny that the
25 air-bleed systems in forks are already out there. They keep

1 going through this, not four, five, six times they get
2 rejected, Your Honor, and then, in response to the sixth time,
3 they come back and they say, Here's *what's different, our*
4 *Applicant features as recited, we locate the air-bleed system*
5 *in the lower fork, where the vent hole is located between the*
6 *lower leg seal and the bushing that is attached thereto. It*
7 *doesn't say in one part of it or something else. It doesn't*
8 *say that.*

9 THE COURT: Let me get -- there you go. I was going
10 to say, let me see a visualization of the, quote, seal and the,
11 quote, bushing.

12 MR. WALSH: Exactly. So think of those forks, the
13 seal it at the very top, you see on the right lower leg seal,
14 and the upper bushing is right underneath is. So the seal is
15 the thing that helps it keep oil or lubricant inside.

16 THE COURT: The Court is more than willing to admit
17 that it's ... less than familiar with all of these terms. I
18 get what a seal is. The bushing is? How are you all
19 describing that; talking about that?

20 MR. WALSH: This gentleman will do it. He will be mad
21 if I explain it to you but here is what I think--

22 THE COURT: I don't care if he is mad. We will throw
23 him out of the courtroom.

24 MR. WALSH: It is, basically, something that goes
25 around that smaller tube, so when it telescopes in and out, it

1 doesn't shake. It doesn't go different ways. It keeps it in
2 the same position in the fork; that's what the bushing does.

3 THE COURT: All right.

4 MR. WALSH: They said, *Look, this is where it's*
5 *located, between those two things*, and that's the only reason
6 why they were granted that patent. And the point is, it's
7 black line -- black-letter law in patent. You can't tell the
8 PTO, here is how narrow my patent is, in order to get it, and
9 then come into Court and say it's a bleeder valve patent.

10 THE COURT: Where is your valve?

11 MR. WALSH: It is right here, Your Honor. It's below
12 the bushing. Now, these pictures down here, these picture are
13 of our fork; this was done by Fox's expert. We took those
14 things just to show it, and I will show you exactly where it
15 is. The lower leg seal is at the top, where the arrow is, and
16 the bushing is where the lower blue arrow is, and the valve is
17 underneath it. It's below that.

18 The irony of it is that when Fox had this for the
19 seven years, when they were coming out on their first forks, et
20 cetera, they had their bleeder valves, looked exactly like the
21 figure in this patent, Your Honor. Now they have moved their
22 bleeder valves down. So they are not even practicing their
23 patent, you know, because they thought that it was a different
24 place, and of course, patents are designed so that you disclose
25 what you invented to the public and then someone else can make

1 it better, the whole point of it, you can design around, that's
2 why people encourage it.

3 If they don't, if they say, *No, no, it's not limited*
4 *to that*, then it's invalid Your Honor. There's multiple
5 references that show it's invalid, and by the way, they are not
6 just obviousness ones. I think this is one of the most obvious
7 patents I have looked at. But it is -- five of those six
8 references are anticipation; meaning, different pieces of prior
9 art have every piece of it. The PTO kept rejecting it for
10 anticipation, not for obviousness combining things, but if you
11 do it, it's very easy. The idea that, *Oh, you can make a*
12 *difference* has been around for a long time. People put Zip
13 Ties in it, et cetera. It's not a big deal. And the other
14 thing, it's this tiny portion of the community. People that
15 sell things all over the country, they would never ever have a
16 need to have push that button. The only time you would be
17 doing that is if I'm going from someplace really low to really
18 high over and over. Because if I move from St. Louis, which is
19 600 feet above sea level, to your beautiful city, I would
20 have --

21 *THE COURT:* Don't pander; it's not that beautiful.

22 *MR. WALSH:* If you lived in St. Louis, you would
23 say --

24 *THE COURT:* I have been to St. Louis, so I will give
25 you that one.

1 MR. WALSH: So you would -- you wouldn't have to do
2 anything, Your Honor. You -- the adjustments on here are
3 incredible, rebound, spring rates, et cetera. You would set it
4 for whatever and it would be fine. No problem with it. They
5 are not going to tell you what percentage of people use it, but
6 we know from people buying upgrade kits, you know, that people
7 really aren't doing it, Your Honor.

8 For example, the upgrade kits, where it's plugged.
9 Where we said we don't have one, you can buy for, you know, 29,
10 30 dollars an upgrade to make that a push button. Okay. And
11 of the 60-something-thousand forks that have already been sold
12 that are out there, Your Honor, there's only been a hundred,
13 you know, that have done that, a hundred. You know, no one,
14 you know, is calling for it. It's not something -- they are
15 probably going to discontinue it.

16 Now, in contrast, you can take apart that same fork,
17 you can put in this brand-new damper charger, they call it,
18 cartridge, okay. It's a really complicated thing to do. And
19 it costs you know 15 times that much or 12 times, because it's
20 almost like \$400 to put it in there, 300 and something, and yet
21 there's been like 1600 of those that are purchased, you know.
22 That's what shows, what really shows, driving demand.

23 With respect to being invalid, Your Honor, we -- at
24 this stage, in a preliminary injunction, we don't have to show
25 that it's by clear and convincing evidence or things like that.

1 All we have to show is that there's substantial question. The
2 PTO itself did it six different times, until they said, *No, it*
3 *has to be at this location*, that should be enough, alone.

4 And then here's the references that we are showing.
5 First of all, the idea, *Oh, no one ever thought of this*
6 *miraculous bleeder valve*. They have been on motorcycles,
7 Your Honor, for decades, right. Now, a motorcycle turns that
8 upside down. You know how -- they call it a lower fork, but I
9 will call it an outer fork and an inner fork. A motorcycle
10 turns that upside down. The smaller one is on the bottom and
11 the bigger one is on top. And we make some forks RSIs on
12 bicycles that do the same thing, et cetera, and on motorcycles
13 they have buttons there to equalize it, you know, for decades.
14 It's not a complicated thing. So that's why when you combine
15 some of these things, especially you can see what it looks
16 like.

17 There are other art references that we go through,
18 Your Honor. I don't think I will belabor it. We will talk
19 about it with some of the experts. If you -- if you ignore
20 these other things, if you ignore that location, it invalidates
21 it. It's either not infringed or it's invalidated.

22 This is what I talked about before, Your Honor, which
23 is, this is a complex case. You know, I like the idea that
24 it's not recombinant DNA, but they specifically said it in
25 their brief; that's what it is. They also agreed to a

1 schedule, Your Honor, this is a schedule that they agreed to,
2 for claim construction, and you can't say, *Oh, it's*
3 *unimportant, if you don't have those claim construction things,*
4 Your Honor.

5 So the other thing I wanted to talk about, Your Honor,
6 briefly, was this idea of balance of the hardships. Okay.
7 They want to basically create a monopoly, and allow Fox to
8 price gouge. The reason they are doing this is because they
9 want to charge more money, but they have not told us how much
10 they have lost or not. These forks are already out in the
11 market, Your Honor. If this was in the fall of 2021, when they
12 say they knew about it, you could maybe have a status quo where
13 things don't change. They are already in the market. That's
14 going to hurt SRAM. It's going to hurt customers. It's going
15 to hurt people out there. Spec positions don't change. And
16 it's overly broad relief, and the reason, Your Honor, is the
17 only place they have a patent for this, Your Honor, is the
18 United States.

19 These bikes are made in Taiwan. They are sold to
20 factories or trading companies, that then sell them to the
21 factories in Taiwan. And an OEM company like Trek or
22 Specialized or something, they will go and buy a completed
23 bicycle. They will buy that. They say their aftermarket sales
24 are de minimis. They will buy a completed bicycle from that
25 factory, Your Honor, in Taiwan, and then they will spread those

1 bikes all over the world, and both parties don't know exactly
2 where they go. The best estimate, there's probably 40 percent
3 or something like that, that come to the United States, but you
4 don't know for certain, and they want to shut down that entire
5 process. They want to -- they want to go tell people this,
6 that's writing the papers, give them all of these things saying
7 this is subject to a preliminary injunction, because they are
8 trying to stop, not just sales here, but everywhere, in the
9 United States, outside, that's an extraterritorial --

10 *THE COURT:* So if it's overly broad, then presumably
11 there could be a less broad ... implementation? What might
12 that be?

13 *MR. WALSH:* It's an interesting thing. I don't see
14 one, Your Honor. They could easily sue people, and have them
15 on bikes here. They could sue dealers. They could sue anybody
16 they want. These are made and sold in Taiwan. The reason
17 that's important, Your Honor, is because they are trying to do
18 it intentionally, I believe, to obscure, because you can't
19 extend your patent outside of the United States. If you do,
20 that's called patent misuse. Patent misuse renders the patent
21 unenforceable. You can't enforce it until it is cured, right.

22 And the other example of it, not just in the request,
23 but in this Exhibit A-79, what they want the royalty, just for
24 a couple dollars, et cetera, they want that royalty to be
25 global, for all sales of this globally, even though they do not

1 have a patent in the United States -- outside of the United
2 States, which is an extraterritorial request for expansion of
3 their patent here.

4 So even if they are right on all of those things, they
5 are trying to get to expand this outside of the United States,
6 which is patent misuse, which renders the patent unenforceable,
7 because of that inequitable conduct. So it's overly broad and
8 shouldn't apply to all of those things.

9 On the balance of hardships, this is about Fox wanting
10 more money; that's it. Sales go up and down, none of these
11 people have left. It's not true, factually, that this is a
12 sticky business. They go up and down, even on the Santa Cruz
13 one that they have been talking about. It's going to harm
14 those OEMs, it will harm bike stores, et cetera, that are
15 trying to sell the products, and harm the customers and the
16 product is already out there, Your Honor.

17 So that is our presentation and thank you for your
18 time and patience.

19 *THE COURT:* All right. Let me just ask you each to do
20 this. I don't need it right now, but, obviously, you have got
21 digital presentation, and I imagine on close you will have yet
22 another digital presentation, could you simply, I don't care
23 whether they are on a thumb drive or what, but just have a copy
24 sent over to chambers, each of you. I'm not sure that I need
25 it, but I'm also -- I would rather have it and not need it than

1 need and not have it. All right. So let's go.

2 MR. McCAULEY: Your Honor, may I address the
3 objection?

4 THE COURT: Go ahead. Go ahead.

5 MR. McCAULEY: Thank you. Thank you, Your Honor, I
6 would like to just address our objection to what's Exhibit
7 A-79, and frankly, it's shocking to me that SRAM is using this.
8 I almost said *attempting* to use this.

9 There was an express written agreement between
10 in-house counsel for both parties that settlement negotiations
11 would be inadmissible in any proceeding for any purpose. It's
12 in writing. And in fact, less than an hour before Exhibit
13 A-79, Fox's in-house counsel, or general counsel, confirmed
14 that was the arrangement before emailing this over, and, you
15 can see at the top, it says it's *Subject To FRE 408*, which it
16 is, but it also says it's *subject to a confidentiality and*
17 *non-admissibility agreement*.

18 Now, it is just mind blowing that SRAM's attorneys
19 think that they are free to come into court and violate --
20 flagrantly violate a written agreement between the parties. I
21 have the agreement, the email exchange between Fox's counsel
22 and SRAM's' counsel, less than an hour before Exhibit A-79.
23 Fox's counsel wrote Brian, Brian Gause, who is sitting in
24 audience, *We have prepared a non-binding proposal to settle the*
25 *current litigation between Fox and SRAM before I send the*

1 *proposal over, however, I would like to confirm with you our*
2 *mutual agreement that our settlement discussions including the*
3 *forthcoming proposal, meaning Exhibit A-79, are and remain*
4 *subject to the same agreement that settlement negotiations are*
5 *not admissible in any proceeding, for any purpose, and are*
6 *protected under FRCP 408, please confirm. And Brian responds,*
7 *Hello, Toby. I agree that our settlement discussions including*
8 *the forthcoming proposal, are and remain subject to the same*
9 *agreement, the settlement negotiations are not admissible, in*
10 *any proceeding, for any purpose and are protected under FRCP*
11 *408.*

12 Your Honor, the 408 argument that counsel are making
13 are a red herring. We objected, vociferously, before they used
14 it. It shouldn't be used. It's unethical. It's a complete
15 violation of an agreement, but they are doing it anyway.

16 I would like to just respond to some of the points
17 they made about this settlement proposal. As I said earlier,
18 every time Fox has talked to SRAM about this, they said, *We*
19 *want you to stop using the bleeder valves, that's what we want,*
20 *and SRAM always says, No, we need them, no that's a nonstarter.*
21 *so where are we supposed to go from there? Well this is one*
22 *place we went from there, and yeah, there's a royalty term*
23 *among other terms that's incorporated in here, but importantly*
24 *there's also a volume restriction on the amount of forks that*
25 *SRAM can sell. There was also a requirement that SRAM*

1 acknowledge, a publicly available recognition for Fox's IP for
2 push button bleeder valves, which SRAM refused. This was
3 important to Fox because of our reputation, because we are a
4 leader in suspension technologies. I could say a lot of things
5 about some of the other things that Mr. Walsh said, but--

6 *THE COURT:* All right. All right. I get it. I got
7 it before this. This is a urine exchange at the highest form.
8 Fine. Let's get a witness, and I will figure out where I'm
9 going at the end of it.

10 I understand your position, I understand their
11 position. Let's get some evidence going.

12 *MR. McCAULEY:* Thank you, Your Honor. Fox calls
13 Mr. Allinger.

14 *THE COURT:* There's no one else in the courtroom
15 that -- I don't believe; is that correct?

16 *MR. McCAULEY:* Your Honor, there are some SRAM people,
17 here, who are not the corporate designee who I think should be
18 excluded. I don't have objection to experts, obviously.

19 *THE COURT:* All right. And then, Julie, lock the
20 door. Tammy, this one is restriction level one. Careful of
21 that ramp. I will also tell you that that chair seems like it
22 doesn't move; but it does. When you sit in it, you kind of
23 have to grab it and bump yourself up. If you just try and pull
24 forward and back, it won't work.

25 *THE WITNESS:* Thank you.

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1 (Wesley Allinger was sworn.)

2 THE WITNESS: I do.

3 THE COURTROOM DEPUTY: Have a seat. When you get
4 settled, if you could state your name and then spell your last
5 name, please.

6 THE WITNESS: Wesley Allinger, W E S L E Y, last name
7 A L L I N G E R.

8 MR. McCAULEY: Your Honor, may I ask the Court a
9 question? Since, I believe, every single one of the exhibits
10 that I was prepared to go through with Mr. Allinger are already
11 in the court record, I think it would be more expeditious to
12 hit highlights and not necessarily worry about that?

13 THE COURT: That's fine.

14 **DIRECT EXAMINATION**

15 BY MR. McCAULEY:

16 Q Good morning, Mr. Allinger. Would you please introduce
17 yourself to His Honor.

18 A Good morning, Your Honor. I'm Wes Allinger.

19 Q And would you please state -- you just stated your name.
20 Would you please spell it for the record?

21 A Wesley Allinger, W E S L E Y, A L L I N G E R.

22 Q Mr. Allinger, what is your position at Fox Factory?

23 A I'm the executive vice president of the cycling division.

24 Q How long have you been in that position?

25 A Approximately 12 years.

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1 Q What kind of a company is Fox?

2 A Fox is a manufacture -- design and manufacturer of high
3 performance suspension systems for bicycles, ATVs, motorcycles,
4 trucks, side-by-sides and non-road vehicles to name a few.

5 Q How long has Fox been in the suspension business?

6 A Since the mid 70s, we are approaching 40 years.

7 Q What is Fox's mission been with regard to suspension
8 systems?

9 A To create high-end-type performance systems. You know, we
10 were the first to do air shocks on motorcycles. We brought
11 high-end suspension to snowmobiles, ATVs, motorcycles, as I
12 mentioned earlier, along with, you know, a lot of work to
13 refine and perfect bicycle suspension.

14 Q Now, you said you have been in your current position for
15 about 12 years. How long have you been at Fox, overall?

16 A About 22 years.

17 Q And your current position is executive vice president in
18 the cycling business unit, right?

19 A That's correct.

20 Q Does that mean you are in charge of the bike group at Fox?

21 A Many aspects of the bike group. Yeah. I touch most of the
22 business we do in cycling.

23 Q How would you describe your responsibilities in that role
24 now and over the past ten years or so?

25 A Well, dealing closely with our operations team or

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1 manufacturing team, the main focus, though, is dealing with the
2 engineering team, and working with product development teams,
3 to kind of pave the way, design and chart out our product line
4 for bicycles.

5 Q As part of your job and duties over the past 10 or 20
6 years, have you paid attention to what's going on in the market
7 for suspension products?

8 A Yeah, absolutely. It's a big part of my job, is to make
9 sure I'm in tune with what's going on. I'm a rider myself;
10 spend a lot of time riding, talking to folks, going to events,
11 interfacing with industry in general to be sure that, you know,
12 I have a good sense of what's going on and where it's headed,
13 you know, what we need to do to maintain our position.

14 Q You have been to the Whistler Bike Park that I mentioned in
15 my opening, many times?

16 A Yes. Yes, I have.

17 Q And you have talked to the riders at Whistler, while you
18 were there?

19 A Certainly, certainly. Many -- you know, before COVID
20 several times a year. You know, you just interface with so
21 many folks when you are at a park like that. You get a real
22 good feel for what's going on, especially in the kind of bikes
23 that we're talking about that are being used even more now in
24 those kind of bike parks.

25 Q Do you ever test drive Fox prototypes and products?

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1 A I absolutely do. Yeah. Constantly. Right, that's a big
2 part of my job.

3 Q Do you ever test drive SRAM competing products?

4 A We ride all of our competitors products. Yes, including
5 SRAM.

6 Q And we includes you; you personally do it, right?

7 A I personally do it. When I say we, you know we've got --
8 which I'm sure SRAM does too -- quite a crew of engineers that
9 are enthusiasts that do that, test riders and own product
10 managers that do a lot of riding, also.

11 Q Do Fox and SRAM compete in any particular market segments
12 for sales of mountain bike forks?

13 A Certainly. We compete heavily in the OEM market segment
14 that we have talked about today, and also in the aftermarket.

15 Q Would you describe for His Honor, briefly, what the OM
16 market is, that we're talking about?

17 A So we look at brands like Trek here and I think Norco is
18 the other one. There's approximately a hundred to 150 OEM bike
19 companies, globally, that both SRAM and Fox sell to those bike
20 companies, and we compete for places on those bikes, much like
21 we've talked about with these bikes here, earlier.

22 And as we compete, we're trying to get specs. We are
23 trying to secure our position on certain model bikes, and that
24 happens throughout the year, and it's usually sort of forward
25 looking. So we will do a lot of work this year, for specs that

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1 will be manufactured and sold a year later, for example.

2 Q So you heard Mr. Walsh's statements, you heard what he said
3 by Mike Dennison's statement about Fox's market share this year
4 and that sort of thing. Do you recall that?

5 A I do.

6 Q Do you have any response to that?

7 A Um, you know, I did get a chance to look that over again,
8 before today, and I do think, you know, when Mike makes those
9 comments, he is talking about the current year that we're in.
10 So in relation to what I just said, the work we're doing right
11 now, is next year's revenue, right, and the year after in some
12 cases, because it can spill over a little bit. So, his
13 comments are really centered around what's happening this
14 calendar year, 2022.

15 Q So you know when were the dye cast for the market share
16 this year?

17 A Primarily last year.

18 Q And that's because you lock in specs' positions with OEMs
19 in advance, right?

20 A That's correct.

21 Q What kind of forks -- or how would you describe the kind of
22 forks that Fox and SRAM make, when they compete against each
23 other in this market?

24 A These are high-end premium forks; expensive high-end
25 premium forks that going on bicycles that can cost, you know,

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1 up to 10' or \$12,000.

2 Q So I'm not going to buy a bike with Fox fork on it at
3 Target?

4 A Not at Target, no.

5 Q What kinds of forks and shocks do most premium mountain
6 bikes come with?

7 A Either SRAM or Fox; RockShox or Fox. We are the two
8 premium brands in this segment.

9 Q Does Fox have a definite numerical number of what it thinks
10 it an SRAM's' market shares are in the OEM mid- to high-end
11 mountain bike market?

12 A I think we've heard some discussion around that today, so,
13 we -- the OEMs don't like to share that detail information, so
14 we spend a lot of time and I'm sure SRAM does too, going
15 through the information that's online, and what we know from
16 our own sales, and really kind of estimating and approximating
17 our market share, our competitor's market share, um... Does
18 that answer the question?

19 Q I think so. Recognizing that it's an estimate, it's not
20 precise?

21 A That's correct.

22 Q What are Fox's estimates, approximately, of the market
23 share that Fox and SRAM have, in the mid- to high-end OEM
24 mountain bike fork market?

25 A Yeah. I think we put that between 80 and 85 percent shared

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1 market share.

2 Q That's divided between SRAM and Fox?

3 A That's correct.

4 Q So all of the other suppliers get maybe 10 or 15 percent?

5 A The rest. That's right; that's right.

6 Q And could you name some of your OEM customers for His
7 Honor, so he gets a sense of the kind of bikes we're talking
8 about?

9 A Sure. So companies like Specialized, Trek, Giant, Norco is
10 one, Pivot, Yeti, Santa Cruz bicycles, to name a few.

11 Q Do Fox and SRAM sell their forks, the forks we're talking
12 about in this case, to any markets outside of the OEM market
13 that you are describing?

14 A Yeah. I mentioned aftermarket, and so we both have an
15 aftermarket business.

16 Q What does that mean?

17 A So ultimately our aftermarket products either go directly
18 to a customer or to a customer via a dealer, and ahead of the
19 dealer is a distributor, so. We're selling to the end customer
20 through the aftermarket rather than putting product on a
21 bicycle that ends up with the customer.

22 Q Can you estimate what percentage of Fox sales of these
23 forks we're talking about go to the OEM market versus the
24 aftermarket?

25 A Yeah. This will be an estimate, but our OEM business is

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1 probably around 85 percent, 15 percent aftermarket.

2 Q Based on your familiarity -- well, actually before I ask
3 that, who is your primary competitor? I think you answered
4 that, but let's be clear?

5 A SRAM with the RockShox brand.

6 Q You pay attention to what SRAM is doing?

7 A Oh, absolutely, absolutely.

8 Q Do you watch the new products they are releasing and when
9 they are releaseing them?

10 A Absolutely.

11 Q Do you pay attention to spec wins that SRAM may be taking?

12 A Yes.

13 Q Based on your surveying of the market, do you have a sense
14 or an estimate of what you think SRAM's breakdown might be
15 between OEM and aftermarket?

16 A You know, I really would be speculating there, but you
17 know, SRAM and Fox, in the bicycle business, are very similar,
18 in my opinion, and I think they would have a similar breakdown;
19 can't be sure, but that would be my opinion there.

20 Q How would you describe -- I'm jumping around a little bit.

21 A That's fine.

22 Q How would you describe the nature of the competition
23 between Fox and SRAM, for the mid- to high-end OEM mountain
24 bike market?

25 A I guess I would describe it as intense. You know, our

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1 sales team and our technicians are spending time with the bike
2 brands year around and as is SRAM. You know, talking about
3 features, talking about the ride. You know, the features, that
4 Rick talked about; the feature and the ride. It's a
5 never-ending cycle for us, and, you know, SRAM is doing the
6 same things, and we're seeing customers, those 150 customers
7 globally, every chance we can get.

8 Q So I think this is clear, but I just want to make sure it's
9 very clear. For your sales efforts to win specs with the OEMs
10 right now, when did those efforts -- or when are those
11 experts -- efforts expected to translate into sales of forks to
12 the OEMs?

13 A The work we're doing now will effect mainly next year's
14 business.

15 Q Okay. And what about the forks that are sitting on
16 dealer's floors now? When did Fox compete for the specs to get
17 those on those bikes, that ended up in the dealer floors or
18 showrooms, as of now?

19 A Yeah. Again, that was at a minimum last year.

20 Q Your sales and market --

21 THE COURT: Let me ask you something.

22 THE WITNESS: Sure.

23 THE COURT: If I were somebody that, for whatever
24 reason, loved new cars, I would go and... pick a car company,
25 Saab, and I would go to Saab, and Saab's lot would be

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1 basically, for the most part, comprised of the new year's
2 model. If I go to a bicycle shop, I don't know what I'm
3 looking at. Am I looking at, do they clear out their inventory
4 on year-by-year basis? Bring out, you know, Trek 2023, and
5 then, next year, Trek 2024, or however they denominate that, or
6 is it more like they stay there until they are sold, and
7 then... so at any given time I could have -- be looking at a
8 Trek 2024, 2023, 2022?

9 THE WITNESS: The -- I think what we would like to
10 have happen --

11 THE COURT: No, I get what you would like to have
12 happen.

13 THE WITNESS: No, no. What the dealer would like to
14 do is clear it all out. The anticipation is when you walk into
15 a dealer today, you would see model year 2023 product. Some
16 dealers get stuck with stuff, right, and that's the reality.
17 But as I mentioned that year ahead of time, is because we're
18 spec'ing the bikes, working to earn the spec, and then the --
19 the factories that Rick mentioned in Taiwan have to build it,
20 ship it to distributors, ship it to dealers, then it launches a
21 year later -- and then it launches, and that's what takes the
22 time, but we all endeavor to get current model bikes on the
23 showroom floor in the model year, as an answer.

24 THE COURT: What do bike riders do when they walk in?
25 I mean, again, look, I recognize that I'm asking something that

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1 could yield an objection as to foundation, et cetera, but I'm
2 just going to blow through all of that and just get as much
3 sense as I can and I will do with it what is appropriate.

4 I'm a bike rider, I'm a bike rider that wants a Trek.
5 I go into a Trek store. Do I know or care what Trek 2023 is
6 versus Trek 2022? You might. The OEM might. But does the
7 peddling fool that I am, do I? Or do I just kind of look
8 around on the showroom floor and buy the pretty one or the one
9 that I decide I like?

10 *THE WITNESS:* I think it's a great question, and you
11 know there's whole gamut of customers, right. There's a
12 customer who is an expert, who maybe has done some research,
13 right, and understands the features they want on their bicycle,
14 and then there's the customer who is willing to spend, you
15 know, I want to say \$7,000 on a bicycle, without doing that
16 research, that's going to listen to what the dealer tells them,
17 right. They might say, you know, this Trek bicycle has a Lyrik
18 fork and we think that's great or has a Fox 38 and we think
19 that's great, and you are going to have to take that and go
20 with it, right. You might have heard from your friend, right,
21 that happens quite often too, and so there's a big gamut of
22 customers.

23 I think in the ranges that we're talking in premium
24 mountain bikes, mid- to high-end mountain bikes, most customers
25 are fairly well educated when they walk in. They have looked

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1 through the Internet, they have watched Vital MTB reviews, and
2 whatnot, they are pretty, I use the word *switched on*, when they
3 walk into a bike shop.

4 *THE COURT:* All right.

5 Q (By Mr. McCauley) Because a lot of those Vital MTB
6 websites, media companies, they actually review the new
7 technology that's coming out before it actually hits the
8 market, right?

9 A They get early samples, yeah. And then they will actually
10 review throughout the year too, to talk about how well,
11 durability is working out with the bicycle.

12 *THE COURT:* All right. Let me take 15 minutes for my
13 court reporter and we will pick it up at five of. Recess.

14 *THE COURTROOM DEPUTY:* All rise. Court is in recess.

15 (Recess at 10:41 a.m.)

16 (In open court at 10:57 a.m.)

17 *THE COURT:* Please be seated. Please continue.

18 *BY MR. McCAULEY:*

19 Q Mr. Allinger, I'm going to jump around a little bit, and,
20 Your Honor, I'm going to jump around a little bit to try to hit
21 some high points.

22 How important are individual spec sales and why?
23 Actually let me rephrase that. How important are individual
24 spec wins, a year or so in advance and why?

25 A So, you know, as I was talking about earlier, we're trying

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1 to get positions on bicycles. So any one spec win we get,
2 could be thousands of bikes sold. It's important to win specs
3 if we want to get our equipment on lots of bikes.

4 Q And you said earlier that the forks we are talking about,
5 in this case, are premium forks. What does that mean and
6 what -- what does the buyer -- what does a rider want and
7 expect in a premium fork?

8 A So, a premium fork is normally something that a rider has
9 some adjustability with. So they can personalize the fork to
10 their riding style. In the case of the forks that we were
11 looking at and I was holding earlier, there's a way to set the
12 spring rate for your weight, and the way that you ride.
13 There's a way to set -- thank you -- the -- the damping, how
14 quickly the fork returns or compresses, for your riding
15 preference, that's done with these knobs and also some knobs
16 here at the bottom.

17 So, a premium rider wants a controlled, smooth, very
18 easy to predict experience when they ride.

19 Q Do the bleeder valves impact the feel of the fork?

20 A So when we talked a little bit about this fork lower leg
21 and the bleeders, when this fork lower leg gets a delta
22 pressure between ambient and what it has inside, so that's
23 across that seal that we talked about earlier -- or that the
24 group talked about. If that has more force than an equilibrium
25 force or the same force, then you actually are building an

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1 extra spring that wants to push the fork up. So it's harder to
2 get full travel -- or harder to go into the travel; like we
3 were, signed kind, of squishing the fork earlier, it's harder
4 to do that as that pressure increases.

5 Q When you said push the fork up, you mean push the --

6 THE COURT: I understand.

7 THE WITNESS: Okay. Gotcha. Okay. Perfect.

8 MR. McCAULEY: Your Honor, I think you understand the
9 purpose of the bleeder valve. I don't think I need to go into
10 that.

11 THE COURT: You go into whatever you want to, but I
12 don't disagree with you.

13 MR. McCAULEY: Your Honor, I'm trying to focus on
14 what --

15 THE COURT: I know, I know.

16 MR. McCAULEY: We only have one day and there's no
17 way --

18 THE COURT: Let's not spend it talking to each other.
19 Let's go.

20 MR. McCAULEY: Exactly.

21 Q (By Mr. McCauley) What can cause the pressure in the
22 environment, the ambient pressure, and the pressure in the
23 lower fork leg to differ?

24 A Yeah. So there's a couple of things that can do that. If
25 you change elevation, we talked about that earlier. If the

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1 fork temperature changes drastically, because it got warmer,
2 because the use of the fork created some heat. Also, extreme
3 riding over extremely bumpy terrain can also tend to add
4 pressure into the lower.

5 Q That's relieved by using the valve?

6 A Yeah. When it's out of balance, you can either hit the
7 button or unscrew to achieve equilibrium.

8 Q Let's talk about those two different valves that are at
9 issue. The fork that you have in front of you is a Fox 36?

10 A That's correct.

11 Q It has the button bleeder valves on the back, correct?

12 A That's correct.

13 Q There's another style of bleeder valve that is on the SRAM
14 forks that we've also accused of infringement in this case,
15 right?

16 A That's true.

17 Q How would you describe that for His Honor? Describe what
18 it looked like and how they work?

19 A So it's a screw with an O ring, it threads in and when you
20 unthread it with a tool, you get to the point where the O ring
21 is no longer sealing, and that's when it vents, that's when it
22 allows the pressure to go back and forth; that's the same
23 feature that's achieved by pushing in the button. You are
24 basically moving it off its seat, so now the pressure inside,
25 and the pressure outside can equalize.

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1 Q SRAM includes the button bleeder valves on its more
2 expensive forks, right?

3 A That's correct.

4 Q That's the Ultimate and the Select Plus models of the ZEB,
5 Lyrik and Pike?

6 A That's correct.

7 Q And on the less expensive, less high-end, Select at base
8 models of ZEB, Pike and Lyrik, those include the screw valves,
9 right?

10 A That's correct.

11 Q Okay. And do riders need to purchase the button upgrade
12 kit that SRAM sells to use the screw bleeder valve that we have
13 talked about?

14 A No. They can just use the tool, as I was mentioning
15 earlier.

16 Q So if you are a rider who is trying to save money by,
17 potentially, buying one of the less expensive forks, you can
18 achieve the equalization without the button?

19 A That's true.

20 Q Do you have a sense about whether or not the bleeder valves
21 on the Fox 36 and 38 forks, SRAM forks, et cetera that have
22 been accused, have become popular in recent times?

23 A Yeah. I have a sense from, you know, seeing them used
24 often. We talked about the bike park, talking to folks, and
25 then also the evidence of, you know, bike reviews that call

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1 those features out, and talk about the coolness of that
2 feature.

3 Q Okay. You have looked at SRAM's marketing materials in
4 this case, this --

5 A I -- I have, yes.

6 Q Okay. I would like you to open up your binder to what's
7 been marked as Exhibit 10 for purposes of today's hearing. It
8 was previously marked as Exhibit 9, to a declaration in this
9 case, and it's been filed at **71-13**, in the Court's docket.

10 MR. McCAULEY: Your Honor, do you have the exhibits up
11 there?

12 THE COURT: I do.

13 THE WITNESS: I have it.

14 MR. McCAULEY: Your Honor, again it's Exhibit 10, in
15 the binder, and the Court could flip to the second page. It
16 says RockShox Model Year 23 Product Communication.

17 THE COURT: Yeah, I'm there.

18 Q (By Mr. McCauley) Mr. Allinger, are you on that same
19 page?

20 A Yes, I am.

21 Q All right. Do you recognize this document?

22 A I do.

23 Q What is it?

24 A This is the document that SRAM RockShox uses to communicate
25 their new product line from year 2023. This was available to

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1 the public, it appears, around May 26, that's the embargo date.

2 Q What does an embargo date mean?

3 A That's the date that it's widely -- the it's made public.

4 Q You say *it's*, you mean the products are available for
5 purchase?

6 A I think that's always the goal, but that's not always the
7 case but, yeah, that's the idea. The communication and the
8 products are made available on that date.

9 Q Is it fair to say that this exhibit, this Model Year 23
10 Product Communication is SRAM's effort to put together the cool
11 new features and the products that it's going to be selling.

12 MR. WALSH: Objection, Your Honor, leading.

13 THE COURT: I'm not influenced by it. I understand
14 it. We're fine. Go ahead.

15 THE WITNESS: Yes.

16 Q (By Mr. McCauley) Okay. And on the next page is
17 starts with the section that says *Forks*, right?

18 A That's right.

19 Q And then in the three pages or four pages that follow it,
20 outlines new features that SRAM is including in its forks
21 beginning that year, right?

22 A That's correct.

23 Q And if you flip to the page that has pressure relief valves
24 on it, it's been stamped as 7 of 37, when it was filed in the
25 court. Do you see that?

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1 A Yes, I do.

2 Q Over on the left it says, *new*, in red, right?

3 A That's right.

4 Q What do you understand *new* to be to mean in the context of
5 this document?

6 A That's a new feature that they were talking about in model
7 year 2023 -- or for the year 2023. Yeah.

8 Q And again --

9 A One of the top features. It's right at the beginning of
10 the presentation. So it's an important new feature that's
11 being touted in their model year 2023 product line.

12 Q And it says, pressure relief valve. I will read this into
13 the record, *Pressure relief valves eliminate unwanted air*
14 *pressure build up in the lower leg caused by variations in*
15 *altitude or temperature. With the press of a button or two,*
16 *pressure release valves restore the lower legal balance for*
17 *optimum sensitivity and a premium fork feel.* Do you see that?

18 A I do.

19 Q Below that it states that those button valves are available
20 in the Pike Ultimate, and select models, the Lyrik Ultimate and
21 select models, and the ZEB Ultimate and select models, right?

22 A That's correct.

23 Q Below that upgrades are available for the select and base
24 models of those same forks, right?

25 A That's correct.

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1 Q What's the significance, to you, as somebody who
2 understands the mountain bike trade, of them including this
3 statement or these statements in their model year 2023,
4 communication?

5 A Well, typically, these type of communications are very
6 similar to what we use when we sell to OEMs, also, so to me
7 it's a lead off of the cool new things that they are going to
8 be touting and using to get new business and retain business
9 with their customers.

10 Q Okay. Can we flip to the first exhibit in that binder,
11 which has been marked as Exhibit 3, for today's hearing. It
12 was previously marked as Exhibit 1, to a declaration, and it
13 was filed at docket **71-4**. Are you there?

14 A Yes.

15 Q Okay.

16 MR. WALSH: Your Honor, we object to this as being
17 hearsay.

18 THE COURT: Overruled.

19 THE COURT: Let's go.

20 Q (By Mr. McCauley) Mr. Allinger, I would just like to
21 make a couple points about this. The first of them was not
22 made in our papers, previously. Looking at the first page of
23 this article, it says Fox shock -- excuse me -- Fox Factory 36,
24 versus RockShox Lyrik Ultimate as the title, right?

25 A That's correct.

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1 Q And then on that very first page, underneath the photo of
2 both of those two products, there's a list there that the
3 editors put together of highlights for Fox Factory 36 and
4 highlights for RockShox Lyrik Ultimate. Do you see that?

5 A Yes, I do.

6 Q Beneath that there's bullet points listing a series of
7 features for both of those forks?

8 A That's correct.

9 Q Is there a particular bullet point there or two that you
10 think are significant to this case?

11 A Well, you know, obviously, the air-bleed valves make the
12 list, as a significant feature that's worth calling out in the
13 highlights. Yeah. That would would be the most germane thing
14 I could think of to say, currently.

15 Q And then flipping to, it's page nine of 13, in the upper
16 right-hand corner -- actually eight of 12, in the lower
17 right-hand corner. There's a page that says, *Unique Features*
18 near the top; highlighted yellow text. Do you see that?

19 A Yes, I do.

20 Q It says, in the first sentence, *Fox Incorporated air-bleed*
21 *ports into the 36, with its last major revamp and the future*
22 *has been well received.* Do you see that?

23 A Yes, I do.

24 Q What's the significance, if any, of that, to you? Kind of
25 obvious, but...

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1 A Yeah. You mentioned well received, right? So it's kind of
2 an indication that riders are starting to come to expect this
3 feature on their forks.

4 Q And in the next sentence it says, *When RockShox launched*
5 *its new line, they too included bleeder valve ports. Right now*
6 *the attorneys are sorting out if the update is legal.* Do you
7 see that?

8 A I do.

9 Q And then beneath, I won't read it into the record, but
10 there's a discussion of some of the benefits of bleeder valves,
11 right?

12 A That's right.

13 MR. McCAULEY: Your Honor, there are other articles
14 that are in the record, I'm not going to go through all of
15 them.

16 THE COURT: That's fine.

17 Q (By Mr. McCauley) Again, forgive me, I'm jumping
18 around to try to focus on some key points.

19 When did Fox first use its patented bleeder valve
20 design in any of its products?

21 A Yeah. I believe that to be our in calendar year 2014, 940
22 which is downhill fork.

23 Q Just briefly, because I know you can go on at length about
24 this. Describe what a downhill bike is, and why the bleeder
25 valves were useful on that bike -- excuse me that fork, rather?

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1 A We talked a little earlier, a downhill bike is the bike
2 that goes to the top of the hill and races down just as fast as
3 it can, over extreme terrain. Kind of heard I mentioned
4 earlier, like a motorcycle without -- a dirt bike without a
5 motor in it, right. And a downhill bike was the primary bike
6 used at bike parks like Whistler and around the world where
7 people ride chairlifts and come down, particularly in 2014,
8 that was the state-of-the-art bicycle used in those
9 applications. Very early, very ... you know, often a little
10 heavier a little stronger than a normal mountain bike, at least
11 at the time.

12 Q You wouldn't want to ride or push --

13 A It's not a cross-country bike. It's not a bike that you
14 would want to pedal for long distances; that's correct.

15 Q It's a heavy duty, point down --

16 A A bike made for going downhill.

17 Q Did the technological mountain bike landscape change
18 between Fox's initial launch in 2014 or so, on the 40s, that
19 you just described, and 2020/2021?

20 A I think -- I think what happened, so 2014 I mentioned
21 downhill bikes were kind of the norm for that gravity rider,
22 and as we got closer to today, bikes like some of the bikes we
23 are seeing here, which we call now Enduro bikes, trail bikes,
24 down country bikes, actually started to get more capable. They
25 went from being a -- kind of the traditional, what you think of

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1 as a cross country bike or a bike you pedal on the trail and
2 you pedal uphill, to more of a bike you can pedal and you can
3 go downhill with, and during that time, you know, I even saw a
4 lot more folks, Whistler, North Star, other places where people
5 ride chairlifts, really moving towards not just downhill bikes,
6 we started to see bikes that were more of our Enduro-style
7 bikes; bikes that use the 38 and 36, the Pike, the Lyrik, the
8 ZEB showing up as more of a downhill application, right. So
9 now those bikes are seeing the elevation changes, whereas in
10 2014 and earlier not as much.

11 Q Were there some technology changes with bike technology
12 during that window that made it more feasible for people to use
13 these more Enduro-style bikes in the bike parks, et cetera?

14 A I mean, there were advances in materials. So we are seeing
15 a lot more carbon fiber bikes. So lightweight bikes could be
16 light and strong to handle that abuse that's more similar to
17 downhill. Sure.

18 Q So, did this create a new opportunity, in Fox's mind, for
19 its patented bleeder valve technology?

20 A Absolutely. So when we saw that start to happen, we
21 figured a great feature would be to help that rider maintain
22 their equilibrium that we have talked about, maintaining the
23 feel of the fork, the premium feel, whether they are at the
24 base lodge or up at the summit or anywhere in between. So, we
25 brought those, that bleeder valve technology, to more of our

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1 product line.

2 Q Now, a couple of minutes ago we looked at a couple of the
3 documents in the record that indicate that there was some
4 desire in the mountain biking community for Fox's patented
5 bleeder valves. I'm not going to go over those again.

6 Is there anything else in the record that you think
7 helps demonstrate that people had come to want and expect Fox's
8 patented bleeder valves, on the lower legs of the mountain bike
9 forks, circa 2020?

10 A Circa 2020, so I think it's -- the exhibits that we have
11 that show the reviews from avid mountain bike reviewers and
12 sources are a really good indication of that. We also have
13 some elements in the record that show reader surveys, and
14 during that time period, I think we got reader surveys from
15 2020 through now, showing Fox getting much higher percentage --
16 I don't have the exact numbers, we would have to look -- than
17 RockShoxs as an intended-to-buy scenario. So people
18 appreciating Fox suspension as the number one suspension for
19 mountain bikes.

20 Q So, you were obviously here when I played the Vital MTB
21 clip during my opening statement. In fact, quoted from that
22 same interview, and one of your declarations in this case,
23 right?

24 A That's right.

25 Q What's the significance of that Vital MTB interview to you,

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1 as it relates to the issues in this case?

2 A Well, it's significant in that the interviewer, who works
3 for Vital, who rides bikes, asked the question, *Why not bleeder*
4 *valves?* And it's significant to me that the representative
5 from RockShox I guess didn't have -- acknowledged, acknowledged
6 that there needed to be bleeder valves, and they were looking
7 into how to make that happen, and that there were patent issues
8 around making that happen.

9 Q In fact, said that SRAM had to respect --

10 A Respect patent issues; that's right.

11 Q Right. I would like to just kind of do a buzz through of
12 the materials that you have seen. They are in the record, but
13 not spend the time pulling them out. Okay.

14 The ... well let me go ahead and pull one up. Would
15 you please go to -- the exhibit at tab 17 in your binder.

16 A Okay.

17 Q What is this and why is it significant in this case?

18 A This is a Design & Innovation Award for the Fox 38,
19 calendar year 2021, and it's significant, obviously winning
20 that award is very significant, right, that's an important
21 thing. It says, *If you are looking for the best current*
22 *suspension for a fork for full-on enduro racing, you will find*
23 *it here.*

24 Q This is a very short summary, but if you look four lines
25 down it says, *As such, the lowers have additional oil and vent*

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1 channels, right?

2 A That's right.

3 Q And ... would you please turn to -- well, let me just ask
4 you a question.

5 A Sure.

6 Q Do you recall that -- let me ask a different question. Who
7 is MTB News?

8 A MTB News is another outlet similar to Vital MTB, an online
9 reviewer.

10 Q Of mountain bike products?

11 A That's correct.

12 Q MTB is short for mountain bike?

13 A That's right, MTB, mountain bike.

14 Q Does MTB News sponsor User Awards For Best Suspension Fork
15 And Fork Brand Of The Year?

16 A Most of the reviewers do that.

17 Q And would you please confirm that for the years 2020, 2021,
18 2022 and 2023, that the MTB News User Awards, for Best
19 Suspension Or Fork Brand Of The Year went to Fox?

20 A Yes, those are in the exhibits.

21 MR. McCAULEY: And, Your Honor, those are Exhibits 18
22 to 21 in the binder, if it matters.

23 Q You mentioned earlier that Vital MTB conducts customer
24 surveys. What do those surveys generally say about whether
25 customers prefer Fox or SRAM?

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1 A The vital MTB customer surveys?

2 Q Yes.

3 A In general, I think -- so -- you asked two questions.

4 First, Vital MTB survey, they survey around 6,000 mountain

5 bikers, and they ask them questions about their intent to buy,

6 and what their favorite suspension brand is, those sorts of

7 questions, and Fox, for intent to buy forks and intent to buy

8 shocks, is usually number one there.

9 MR. McCAULEY: That's in the record, Your Honor, so we
10 won't dig any further.

11 Q When was Fox first able to buy a SRAM fork with the accused
12 bleeder valves?

13 A April of 2022.

14 Q Do you recall which bike?

15 A We had to buy an entire bike. We bought an entire bicycle

16 so we could get the Flight Attendant System, which is a system

17 that RockShox has, that includes the fork and the shock. It's

18 an electronic adjust system. And we had -- we saw some

19 industry information prior to that date that indicated to us

20 that that system -- that particular fork on that system may

21 have bleeder valves, and so as soon as we could buy it, which I

22 believe was in April, we bought a bike with that on there, so

23 we could take a look at it.

24 Q And then in the middle of July, Fox filed this lawsuit,

25 against SRAM, right?

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1 A That's correct.

2 Q How would you describe the state of spec -- well, actually,
3 let me back up. July 2020 was around the tail end of the COVID
4 pandemic, right?

5 A I think -- yeah. I would agree.

6 Q How would you describe the competition or the state of
7 competition between Fox and SRAM or mid- to high-end OEM
8 mountain bike forks from, say, July through December of 2022?

9 A Yeah, 2022 was a little bit of a different kind of
10 scenario. I think we talked earlier, we were coming out of
11 this -- out of COVID where we both, Fox and SRAM, enjoyed tons
12 of sales, right, and the industry was just booming, but during
13 that time period there was an extreme buildup of inventory in
14 the channel, right. So a lot of the factories that were
15 mentioned in Taiwan, and some of our customers ended up with
16 more inventory than they could turn into bikes. Okay.

17 So, during that time period, our normal amount of
18 selling that we do, wasn't yielding as much interest, right.
19 There was a lot of wait-and-see attitude during that timeframe,
20 and we're still kind of in that right now, to a certain extent.
21 The business is, as a whole, bicycle industry as a whole is
22 working through that extra inventory right now.

23 So that's, again, a lot of the work we're doing is
24 forward looking, right. Once they burn through that inventory,
25 then we are going to start to see the work pan out that's

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1 happening right now.

2 Q I think you testified to this earlier but, from July
3 through December, Fox was having regular settlement discussions
4 with SRAM over this case, right?

5 A Yeah, I think the day ...

6 THE COURT: I will save you the trouble. I'm not
7 going to get into that.

8 THE WITNESS: Okay.

9 Q (By Mr. McCauley) So, why did Fox decide to file its
10 PI papers in January, mid-January of 2023?

11 A Our settlement agreements hadn't gotten anywhere. We are
12 just heading right into our selling season, right, and it's
13 ramping up even as we speak, right, so summer --
14 spring/summertime is when it gets the most hot and heavy, the
15 time when we are spending the most time with our customers, and
16 talking about our new products and our new offerings.

17 Q What's your understanding of what irreparable harm means?

18 MR. WALSH: Your Honor, objection, not relevant.

19 THE COURT: Sustained.

20 Q (By Mr. McCauley) In your declaration filed, in
21 February, you explained your belief that Fox had lost a number
22 of specs to Santa Cruz Bikes to SRAM forks with bleeder valves;
23 is that right?

24 A That's correct.

25 Q Have you been able to confirm that?

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1 A Yes. We have confirmed 16 spec losses to Santa Cruz since
2 that declaration.

3 Q And which SRAM products did you lose those specs to?

4 A The Lyrik Ultimate and the ZEB Ultimate, and they both have
5 push button bleeder valves.

6 Q Is Santa Cruz an important customer?

7 A Yeah, absolutely. Santa Cruz is one of our premier -- they
8 are in our backyard, basically. They are one of our premier
9 customers. They are a trendsetting customer. They are a
10 customer that a lot of the other brands look to, again like a
11 trendsetting, high-end customer that we really value,
12 extremely.

13 Q Does Fox expect to suffer irreparable harm if SRAM is not
14 enjoined from selling the accused forks?

15 A Absolutely. I feel like we already have, right. So, our
16 reputation and our ability to sell a feature that we've spent
17 considerable time and money perfecting, adding to our forks,
18 and be to enjoy that advantage in the market is just paramount,
19 and when we're not able to do that, it really hurts our
20 reputation as an innovator, and you know, in my thoughts about
21 irreparable harm, I'm not talking about money, I'm talking
22 about reputation and design, a design win, so to speak.

23 Q What about the ability to calculate the losses that are
24 being caused by spec losses, for instance. Does that --

25 A Yeah. It's extremely hard to look into the future. I feel

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1 like, potentially, when we talk about Santa Cruz that could
2 just be the -- I don't know what the right word is, the tip of
3 the iceberg, so to speak, right. So trying to talk about
4 what's going to happen in the future, while we compete against
5 our own patented technology is extremely difficult.

6 Q Your declaration referred to incumbency effect with spec
7 sales and them being sticky. Would you explain to His Honor,
8 briefly, what you mean by that?

9 A I think when we talk about about incumbency, and I know
10 that a lot of times everything is, quote/unquote, up for grabs
11 every year, but it's not always the case. When we start
12 working closely with a customer, there's -- and you have spec
13 on a particular bike line, it's kind of yours to lose, right,
14 and so your -- you sort of get -- I wouldn't say the benefit of
15 the doubt, but you have that incumbency position, and it makes
16 it that much easier to continue to do that spec year after
17 year, and to really improve, continue to nurture that
18 relationship with the customer.

19 Q You testified earlier that because bleeder valves are now
20 wanted and expected in the market?

21 A Hm-hm.

22 Q How do you think that impacts SRAM's competition against
23 you, now that they are selling these accused products?

24 A Well, like we talked about earlier, if you match us up --
25 so we're selling based on features a lot of times, right,

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1 features, ride feel, all of the things you have heard, any one
2 of those things is an ingredient when it comes to a
3 negotiation, comes to trying to win the spec. You know, what
4 controls do you have in your damping? How does your spring
5 work? Do you have the bleeder valves? What are your axle
6 configurations, all of those things, what is the stiffness of
7 the fork? How much does it weigh? Those are the things that
8 we saw listed earlier and those are the items that we use, when
9 we are saying, *Hey, do you want to buy our fork for your bike?*
10 *We think it's the right fork. These are the reasons why.*

11 If you look at SRAM's, we look at their example ten,
12 there, same sort of things they are saying, right. First page,
13 *Look the our dampers, look at our spring look at our new*
14 *bleeder valves.*

15 Q I think you have already answered this, but I want to make
16 sure it's in the record. Do you expect SRAM's infringing
17 competition with these forks to impact Fox's market share?

18 A Yes.

19 Q Briefly explain, please?

20 A Well, I talked a little bit about what happened in Santa
21 Cruz. I think now that we're heading into our really heavy
22 speccking season, we are going to see more of the same, and when
23 I say more of the same, that's more specs that we are not
24 winning, and it sure would be nice to -- to have one more
25 feature when I go into those negotiations. Yeah. One more

Wesley Allinger - Cross

1 feature that we worked hard to bring to market.

2 MR. McCAULEY: Your Honor, may I have 30 seconds?

3 THE COURT: Yes.

4 Q (By Mr. McCauley) Just in case we didn't do this,
5 Mr. Allinger, approximately when did Fox release the 36 and 38
6 forks with bleeder valves on the lower legs?

7 A So that would be 2021, 2020.

8 Q Does 2020 sound about right?

9 A Yeah. I can't give you the exact date. I would have to
10 look it up.

11 Q They were released at the time of the Vital MTB interview
12 that we played earlier, right?

13 A Yes.

14 Q That was in July of 2020, 2020, right?

15 A Okay. Yeah.

16 Q Okay.

17 MR. McCAULEY: Thank you, Your Honor. I have nothing
18 further.

19 THE COURT: Cross.

20 MR. WALSH: Thank you Your Honor.

21 CROSS-EXAMINATION.

22 BY MR. WALSH:

23 Q So, Mr. Allinger, you just talked about losing market
24 share. When we took your deposition, you said you had no idea
25 if you were losing market share, didn't you?

Wesley Allinger - Cross

1 A I have to take a look at the exact words, but ...

2 Q Well, you said you didn't have any -- you had no idea what
3 your market shares were. You don't have exact figures for your
4 market share. You didn't do any study about your market
5 shares, to see if you were losing them, were you?

6 A I think that sort of mischaracterizes what we were saying.
7 We have been saying, all along, market share data is not
8 precise, right, and you guys have acknowledged that even for
9 how you collect market share data. It's not precise.

10 Q I understand, but the Court wants you to be precise -- or I
11 want you to be precise. You haven't brought into the court
12 your market share matters, even if it's imprecise? You haven't
13 shown, *Here is my market share data for last year, and this*
14 *year, and therefore I'm losing one percent, one tenth of a*
15 *percent, 20 percent.* You don't have those number, do you?

16 A We have those numbers, I'm not prepared to give you those
17 exact figures. No. I mean we -- we spend, like I mentioned
18 earlier, we spend a lot of time looking and trying to get a
19 feel for it, and you said it yourself earlier, you don't have
20 precise numbers.

21 Q So -- let me get -- I thought I just heard you say that you
22 do have those numbers?

23 A I didn't say precise. I didn't say precise numbers. You
24 asked me for precise numbers.

25 Q Well, we asked you for discovery --

Wesley Allinger - Cross

1 MR. McCAULEY: Your Honor, may the witness --

2 THE COURT: Sustained.

3 MR. McCAULEY: Let him answer.

4 THE COURT: Just stop. Just stop. Go.

5 Q (By Mr. Walsh) With respect to market share,
6 Michael Dennison is the CEO of your company, right?

7 A That's correct.

8 Q Ernie called just ten days ago -- or around ten days ago,
9 he said that you weren't only not losing market share, you were
10 maintaining it and you were gaining, right?

11 A Is there -- I would have to look at exactly what he said,
12 because I'm not sure it's completely represented, um, but
13 what's the question?

14 Q Well, I'm just trying to figure out, does your CEO have a
15 wrong impression of your company, when he says for your sport
16 specialty group that we are maintaining our market share and
17 grow, and that, in fact, is happening?

18 MR. McCAULEY: Objection, mischaracterizes the record.

19 THE COURT: Let me see what it is that you are
20 referring to.

21 MR. WALSH: It's Exhibit A-73. Can you pull that up

22 Q (By Mr. Walsh) Can we go down a little bit so you can
23 see the question. That is an analyst of the company, right?

24 A Yes.

25 Q And you said you are talking about some inventory glut.

Wesley Allinger - Cross

1 Last part of the question, *Anything you can share with us, give*
2 *us a little light at the end of the tunnel.* Do you see that?

3 A I see that.

4 Q Your CEO says *Customer demand is picking back up, et cetera*
5 *and keep going down.* The third line, fourth line down from the
6 page eight. *So now we're really looking back of the year to*
7 *really understand what's going to happen in Q3 and Q4, right?*
8 So that's the fall and the winter of this year, right, from
9 July to December, right?

10 A Q3 and Q4 are from July to December; that's correct.

11 Q He says, *The good news is it's all about stack and making*
12 *sure that we maintain our market share and grow, and that's in*
13 *fact, happening. We feel great about our position.* Do you see
14 that?

15 A I do.

16 Q Was he just not telling the truth?

17 THE COURT: All right. I have seen it, that's fine.
18 We're not going to get into, is this one going to make excuses
19 for or interpret what that one said.

20 Q (By Mr. Walsh) Okay. With respect to your testimony
21 here that you believe you're gaining market share, is it okay
22 to tell the public about that? This has been sealed, but is
23 that a confidential secret that we can't tell the public about?
24 That you believe that you are going to be losing market share?

25 A Well --

Wesley Allinger - Cross

1 THE COURT: Move on.

2 Q (By Mr. Walsh) With respect to the -- with respect to
3 the annual report of your company, where it says in the annual
4 report, that even the loss of litigation, the loss of
5 litigation is going to have no material effect on your company.
6 You don't disagree with that, do you?

7 A Is this -- what is this --

8 Q This is an earnings report. You can take that down. Did
9 you not read the annual report of your company?

10 A I'm trying -- just seeing things flash in front of me, so.
11 Fox is -- Fox isn't only a mountain bike company, right. We
12 have a division that that does up fitting on trucks. We sell
13 OEM shocks to Ford, Toyota, SCA, so when you talk about
14 financial statements, you are talking about material things
15 that affect the whole company, right.

16 Q Right. Okay. So the question is --

17 A It's not the same thing.

18 Q When it's referring to litigation, it does say that even
19 the loss of -- loss of this litigation is not going to have a
20 material affect on the company. You don't disagree with that?
21 It says that?

22 A I don't disagree that it says that, and that's referring to
23 the entire company, which is more than just bicycle.

24 Q Right. And it also says that the loss of a patent, will
25 have no material affect on the company; like the patent you are

Wesley Allinger - Cross

1 trying to force today?

2 A It's the same answer though. It's the same answer.

3 It's -- this -- this financial statement is talking about a
4 large company that is more than just bicycles.

5 Q Okay. You ... first of all, with respect to -- I want to
6 talk about some nomenclature. Because you called something --
7 you said on SRAM's products, you called them screw valves,
8 right?

9 A Did I say that today?

10 Q I think you did. With respect to the -- with respect to
11 the products that -- that don't have push button valves?

12 A My attempt was to differentiate.

13 Q But you called them screw valves, right?

14 A I would have to look back.

15 Q All right. So on the marketing material that you showed
16 and talked about, with your counsel, there's no mention,
17 anywhere, in that marketing material on SRAM, that those plugs
18 are valves or valves for equalizing pressure, are they?

19 A I think it's implied when you look at the fact that you are
20 offering an aftermarket kit to upgrade the bleeder valves.

21 Q Upgrade kit to make something that's not a valve, a valve?

22 A An upgrade kit to make a valve a better valve.

23 Q All right. So you think that just a bolt that screws into
24 something is a valve; that's your definition of a valve?

25 A My definition of a valve would have to include an O ring.

Wesley Allinger - Cross

1 It would have to be something that seals, which ...

2 Q So with respect to some of the other things that you talked
3 about, for example, you talked about a reader customer surveys
4 by Vital Mountain Bike. First all, these articles, there's
5 dozens and dozens of different, you know, what -- I guess they
6 call them magazines, maybe at one time some were magazines, now
7 they are all on the Internet. There's dozens and dozens of
8 them that reference and talk about and look at biking and
9 mountain bikes?

10 A I wouldn't say dozens and dozens. There's more than a few.

11 THE COURT: Can we agree on many?

12 THE WITNESS: Many, many is a good word.

13 Q (By Mr. Walsh) The customer -- the reader customer
14 surveys that you talked about, where you said Fox was getting
15 higher marks, et cetera, you are not trying to tell the Court
16 that those reader surveys said that a bleeder valve had
17 anything to do with any decision to buy a product or to think a
18 product is better, are you?

19 A Those reader surveys were to illustrate that Fox has the
20 dominate, innovative premium position in the market.

21 Q Okay. Those same reader surveys had similar numbers for
22 Fox before you had any kind of bleeder valves, right?

23 A Those numbers, much to our happiness, have been high for a
24 long time, right. I mean, we work hard to make sure that's the
25 case.

Wesley Allinger - Cross

1 Q One of the recent ones that talked about it, before -- that
2 was looking at data before SRAM, but on bleeder valves, had
3 SRAM the higher percentage than Fox, didn't it?

4 A I would have to look back.

5 Q What I'm trying to get at is that even the document that
6 you looked at, it had all of these different things listed, and
7 down that list was a list of something involving bleeder
8 valves; in other words, you are not trying to tell the Court
9 that there's a reader survey out there, that says, *How*
10 *important are the following features to you. Rank them in*
11 *order of importance.* I think you listed, very specifically,
12 some of them, like, you know, the ability for damping and
13 compression damping and changes, ability to change things back
14 and forth, spring rates, all of those types of things, right?
15 The -- all of those things, don't you think that those are a
16 lot more important than a bleeder valve?

17 A I'm not disputing that there's a list of important features
18 on a shock -- on a fork. We're seeing that reflected in our
19 many readers -- many surveys. We are also seeing it reflected
20 in SRAM's communication to their customers. It's in the first
21 few pages, the most important features, and the bleeder valve
22 is part of those important features.

23 Q Well, okay, but let's figure out -- let's go to those
24 important features that you say. Okay. If you go back to the
25 thing that you looked at with your counsel, which was this

Wesley Allinger - Cross

1 Exhibit 10. Okay.

2 So the first page of Exhibit 10, is -- it's -- I guess
3 it's page four, the first feature that's listed is new, is
4 something called ButterCup, and it's the entire page, right?

5 A Yes, I'm looking at that.

6 Q Would you agree with me, that in the reviews and people --
7 customers talking about SRAM's products, when they started
8 introducing these, that Buttercups are mentioned constantly.
9 In fact they are mentioned in the article that you have
10 referenced in your --

11 A They are mentioned along with bleeder valves and other
12 features, like stiffness and spring rate.

13 Q Are you telling the Judge that you think that a bleeder
14 valve is more important than a ButterCup, that has low
15 amplitude, vibration reducing technology?

16 A No. I'm saying that bleeder valves, like you guys are
17 saying, are important features.

18 Q All right.

19 A And they are, at least, in the top few.

20 Q All right. So let's go to second one. The -- the second
21 one is a Charger 3. Do you see that that's a new charger that
22 went in?

23 A I do, I see that.

24 Q That's a full page, as well, right?

25 A Yes.

Wesley Allinger - Cross

1 Q And would you agree with me that Chargers are extremely
2 important?

3 A Charger damper, Fox dampers are extremely important parts
4 of forks.

5 Q You heard in my opening statement, I think, that the
6 upgrade kits for the Charger dampers, there's been at least
7 1600 of them sold. They are expensive, right? They are
8 300-and-some-dollars or almost 400, and they are hard to
9 install. Would you agree that they are hard to install and
10 expensive?

11 A I don't -- my personal feelings, wouldn't be that hard to
12 install.

13 Q Maybe for you. Don't -- do you think that sales of
14 aftermarket upgrade things show customer demand for those
15 products?

16 A I think that the reason you are selling a lot of Charger 3
17 dampers is because it's better than the damper that the forks
18 came with in the past. People are buying it to make their fork
19 better.

20 Q Right. So can you look at the next page of that, the next
21 item of importance in this is something called DebonAir.

22 A I do.

23 Q How would you describe a DebonAir?

24 A It's the fork spring, spring rate system.

25 Q Air spring, right?

Wesley Allinger - Cross

1 A Yeah.

2 Q Okay. And then the next page is the one that you went to
3 directly, which has the pressure relief valves on the left,
4 then the right it has the ultimate bushing package. Do you see
5 that?

6 A I do.

7 Q Do you think that pressure relief valves are more important
8 that the ultimate bushing package?

9 THE COURT: Are you really asking him what he thinks,
10 generally? Doesn't do a whole lot.

11 MR. WALSH: You are right. I will move on.

12 Q (By Mr. Walsh) So the Innovation Award that you
13 talked about, you know, that you mentioned, that award does not
14 say -- you were not trying to tell the Court, when it said,
15 *Wow, it's wider. When they talk about the suspension*
16 *performance has a single crown fork. Doesn't just wow with*
17 *it's wider and stiffer chassis, but makes the use of extra*
18 *volume to integrate new technologies to make the rider feel*
19 *better; as such, the lowers have additional oil and vent*
20 *channels to allow the fork to perform even more sensitively.*

21 Are you saying that an oil and vent channel, that's
22 what you described as a pressure release valve?

23 A I'm not saying that. No.

24 Q So you weren't trying to tell the Court that you won this
25 award because of the pressure release valve, right?

Wesley Allinger - Cross

1 A The reason for showing those awards was to show the long
2 history of Fox as an innovator.

3 Q I get it. I get it. I just thought that it was to try to
4 show that it involved that.

5 The other thing about that, this is from 2022, talking
6 about 2021 components, and according to the patent, you first
7 started using this invention in 2012, right, ten years earlier?

8 A That's right, on the 40 downhill bike, the fork.

9 Q You didn't win in kind of award or something related to
10 that?

11 A I don't know that for a fact. I'm sure there was a lot of
12 talk about it, at the time.

13 Q You didn't go look, for purposes of this lawsuit, did you?

14 A I did not.

15 Q Okay. Also, if we stay on the same lines, you looked at
16 Exhibit 3, which is that article that listed all of the
17 different things?

18 A Hm-hm.

19 Q You know, listed the DebonAir, Air Spring, ButterCup
20 technology, et cetera. One of the things that you mentioned
21 that riders really want is lightweight now, right?

22 A I mentioned that in my deposition. Yes.

23 Q I think you just mentioned it on the stand, right? You
24 said we are selling features that control damping, spring rates
25 and how much it weighs, right?

Wesley Allinger - Cross

1 A Yes, sir.

2 Q If you look through this long article about comparing the
3 two, the 36 and the Lyrik, if you look at the end of it, when
4 it says, *What's the bottom line*, right, it says -- they picked
5 the SRAM here as the bottom line as being better, right? They
6 gave the nod to RockShox. On page ten?

7 A When I read page ten, I read that it was a very close --
8 very, very close, and the 36 is more of a elite performance
9 competition fork, and the RockShox Lyrik is more of an overall
10 trail performance fork. That's what I read.

11 Q Okay. So, it reads, *In sum, much of our riding experience*
12 *was a draw. Without a doubt, the Fox 36 is a kick-ass fork*
13 *ready to perform among the elite. With that said, speaking*
14 *only to the facts, the RockShox Lyrik is lighter, costs*
15 *marginally less, does have a slight advantage in overall trail*
16 *performance, particularly those chattery trail segments*, right?
17 Do you see that?

18 A I do see that.

19 Q All right. So it didn't mention, at all, anything that had
20 to do with the pressure relief valve?

21 A Well, I think it's implied, right.

22 Q Okay. So, with respect to the last sentence of it, where
23 it says --

24 THE COURT: I have had many, many years demonstrating
25 that I can read. Let's move on.

Wesley Allinger - Cross

1 MR. WALSH: Okay. I will.

2 Q (By Mr. Walsh) The chatter trail segment. That's
3 what they are talking about?

4 A Chatter trail has a lot of things. Chatter trail talks
5 about friction, talks about spring rate, talks about damping,
6 talks about structure. All of those things have to work
7 together to make a fork good on chatter trail.

8 Q Okay. With respect to the -- the one customer that you
9 talk about, losing a particular spec that you list is Santa
10 Cruz, right?

11 A Yes.

12 Q And you said, you know, you said it was sticky. Your
13 attorney asked you about it's sticky, once you get a spec, et
14 cetera, and you talked about a -- you know, once you have an
15 incumbency. In your deposition you said that, you don't --
16 there's a lot of back and forth, right now, as you know, every
17 one of them is up for grabs, every year, right?

18 A Yeah. What I meant by incumbency, struggling with the
19 word, is that once you are on a bike, certainly it's up for
20 grabs, there's no doubt, but you do have the leg up, right,
21 because you are working closely with that customer on that
22 specific bike all throughout the year. We do tuning all
23 throughout the year. So being -- being on a bike, having a
24 spec, is absolutely a way to help you in the next negotiation,
25 and that's what I meant by stickiness.

Wesley Allinger - Cross

1 Q Okay. With respect to the -- model that I talked about in
2 opening statement, where SRAM had a spec on a Santa Cruz bike
3 with a bleeder valve, and then for this year Fox has taken back
4 that spec, and it's on a fork without a bleeder valve. Did you
5 recall that instance or not?

6 A I don't recall the details of that incident.

7 Q Do you know -- do you know what the Tallboy --

8 A I know the bike. Yes.

9 Q You know the bike. It's made by Santa Cruz. So you are
10 saying, as you sit here today, you don't know whether or not
11 that spec went back to Fox?

12 A Just last week was when I learned that the 16 specs we
13 talked about earlier went to SRAM; Lyrik Ultimate and ZEB
14 Ultimate. That's the level of detail and that's how current
15 the information is. So I don't have an answer for you.

16 Q Do you know what a fork -- a Fox fork with spec on Tallboys
17 in the past?

18 A Sure. I'm you know -- there's kind -- there's -- how far
19 in the past do you want to go? We have Tallboy, Tallboy LT,
20 there's 34, 36.

21 Q Forget about it. I will ask our person about that, with
22 respect to that. With respect to the forks that Fox started
23 using, the Fox 40s was their names, they had a pressure release
24 valve, it looked, virtually, identical to the one that is in
25 the patent, the '331, did it not?

Wesley Allinger - Cross

1 A Yes.

2 Q And you used those for that seven years, until you started
3 to introduce those valves in your 38 and 36, right?

4 A The Fox 40 had a bleeder valve the entire time. Yes.

5 Q Right. It was a bleeder valve that looked, visually, if
6 you look at the patent, it looks exactly like it. It's at the
7 same place, between the seal and the bushing?

8 A All the bleeder valves we have been looking at, look the
9 same, including the SRAM bleeder valves.

10 Q Is the SRAM bleeder valve that you looked at, is that
11 between the upper seal and the bushing?

12 A The SRAM bleeder valve that we're looking at is not.

13 Q It's below the blushing right?

14 A (Nodding head.)

15 Q Okay. Now, Santa Cruz, you are not testifying to the Court
16 that you actually lost that as a customer, right? They spec
17 many different bikes?

18 A We did not lose Santa Cruz as an overall customer.

19 Q You have many bikes that spec for Fox with Santa Cruz?

20 A Yes, we do.

21 Q In fact, you have not lost any customer yet. In other
22 words one customer --

23 A I don't believe there's any customer -- I'm sorry.

24 Q Go ahead.

25 A I don't believe there's any customer, other than a couple

Wesley Allinger - Cross

1 that are Fox exclusive, that are exclusive to either SRAM or
2 Fox.

3 Q Hm-hm. You definitely agree that the price competition
4 between SRAM and Fox existed long before there was any bleeder
5 valve issue, right?

6 A Price competition?

7 Q Yes.

8 A Price is a major factor when it comes to negotiating. I
9 think it's that way with any product, and between any two
10 competitors.

11 Q That competition has existed in the 12-plus years that you
12 have been in your position?

13 A Of course.

14 Q Right. Okay. You didn't testify as to how much you might
15 have to lower your price, if a preliminary injunction was not
16 issued, did you?

17 A Did not.

18 Q And in today, through the last X number of years, you were
19 not able to tell us, in your deposition, whether or not you had
20 to lower your price at all, with respect to this, because of a
21 particular bleeder valve?

22 A I think price negotiation is a tough one to talk about
23 right, because if you are talking about features and you are
24 talking about that, you even mentioned it, how many bikes you
25 are on with a customer. It's a delicate negotiation. You are

Wesley Allinger - Cross

1 talking about lots of factors, right.

2 So, for me to, you know, how much business you are
3 getting. What the volume is of the business. Whether you are
4 on their premier bikes or. Not all of these things go into a
5 price negotiation, so tagging an exact number is almost
6 impossible.

7 Q I understand that but you didn't have an estimate, you
8 didn't have any kind of number or you didn't --

9 A It varies from customer to customer.

10 Q You didn't -- you did agree, in your deposition, that
11 there's no question that Fox is going to continue to still be a
12 viable business, regardless of whether preliminary injunction
13 is entered?

14 A We are not going out of business.

15 Q Right. You haven't spoken with any of your 150 customers
16 regarding Fox's reputation, have you?

17 A I don't understand your question. I mean we talk to our
18 customers all the time, and they expect that our reputation is
19 what it is, and ...

20 Q The question in your deposition was, *Have you spoken with*
21 *or polled OEMs your customers regarding Fox's reputation,* and
22 *your answer was, Well no, not specifically, no.*

23 A Well, it's implied. I mean we work -- I guess I don't
24 understand your question. Are you asking whether I asked a
25 customer, if they thought we were the market leader?

Wesley Allinger - Cross

1 Q Let's talk about polling. You haven't -- there's no
2 customer polling that was done in any articles that you talked
3 about that related to the pressure relief valve?

4 A There's no customer polling. Customers would never answer
5 a pole. It would show favoritism. It would -- they would
6 never do it?

7 Q You couldn't do a customer poll that asked what are the
8 features of our forks or RockShox forks that were the reason
9 for purchasing the product?

10 A Could we do a customer poll like that? We know that
11 information, working with our customers. We have a sales team
12 that's very in touch with what our product managers are looking
13 for.

14 Q It's your current position, as you sit here today, that
15 Fox's reputation for innovation is still excellent, right?

16 A Yes.

17 Q So the -- the other thing I wanted to ask you about --

18 MR. WALSH: Your Honor, may I come up to the bike and
19 point this out?

20 THE COURT: Excuse me?

21 MR. WALSH: Can I come up here to point to this
22 bicycle?

23 THE COURT: That's fine.

24 Q (By Mr. Walsh) Remind the Court the percentage of
25 your products that are put in bicycles, and then they come into

Wesley Allinger - Cross

1 commerce, is about how much of in your estimate?

2 A Are you talking about the 85 percent that we talked about
3 earlier?

4 Q Right. You sell about 85 percent of them to OEMs; they
5 come in, they are sold like this, right?

6 A Yes.

7 Q All right. And your products are made in Taiwan?

8 A Yes.

9 Q They are sold to Taiwan factories or trading companies?

10 A Many of them, not all of them.

11 Q Right. Well, some are sold into the United States, but the
12 vast majority of them are sold to Taiwan factories or trading
13 companies?

14 A The way the product is sold, there's a number of factories
15 in Taiwan that build bikes for customers like Trek, but then
16 there are also factories in Europe and in the US with brands
17 that we have talked about, Pivot, Yeti, where we ship our
18 product to those countries and they assemble the bikes. They
19 are not done in Taiwan.

20 Q When you say *ship them*, you ship them from Taiwan?

21 A From our factory in Taiwan.

22 Q What percentage do you believe are actually assembled in
23 Taiwan?

24 A I don't have a number for you.

25 Q Okay. So when a person is going in to purchase a bicycle,

Wesley Allinger - Cross

1 that may have your fork on it or a RockShox --

2 THE COURT: Go back to the podium. There's no
3 advantage to your being there.

4 MR. WALSH: I want to ask him about certain
5 components.

6 THE COURT: Well, then let's get to that.

7 MR. WALSH: Thank you. Sorry.

8 Q This bicycle that, they are going in for, has many
9 different things on it, besides the suspension fork?

10 A Sure.

11 Q The avid cyclist is going to look at the wheels, the tires,
12 and pedals and the type of transmission it has, and the chains
13 down here, right?

14 A An avid cyclist is going to look at the entire package.
15 There's no doubt. But there are components on that frame that
16 that really garner the attention of a customer. The fork is
17 front and center, the shock is front and center, the brand name
18 of the bike is front and center, and I would also say that the
19 drive train is front and center.

20 Q The drivetrain, for example, here, this is electronically
21 shifted?

22 A That's right.

23 Q That little noise you hear? And it also has --

24 THE COURT: Go back to the podium. I'm done with --

25 MR. WALSH: Okay. Fine.

Wesley Allinger - Cross

1 THE COURT: There's no advantage. Certainly, I can
2 understand you can make reference, I can look, I can see, let's
3 keep you at the microphone.

4 MR. WALSH: Okay.

5 Q (By Mr. Walsh) You -- I guess my point is that
6 there's a lot of things, when someone goes in to look at the
7 bike? They are not just looking for one particular feature on
8 one particular item, right?

9 A One of the key features in a mountain bike are the ones
10 that I mentioned. You have the frame, you have the suspension
11 and you have the drivetrain. Those are the ones where people
12 are going to make their decision.

13 Q Right. And for the suspension, you have high-speed rebound
14 damping, low-speed rebound damping, high-speed compression,
15 low-speed compression. Three position -- different levels for
16 compression adjustments. You have Kashima coating and SRAM has
17 aluminum coating. You have a floating axle, right?

18 A We have all of those things. Yes.

19 Q And you testified that each of those features can drive
20 consumer demand?

21 A Absolutely.

22 Q Okay. Just a -- one last thing. When you were -- when you
23 mentioned the lawsuit, the last lawsuit that went on between
24 the parties, and when you filed this preliminary injunction you
25 said, *Hey, we didn't want to get back into the lawsuit with*

Wesley Allinger - Cross

1 *these people, again, right? That's, essentially, what you are*
2 *trying to say?*

3 A It had been six years of back and forth and at great
4 expense and great distraction for both our companies.

5 Q So when you, at least, knew that SRAM was going to utilize
6 these bleeder valves, in October of '21 when you were still
7 very much involved in those suits, you were still talking and
8 negotiating?

9 A You said October?

10 Q October of '21?

11 A Yeah. I mean we saw some evidence of it, but we couldn't
12 buy a fork.

13 Q Okay. Why didn't you ask SRAM about it? Why didn't you
14 say to SRAM, *Look, if you are thinking about doing this, we*
15 *have this technology, don't do it?*

16 A Why didn't we ask SRAM about it? If you don't get your
17 hands -- so we have a process at Fox. We need to get our hands
18 on something and evaluate it. For us to make a call, based on
19 picture that we saw, you know, we are just not going to do
20 that. We're not going to do that. We're going to be sure.

21 Q Well, Fox has stated in this lawsuit that it knew that we
22 intended to put bleeder valves on the products in October of
23 2021. My question is --

24 A We didn't say that we knew. We said we saw that and then
25 we bought one in April and then we knew.

Wesley Allinger - Cross

1 Q All right. So why wouldn't you talk to them? You are
2 engaged with them all the time, to negotiate this other
3 lawsuit, that you said you had, why wouldn't you say to them,
4 *Look, you have this --*

5 THE COURT: Whatever the value of the point is, it's
6 been made. We're beating a dead horse.

7 Q (By Mr. Walsh) Okay. And then -- and then in this
8 lawsuit you have indicated that you would be willing to accept
9 a royalty per product, if it's a global royalty, right?

10 A We have been negotiating for awhile. The problem is we
11 have just hit loggerheads. We have wanted SRAM to stop
12 doing -- stop infringing since the beginning. We are offering
13 up all different ways to do that. I know we don't want to talk
14 about negotiations, but it's been ongoing for the last six
15 months.

16 Q I get it. My last question is, though, you have offered to
17 settle it for a royalty, per product, right?

18 A Yeah. -- yes.

19 MR. WALSH: That's all I have, Your Honor.

20 THE COURT: Redirect, briefly.

21 MR. McCAULEY: None, Your Honor.

22 THE COURT: All right. Brief as possible. You are
23 excused. We will -- just leave that there. We will break for
24 lunch, pick it up at 1:15.

25 MR. McCAULEY: Thank you Your Honor.

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1 THE COURTROOM DEPUTY: All rise. Court is in recess.

2 (Recess at 12:03 p.m.)

3 (In open court at 1:19 p.m.)

4 THE COURT: Please be seated. I take it this is your
5 next witness, counsel?

6 MS. BHATTACHARYYA: Good afternoon, Your Honor.

7 Arpita Bhattacharyya for the plaintiff, Fox Factory. For our
8 next witness, Fox Factory calls Dr. Alexander Slocum.

9 THE COURT: All right. Robb, if you would, please.

10 THE COURTROOM DEPUTY: Please stand and face me and
11 raise your right hand.

12 (DR. SLOCUM was sworn.)

13 THE WITNESS: I do.

14 THE COURTROOM DEPUTY: Please be seated. Please state
15 your name and spell your last name for the court reporter,
16 please.

17 THE WITNESS: Alexander Henry Slocum, S L O C U M.

18 DIRECT EXAMINATION

19 BY MS. BHATTACHARYYA:

20 Q Good afternoon, Dr. Slocum. We will get into the details
21 soon, but generally, what has Fox asked you to investigate and
22 opine on, in this case?

23 A They asked me to look at the '331 patent, Claim 1, and then
24 compare the -- there's three forks, you heard about the ZEB,
25 the Lyrik and then the Pike, and each of those have different

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1 models. The Ultimate, there's an Ultimate Flight Attendant, a
2 Select Plus, a Select and a Base, and do those products and the
3 different flavors, do they in infringe claim one of the '331
4 patent; that was my task.

5 Q I would like to go to some of background for the Court.
6 Let's first focus on your educational and teaching background.
7 So with that in mind, would you please provide a brief synopsis
8 of your educational background, beginning with your
9 undergraduate degree?

10 A So I grew up as a hotrod kid, and in my education, all
11 three degrees from M.I.T. in mechanical engineering. My focus
12 has always been machine elements, mechanical systems,
13 mechanisms. I finished my undergraduate in mechanical in 1982,
14 my Masters in mechanical in 1983 and then my Ph.D. in 1985, and
15 then from 1983 to 1986, I was also working full-time, it was
16 called the National Bureau of Standards then, now it's NIST,
17 National Institute of Standards, and that was in Washington,
18 DC?

19 Q Where are you currently employed, Dr. Slocum?

20 A I'm currently a professor at M.I.T. Massachusetts Institute
21 of Technology. I started teaching there in 1986 -- or sorry
22 '85. There was a year of overlap with the bureau, because we
23 were doing some common work. And I worked there till 1989.
24 Then went back to the U.S. Government, working on what was
25 called the Star Wars Program, you know, for special machines,

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1 and then I came back to teaching in 1991, where I have been
2 there ever since, professor of mechanical engineering, and I
3 teach machine design from, we have car teams, we have the
4 electric bike team, to robots, automation in general, what's
5 called HyPro Precision Systems, which are machines that have to
6 do the same thing every time, and that's automation equipment
7 all the way up to quite a lot of work in the semiconductor
8 industry for making Wayfarers. I also do a lot of oil field
9 and large wind turbine machines.

10 So, to me a machine is a machine, it all fits right in
11 my screen, and then I write the math to say how it works and
12 how to optimize it and make it work.

13 Q Dr. Slocum, you mentioned the Star Wars Program, for those
14 are not familiar with it, would you briefly explain what is the
15 Star Wars Program?

16 THE COURT: I don't care about it. Don't worry about
17 it.

18 THE WITNESS: Okay.

19 THE COURT: Look, he is qualified. Let's talk about
20 something other than the Mandalorian.

21 MS. BHATTACHARYYA: So we are offering Dr. Slocum as
22 an expert in bicycle suspension technologies

23 THE COURT: I'm going to accept him as such. You want
24 to make a record of objection? If you have one, I will let
25 you, but be brief.

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1 MR. HICKEY: No objection, Your Honor.

2 Q We will dive right into 221 patent. Dr. Slocum, you have
3 studied and reviewed the patent, which is at issue in this
4 case, right?

5 A Yes, I have.

6 Q And how would you describe your review of the patent?

7 A So I read the patent, cover-to-cover, and then I also
8 reviewed the file history --

9 THE COURT: Let me just interrupt you for one second.
10 I'm not sure whether it was the way my court reporter got it
11 down or the way that it was said. I'm looking at it, in the
12 docket -- excuse me, in the transcript, as the 221. We mean
13 the '331, do we not?

14 THE WITNESS: We do.

15 Q (By Ms. Bhattacharyya) Just for the record,
16 Your Honor, full patent number is 9739 --

17 THE COURT: No. I understand how that works. We are
18 talking about the last three digits. I'm good. Let's go.

19 Q (By Ms. Bhattacharyya) So, Dr. Slocum, you have also
20 considered the prosecution history of the '331 patent, correct?

21 A Yes. Yes, I did.

22 Q And in order to analyze that claim one of the '331 patent
23 you mentioned that you have reviewed certain SRAM products with
24 air-bleed valves on them, correct?

25 A Right.

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1 Q The -- the various different models of those products, some
2 have a push-button-type valves, and some have screw-type
3 valves, right?

4 A Correct.

5 Q Earlier, you had heard Mr. Walsh say -- characterize this
6 screw-type valves as a plug. Do you agree with that
7 characterization?

8 A I would not call it a plug. It's a valve. It opens and
9 closes as needed, maybe sometimes several times a day, and
10 that's a valve.

11 Q Dr. Slocum, we will go to the details shortly, but as a
12 review for the Court, what is your opinion as to whether or not
13 the SRAM forks here analyzed, infringed Claim 1 of the '331
14 patent?

15 A So I went through and I first created like a claim chart
16 with each element of the claim, and I go through and I see do I
17 find each element of the claims within the accused products?
18 And I am just focusing on the -- this bleed-valve part. I
19 don't know to be worried about the detailed internals of the
20 dampers and the springs, because that was not part of the
21 claim.

22 I think its page 28 of the manual, which is one of the
23 exhibits from SRAM, it even shows a picture of a fork and it
24 says for all of the different models this bleed-valve zone is
25 all the same; that's what their own stuff says. That's what I

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1 found when I examined the products also. So I think we are on
2 the same page there, and that was the basis of my physically
3 taking apart and looking at a ZEB Ultimate and a Select valve,
4 that it infringed with both the push button and the screw-type
5 valve, and then based on pictures of the others and then really
6 from their own manual, all the other models, although they have
7 some very nice differences for a rider's dynamics, with respect
8 to the bleed, they are all the same.

9 Q Dr. Slocum, we have submitted two claim charts mapping each
10 element of Claim 1, to the SRAM's Lyrik Ultimate and Lyrik
11 Select forks, right?

12 A Correct.

13 Q And they are in the binder, the black binder in front of
14 you, at Exhibits 2B and 2C. Do you recognize those as copies
15 of the claim charts that you submitted with your declaration in
16 support of infringement?

17 A Yes, they are.

18 MS. BHATTACHARYYA: Your Honor, in the interest of
19 time, I'm not going to walk through each and every element of
20 that. It's already in the record at docket **71-2**. I'm just
21 going to jump right into, and focus on the one element that is
22 disputed, which is about the position of the air-bleed valve.

23 THE COURT: Okay.

24 Q Dr. Slocum, what do you understand is SRAM's position on
25 non-infringement of the '331 patent?

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1 A Okay. So this is my understanding, based on the reading
2 Mr. Wesling's report, that Mr. Wesling looked at the patent and
3 said, in his view, having read the patent and the prosecution
4 history, he believes Claim 1 has a limitation, that's not in
5 words, but that's his interpretation, that the valve has to be
6 between the seal and this upper bushing, which is the bearing
7 that allows the tubes to slide nicely. And so he says, our
8 valves are all below the bushing, not between the bushing and
9 the seal, and therefore we do not infringe; that's what they
10 believe.

11 Q And do you agree with Mr. Wesling's interpretation?

12 A I don't, because I didn't find any such narrowing of the
13 patent, either in specific limitation in Claim 1, or in the
14 back and forth with the Examiner, in the prosecution of the
15 patent. There was no explicit, *I will allow this, if you add*
16 *this limitation*. So there was none of that.

17 Q Does claim 1 of the '331 patent say anything about the
18 air-bleed assembly being located directly below the seal or
19 between the seal and the upper bushing?

20 A It just needs to be below the seal and above the oil bath
21 line. It can be anywhere there, and then it will be left to
22 one skilled in the art where best to place it for their
23 application, which would be manufacturing considerations, but
24 also it does make it clear, you have to place it so you are not
25 going to lose oil in -- that's part of what this thing does is

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1 it bleeds air. You don't want to lose oil, which is going to
2 create a loss of function of the shock absorber -- excuse me --
3 the forks.

4 Q Just so the record is clear, Dr. Slocum, Claim 1 of the
5 '331 patent, does not say anywhere that the air-bleed valve is
6 located directly below the seal or between the seal and the
7 bushing, right?

8 A Correct. Does not have that limitation.

9 THE COURT: All right. Let me just jump into it.
10 What did you make -- do you have the patent in front of you?

11 MS. BHATTACHARYYA: Your Honor, it's -- it's Exhibit
12 28, in the binder.

13 THE COURT: All right.

14 THE WITNESS: Excuse me, Your Honor, let me just get
15 there. Okay. Here I am. Where would you like --

16 THE COURT: Column four. At the bottom, Claim 1. And
17 I guess I'm looking at line 67. Tell me what you make of this,
18 *Said manually operable valve, disposed between the lower leg*
19 *seal and said first and of said lower fork, and wherein, the*
20 *fluid passage in said manually operable valve are located at a*
21 *distance from an oil bath lubrication within said lower fork.*
22 What is it that you read this as saying, in plain English?

23 THE WITNESS: Okay. In the lower fork you have the
24 tubes of the upper fork that project down in. There's a seal
25 between the two.

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1 THE COURT: Right.

2 THE WITNESS: And then in the bottom of the lower fork
3 you have got an oil bath.

4 THE COURT: Right.

5 THE WITNESS: The patent is just saying it needs to be
6 somewhere between the seal and above the oil bath, can be
7 anywhere in there. There's nothing in there that tells me
8 that -- anything more detailed than that.

9 THE COURT: Okay. All right.

10 Q And in the SRAM forks that are accused of infringement, in
11 which you analyzed, the air-bleed valve is between that seal,
12 between that upper and lower forks and above the resting level
13 of the oil bath, right?

14 A Correct. It's about five tube diameters above the oil
15 bath, maybe six or so, and it's just below the bushing.

16 Q Let's take a look at the sentences from the prosecution
17 history, which SRAM is relying on, in order to try and limit
18 that that position of the air-bleed valve to between the seal
19 and the bushing.

20 Dr. Slocum, would you please pull up the response to
21 the office section, dated March 2nd, 2017, which is in your
22 binder, as Exhibit 14.

23 A Okay. Exhibit 14 is -- says -- 15, unless I'm reading it
24 backwards.

25 THE COURT: No, you are not. You are good. I

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1 understand why. I'm just telling you -- the witness, we're
2 just focusing on the yellow tabs.

3 THE WITNESS: Okay. I see Exhibit 14. Thank you,
4 sir.

5 Q (By Ms. Bhattacharyya) And it's the Preliminary
6 Amendment And Response, that was filed with the patent office.
7 And, Dr. Slocum, do you recognize this exhibit as a copy of the
8 office section response that SRAM has relied on to try and
9 limit the position of the air-bleed assembly?

10 A I do.

11 Q Let's go to page ten of Exhibit 14.

12 A That would be page 11 of 15 at the top or ten at the
13 bottom?

14 Q I'm referring to the page numbers that are at the bottom of
15 the page?

16 A Okay. I'm there at page ten.

17 Q And do you see the sentence, *In contrast to Galasso?*

18 A I do.

19 Q In the middle of the page, let's go there. SRAM is
20 specifically relying on the sentence, *The air-bleed assembly in*
21 *a lower fork, wherein the vent hole is located between the*
22 *lower leg seal and the bushing that is attached thereto, right?*

23 A I see that, correct.

24 Q In your opinion, does this isolated statement that I just
25 read, warrant limiting the air-bleed assembly to a position

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1 between the seal and the upper bushing?

2 MR. HICKEY: Objection, leading.

3 THE COURT: Overruled.

4 THE WITNESS: That's one sentence in a whole
5 paragraph. My reading of the patent there is one specific
6 embodiment, and also discussion of there are other ways to do
7 this, and so I read this as, yeah, one embodiment is in that
8 position, but you have got to keep reading, and then it's about
9 the third sentence down, it says, *Thus*, so this is like
10 summarizing everything about the patent, *the area bleed system,*
11 *including the manually operable valve, is located below the*
12 *lower leg seal that is attached to the outer most edge of a*
13 *second end of a lower fork tube, wherein the second end of the*
14 *lower fork is configured to receive upper fork telescopically*
15 *therein. Of note, an oil bath lubrication is located within*
16 *and at the first end of lower fork tube, the oil lubrication*
17 *remaining in such a position, via gravity.*

18 They are talking about you have got to have the seal
19 between the oil bath -- I'm sorry -- the valve between the oil
20 bath and the seal. That's the way I read it, as the whole
21 paragraph.

22 Q (By Ms. Bhattacharyya) And let's go to the next page.
23 It's page 11. Referring to that number on the bottom of the
24 page. How about the other statement that SRAM has relied on,
25 which it's in the full -- full paragraph, and it starts with

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1 *However, due to the positioning of applicant's air-bleed system*
2 *being located directly below the lower left seal --*

3 *THE COURT:* I'm not seeing where you are.

4 *MS. BHATTACHARYYA:* Your Honor, that's in the first --

5 *THE COURT:* Robb. Robb, ELMO, and help them.

6 *THE WITNESS:* I see, it's like the fourth line down on
7 the paragraph.

8 *THE COURT:* Okay. I got it. I got it. Go ahead.

9 Q (By Ms. Bhattacharyya) Yes. The fourth line down in
10 the paragraph. It starts with *However, due to the*
11 *positioning...*

12 A Yes.

13 Q So it reads, *However, due to the positioning of the*
14 *air-bleed system being located directly below the lower left*
15 *seal, within the lower fork tube, and it goes on.*

16 Dr. Slocum, does that sentence warrant limiting the
17 air-bleed assembly to position directly below the seal?

18 A No. It just says it has to be ... below -- directly below
19 the lower leg seal, but it is just within the lower fork tube.
20 So it can be anywhere in that lower fork tube. It doesn't say
21 it has to be right there. Indeed, again, it talks about the
22 oil bath lubrication. You have to make sure wherever you put
23 the valve, you push it, you don't squirt out oil.

24 *THE COURT:* Is there any functionality or utility to
25 putting it at any particular position above the oil bath?

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1 THE WITNESS: Well, it has to go above the oil bath.

2 THE COURT: No, I know that, but clearly if it's below
3 the oil bath, the oil is coming out.

4 THE WITNESS: Right.

5 THE COURT: But in terms of being above the oil bath,
6 is there any particular -- well, not particular -- is there any
7 functional or -- functionality or utility to having it one inch
8 above the bath versus two inches above the bath versus between
9 the seal and the bushing or whatever else is in that stretch of
10 tubing?

11 THE WITNESS: I can explain, Your Honor, very simply,
12 that when you are -- have a reservoir of oil, you are splashing
13 around in a tube or diameter, of let's call it D, if you were
14 at least five D above that, this is called St. Venant's
15 principle, very well known --

16 THE COURT: Not by me, but go ahead.

17 THE WITNESS: You will not be affecting or affected by
18 the stuff that's five characters dimensions away.

19 So when you look at -- the seal is up at the top of
20 the tube, and the oil is way in the bottom of the tube, it's
21 telling me, put the seal anywhere you want, first of all, below
22 the top, and at least a bunch of diameters above the oil and
23 you will be safe.

24 Now, anyone -- this what I teach. I have been
25 teaching for 40 years this stuff, so any design person will

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1 know this, who designs fluid systems, hydraulic systems. So I
2 don't see a need to say it specifically, in the patent. You
3 get there by experimentation. The real design question is, do
4 I put it as shown in the one embodiment in the patent? The
5 patent specifically says you can put it other places. There's
6 other embodiments. There's some advantage to that, but also
7 disadvantages to that, because if you put it right up there at
8 the seal, where there's this foam ring with oil to keep
9 everybody lubricated, you probably will have more oil spritzing
10 out than if you put it a little bit below the bushing.

11 So that becomes a design choice in my mind. Is it
12 at -- either way, always has to be below the seal, otherwise it
13 won't vent.

14 *THE COURT:* Go ahead.

15 Q (By Ms. Bhattacharyya) Dr. Slocum, you heard
16 Mr. Walsh say in his opening that the PTO required the claim to
17 be limited to this narrow position between the seal and the
18 bushing. Do you agree with that?

19 A I heard him say it, but I don't agree with it, because if
20 it was true, it would have ended up as a limitation in the
21 claim, because that's what examiners do. If they want a
22 limitation, you have to put it in the claim. I have enough
23 patents to know that they do that to me all the time.

24 Q Did the patent Examiner say anywhere in the prosecution
25 history, that he is requiring the position of the air-bleed

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1 valve to be limited to between the seal and the bushing?

2 A I did not read that anywhere, nor did I read in inference
3 or implication thereof.

4 Q And when you consider the entire prosecution history, do
5 you recognize the two sentences that SRAM is relying on as
6 limiting the location of the air-bleed assembly?

7 A I don't. I read it as they are discussing the particular
8 embodiment that was in the patent; that's all.

9 Q And based on the plain language of the claim, the air-bleed
10 assembly can be located anywhere on the lower leg of the fork
11 between the seal and above the oil bath, right?

12 A That's the way I think the plain language says. Again,
13 there's nothing in the claim that says located below the seal
14 and above the bushing. That doesn't appear. It just says
15 below the seal and above the oil bath. So that's very clear.
16 Can be anywhere in there, and now it's a design choice where
17 the practitioner would think best to place it for all of the
18 reasons design people decide to put things places; you know,
19 oil loss, cost, ergonomics of the user.

20 Q You studied the declaration that SRAM's Mr. Wesling had
21 provided on non-infringement. Is there any other claim
22 element, in Claim 1 of the '331 patent, that Mr. Wesling
23 opines, as missing from the accused SRAM forks?

24 A No, that was it. I think that was his entire reasoning for
25 why they -- he believed they don't infringe, is that limitation

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1 that he added into the claim.

2 Q With respect to validity, and I will cover validity mostly
3 with Mr. Galasso, but I just want to ask you one question. So
4 Mr. Wesling, who is a SRAM declarant, had opined that Claim 1
5 of the '331 patent is invalid, because it cannot determine
6 whether the claim limitation, *most, if not all of said oil bath*
7 *lubrication, remains within said lower fork*. Do you agree with
8 Mr. Wesling's opinion on that point?

9 A I don't. This becomes one skilled in the art, who is
10 designing for this particular community of people who are going
11 to buy stuff. They will have an idea of how much oil could be
12 lost per application, because nothing is a hundred percent
13 sealed. Even the encasements we did for the Charters of
14 Freedom, we have a diffusion light we calculate. So you
15 just -- it's in the customer specs of what you will allow and
16 so you design for it. It's a design choice.

17 Q And would you agree that the term *most if not all of the*
18 *oil remains within the lower fork* means that substantially all
19 oil will remain within the lower fork when the air-bleed valve
20 is activated?

21 A Yeah, that would mean that substantially. What is that?
22 As a design person you would typically say, for a customer not
23 to notice, this is like a three-sigma value, statistically
24 99.3, call it no more than 1 percent typically, for example, of
25 the oil should be lost. So the customer will not notice. And

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1 then that meets the requirements that most if not all of the
2 oil is not lost. It stays in.

3 Q And how did you test if that limitation was met by SRAM's
4 forks?

5 A Well, for the two forks that I disassembled, because I had
6 read the patent first and stuff. I first took the forks as if
7 they were, you know, I was a user and I activated the valve,
8 and you hear a little psst. Now I live at altitude of 800 feet
9 above sea level. I don't know where they were assembled or
10 their history, but clearly it was less than 800 feet, because
11 there was an audible psst, and I look at my finger and I didn't
12 feel anything that, *Oh wow, there's oil feel*. I didn't feel
13 that. And that was on the push-button one. And then on the
14 screw one, I used a little thin blade driver to unscrew it, and
15 again I'm doing it slowly, because that's how you crack open a
16 bleed valve and I heard a psst... but I didn't see any residue.

17 Back of the calculation there's roughly 30 CCs of oil,
18 30 to 50 in these things, and over several hundred cycles of
19 use, potentially, before you rebuild them. How much oil would
20 one percent loss be? It would be something about a half
21 millimeter by a half millimeter, you know, cubes. About the
22 size of the head of a pin, would be about how much, you could
23 tolerate, and then the user would really never notice, but I
24 didn't even see that in this case.

25 Q And, Dr. Slocum, SRAM's invalidity claim charts take the

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1 position that they are following your infringement
2 interpretation of the claim element and upper bushing attached
3 to and positioned adjacent to said lower leg seal. What is
4 your position on this claim element, vis-a-vis the accused SRAM
5 forks?

6 A So the forks, there's this outer tube, that's the structure
7 to which everything is attached. So you have got the top of
8 the fork, there's -- it's been bored out and a bushing is
9 pressed in. So the bushing is now firmly attached to the top
10 of the fork, and then the seal, which is in total for this case
11 is an oil felt -- piece of felt that holds oil, and then a
12 rubber lip that's a no -- the whole thing -- the seal is
13 pressed in. There's also, in that case, the ones I looked at,
14 there's a retaining ring.

15 So the seal is attached to the bushing and the, quote,
16 means of attachment or method of attachment is that common bore
17 that grips them both tight. So it's like you have two plates
18 that are held together by a bolt; bolts the two together. So
19 that's how the attachment is physically done.

20 Q And the rubber sealing lip and the forming together, form
21 the claimed sealing element in Claim 1 of the '331 patent,
22 right?

23 A Right. A seal is a term for, *this is the thing that*
24 *accomplishes the sealing*, and there's different ways of doing
25 seals. One very common way is you have a wiper with lubricant,

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1 then the seal and what the lubricant does is it keeps the amino
2 layer of oil on the tube so the rubber is never rubbing, you
3 know, on dry metal. If you were to do that, you need a very
4 special type of teflon impregnated seal.

5 *THE COURT:* You realize you are killing my court
6 reporter with your comic-book sound effects.

7 *THE WITNESS:* I'm sorry, Your Honor. I teach -- I
8 teach everything from inner city high school kids --

9 *THE COURT:* It's fine, with me, I understand what you
10 are saying, but I'm just saying, I know Tammy, and I am -- I
11 can see that she is having the thought bubble is, *How is that*
12 *spelled?* But let's go ahead, please. Go ahead.

13 *THE WITNESS:* R R R R R, is rrrrr.

14 *THE COURT:* Okay.

15 *THE WITNESS:* So, in this type of seal design, the
16 goal is to keep a molecular oil layer on the surface, so the
17 rubber will do its job of sealing water out from the outside
18 world, and oil in on the inside world, and you won't wear the
19 rubber away. You will maintain the rubber integrity. That
20 piece of felt, with the rubber, is the seal package, it's --
21 it's all part of the same system.

22 *MS. BHATTACHARYYA:* No further questions for
23 Dr. Slocum.

24 *THE COURT:* Thank you. Cross.

25 **CROSS-EXAMINATION**

DR. SLOCUM - Cross

1 BY MR. HICKEY:

2 Q Your Honor, if it may please the Court, Michael Hickey for
3 defendant SRAM.

4 Dr. Slocum, you covered a couple different topics, in
5 your Direct Examination. I. Want to cover a couple topics
6 with you.

7 First, I want to talk about the scope of Claim 1.
8 Okay. And when I took your deposition, and reminded you the
9 '331 patent showed an embodiment where the air-bleed assembly
10 was between the upper bushing and the lower leg seal, you
11 testified that figure one of the '331 patent, showed the
12 air-bleed assembly well below the level of upper bushing; isn't
13 that right?

14 A Correct. The patent shows a figure one, which is the -- if
15 I recall, is the only full fork image, and what it shows there
16 are two stubs which are clearly below the bushing, and that
17 particular embodiment, which it says it's an embodiment of the
18 invention, you can look at those stubs and say, if I look at,
19 also the drops where the wheels engage, that's a skewer-type
20 wheel, those would also hold, for example, caliber brakes. But
21 if you look at, it's a boss that's cast in there, there would
22 be a hole right through the center of it that would lead in,
23 then those protrusions, you see the rounded end there, that
24 could equally well have the valve in it. They just did not do
25 that detail. Why? I don't know. But it's clearly called out

DR. SLOCUM - Cross

1 as an embodiment of the invention.

2 Q Okay. So I just pulled up figures one and three, together.
3 Figure three shows the air-bleed assembly between the lower leg
4 seal on the upper bushing, correct?

5 A Correct.

6 Q And then you are saying that the protrusions, down in
7 figure one, below that U-shape or reverse U-shape, those are
8 air-bleed assemblies; is that right?

9 A I said that's where a design person reading this would say,
10 *Oh gee look, I could put them there too.*

11 Q Well, actually, you testified, in your deposition, that the
12 nipples in figure one are the air-bleed system, correct?

13 A Yeah. That's what you just said, I believe.

14 Q Okay. You testified that it was your opinion that those
15 protrusions there, those would be the air-bleed system, that
16 would be one embodiment of it; is that right?

17 A Correct. That could be one embodiment of it, of the patent
18 itself.

19 Q Okay. And you indicated that one of ordinary skill in the
20 art would recognize those to be air-bleed assemblies, right?

21 A Well, one reading this patent, yeah.

22 Q Okay. Let's go to a different question. I want to talk
23 about the priority date of the '331 patent. The '331 patent
24 goes back to May of 2012, correct?

25 A I would have to check the date, but I will take your word

DR. SLOCUM - Cross

1 for it, if that's the exact date.

2 Q Yeah. On the cover of the '331 patent, which is your
3 Exhibit 28, it indicates that there was a provisional
4 application that was filed on May 9th, 2012. Do you see that?

5 THE COURT: I see it, so let's go on.

6 Q (By Mr. Hickey) Okay. So if there were air-bleed
7 assemblies on forks that were around before May of 2012, then
8 the '331 patent would be invalid, right?

9 A I'm sorry. Can you ask me that again? I was looking at
10 what was being colored there.

11 Q If these air-bleed assemblies on forks were around, as you
12 identified in figure one, if they were around before May 2012,
13 then the '331 patent would be invalid, right?

14 A Well, I did not say that just something a fork that looks
15 like, which I described, could be a mount for a caliber break,
16 is an air-bleed. I say, Ah, those features there, could be air
17 bleeds, if you have a bore through them, to connect up with the
18 inside and you put the valve on them.

19 Q Well, that's not what you testified to, Dr. Slocum. What
20 you said, I -- I asked you specifically, in your deposition,
21 and you testified, it's -- the question was, And it's your
22 opinion, that the nipples that are shown in figure one are the
23 air-bleed system? And your answer was, Those protrusions up
24 there, those would be the air-bleed system?

25 A Excuse me. I have got a bunch of stuff colored here and

DR. SLOCUM - Cross

1 you are reading, and I can't see where where you are reading
2 so. Okay. Now.

3 Q I will let you read it?

4 A Can you zoom out a little bit, so I can see the whole
5 context? A little more. A little more. Thank you.

6 Q I'm specifically pointing you to lines 13 through 17; this
7 is from page 126 of your deposition.

8 A Well, right. You have got to go out a little bit, because
9 you have got to read the whole thing in context there on that
10 page. Zoom out a little bit, please. Okay. That's good, now.
11 You asked me in line four for the '331 --

12 THE COURT: All right. We're done with this
13 discussion. Let's have a question, let's have an answer and
14 stop the debate.

15 Q (By Mr. Hickey) Okay. If we take a look at the '331
16 patent, let's look at column 3, line 33. There are 13 patents
17 and 15 publications that are listed in the '331 patent as being
18 incorporated by reference in their entirety, correct?

19 A That is my recollection.

20 Q Okay. And those, I have that stack here, you indicated
21 that you had read the '331 patent cover to cover, correct?

22 A Correct. I did not study the background art.

23 Q Except that these exhibits 42 through -- A42 through A48,
24 and A50 through A70, were incorporated by reference in their
25 entirety. So this entire stack of materials is part of the

DR. SLOCUM - Cross

1 '331 patent, correct?

2 A That is what the Examiner will consider when issuing the
3 claims, right.

4 Q It's part of the '331 patent. It's incorporated by
5 reference in this entirety, into the '331 patent, correct?

6 A Yeah. That's part of the -- the final record for the
7 patent.

8 Q You didn't read these things that were incorporated into
9 the '331 patent, did you?

10 A Didn't need to. Trust the Examiner has considered all of
11 that; that's how the claims were issued.

12 Q Okay. Let's take a look at one of those patents. It is
13 A48. Okay. And if we go to figure 34 --

14 THE COURT: Let me just stop you for one minute. Just
15 walk me from '331 to where the rest of this is.

16 MR. HICKEY: Absolutely, Your Honor. If we go to '331
17 column two, we go to line 45, really line 44, it indicates,
18 *Another position sensitive damping mechanism as shown in U S*
19 *patent number 7374 --*

20 THE COURT: Got it.

21 MR. HICKEY: -- 028 which patent is herein
22 *incorporated by reference in its entirety.*

23 THE COURT: All right.

24 Q (By Mr. Hickey) If we could go to the cover page of
25 A48. And that indicates that that -- that patent issued May

DR. SLOCUM - Cross

1 20th, 2008. Do you see that?

2 A I do.

3 Q So that's prior art to the '331 patent, correct?

4 A Correct.

5 Q And if we go to figure 34, of that prior art reference,
6 that's it, looks like the same -- same air-bleed assemblies
7 that you indicated are in figure one of the '331 patent; is
8 that right?

9 A I disagree. If you look at what's shown here, it's showing
10 the bosses. So figure 34 looks exactly like figure 31 -- I'm
11 sorry figure one. I have not read this patent, but I will
12 assume, because the Examiner has, this patent does not talk
13 about the --

14 *THE COURT:* All right. Look, again we're just ...
15 jibber-jabbering at each other. If the point to your asking
16 is, does that figure 34 look like figure one, there's only one
17 answer, the answer is yes. So let's move on.

18 *MR. HICKEY:* Okay. Thank you, Your Honor.

19 *THE WITNESS:* I agree with that answer.

20 Q (By Mr. Hickey) Let's go -- let's talk about prior
21 air bleeds. You agree, Dr. Slocum, that the Patent and
22 Trademark Office kept rejecting the '331 patent application,
23 because the prior art showed air bleeds, correct?

24 A Well, it showed valves into air chambers, and the Examiner
25 said this is an air-bleed, then there's the back and forth that

DR. SLOCUM - Cross

1 is common, where the Applicant said, *No, this is not an*
2 *air-bleed for the function of the patent in the structure of*
3 *the patent. Mr. Examiner, you are, with all due respect,*
4 *looking at something to adjust the pressure in an air spring,*
5 *which is very different in location and function. And they*
6 *went back and forth a few times until the Examiner, in the end,*
7 *apparently agreed and then the patent issued as it did.*

8 Q And you testified, in your deposition that the bleed port
9 in the Galasso reference was for which the PTO kept rejecting,
10 application; that was for bleeding error, correct?

11 A It's for changing the air pressure inside the air spring.
12 If you have too much pressure, you can let some out, but you
13 are not equilibrating the pressure within the air spring to
14 atmospheric, otherwise you no longer have a spring.

15 Q My question, Dr. Slocum, was just simply, does the bleed
16 port in the Galasso reference bleed out air; yes or no?

17 A Not under user control, no. I -- I need to explain.

18 Q The PTO knew and you knew there were air-bleed systems
19 in -- air-bleed ports in suspension systems in the prior art,
20 well before the '331 patent application, correct?

21 A There are -- you can adjust the air pressure. It's not a
22 bleed port in the context of the patent. It's different
23 context.

24 Q Okay. Let's talk about, again, back to the scope of Claim
25 1. You testified Claim 1, of the '331 patent is an apparatus

DR. SLOCUM - Cross

1 claim, correct?

2 A Correct.

3 Q That means that it claims a particular mechanism, right?

4 A Correct. There's a function that has to perform. There's
5 a way it does it, and then here's the result if you put it
6 altogether, what the system is, and how it works.

7 Q And so it's a function-way result claim -- is it a
8 means-plus-function claim?

9 A No. That would be a test for means-plus function. Again,
10 I'm not a lawyer, but when I read a claim, I have to read and
11 see, what does this do, and how does it do it, and what's the
12 result of it. It has to make sense. It's not just random
13 words put together, that's my interpretation of how I'm
14 supposed to read a claim and seeing if something infringes or
15 not.

16 Q And you testified that the essence of the patent was that
17 this mechanism was for going up to the top of the mountain,
18 right?

19 A This is a mechanism that when you take your bike up, with
20 the big change in attitude, you can relieve the overpressure,
21 in this interstitial space, so the rider doesn't feel a change
22 in performance. The chairlift is what takes you up the
23 mountain.

24 Q And Claim 1 doesn't mention mountains or valleys or sea
25 level or Colorado or California or DC, right?

DR. SLOCUM - Cross

1 A Hold on a second.

2 Q I will make it simpler, Claim 1 doesn't identify the place
3 where the mechanism is used, right?

4 A That is correct.

5 Q And it's not limited -- Claim 1 isn't limited to bicycles
6 or motorcycles, correct?

7 A It is just a fork on a vehicle wheel. So whatever vehicle
8 would use a fork.

9 Q And it doesn't say anything about the rider or rider feel
10 or rider experience, right? It doesn't -- Claim 1 doesn't even
11 use the term rider?

12 A The term rider does not appear. It merely says, if we go
13 down to the element, *an air-bleed assembly* --

14 THE COURT: I can read it. The word rider does not
15 appear. Let's move on.

16 Q (By Mr. Hickey) Claim 1 doesn't mention what
17 orientation the fork is to the ground, when the air-bleed
18 assembly is used, right?

19 A It doesn't tell me the orientation.

20 Q Okay. And going back to the topic of what was said during
21 the prosecution of the '331 patent, if we -- if we pull up
22 Exhibit 14, page ten, in the line that begins, In contrast to
23 Galasso, *Applicant's features, as recited in newly amended*
24 *Claim 1, locate its air-bleed system in a lower fork, where the*
25 *vent hole is located between the lower leg seal and the bushing*

DR. SLOCUM - Cross

1 *that's attached, thereto.* This is the statement of the
2 Applicant, correct? It's not a statement of the patent
3 Examiner, right?

4 A That whole paragraph is the Applicant saying why their
5 valve is not the valve that the Examiner who was referring to.

6 Q And the Applicant is referring to the features of newly
7 amended Claim 1. It doesn't say -- the Applicant doesn't say
8 that it's talking just about a single embodiment or one
9 embodiment like figure three, correct?

10 A Right. The claim is not limited to a particular
11 embodiment.

12 Q Right. And similarly, on page 11, which is Fox 495, when
13 it talks about, *Due to the positioning of applicant's air-bleed*
14 *system being located directly below the lower leg seal,* it
15 doesn't limit that to a particular embodiment, correct?

16 A It's currently now talking about -- let me check. Yeah.
17 It's just saying it has to be below the lower leg seal.

18 Q Directly below the lower leg seal, correct?

19 A Okay. Can I read the whole, please -- let me have the
20 whole paragraph, please. Don't jump around like that, it's
21 hard for me to follow. Well, you have got to zoom out a little
22 bit. You can't just read that. You have to read all of the
23 paragraphs or the sentences in context, that's why it's a
24 paragraph.

25 Q Dr. Slocum, I'm just asking you the question of whether the

DR. SLOCUM - Redirect

1 Applicant says that this statement is limited to a particular
2 embodiment?

3 A I'm saying it doesn't, because when I read that whole
4 paragraph it's not limiting it to a particular embodiment,
5 because it says it has to be here, directly below the seal, but
6 then above the oil bath. So it's anywhere in between.

7 MR. HICKEY: That's all of the questions I have,
8 Your Honor.

9 THE COURT: All right. Any Redirect?

10 MS. BHATTACHARYYA: Very short redirect, Your Honor.

11 **REDIRECT EXAMINATION**

12 BY MS. BHATTACHARYYA:

13 Q Dr. Slocum, can you go to Exhibit 14 in your binder, and
14 just the page that Mr. Hickey was referring to, Exhibit 14,
15 page 11.

16 A Okay.

17 Q It's just after section Response. And you asked Mr. Hickey
18 can you look at the whole paragraph, but he only showed you the
19 top part of the paragraph.

20 You can take your time. Can you read the whole
21 paragraph and answer what you wanted to say?

22 A Okay. So, Your Honor, remember you had asked me earlier
23 about, you know where is it with respect to the oil bath top.
24 When this paragraph says, and I will quote, *Due to the*
25 *positioning of the applicant's air-bleed system being located*

DR. SLOCUM - Redirect

1 *directly below the lower leg seal, and now you have got to go*
2 *down a few sentences that say, while enabling the oil bath*
3 *lubrication to remain fairly leveled at the bottom of the lower*
4 *fork tube, that would mean it's in the vertical, not lying on*
5 *the ground, without spray leaking out through the open vent*
6 *hole. To one skilled in the art that says, you should really*
7 *put this thing up as close as you feel you can to the seal, and*
8 *that will help keep things spraying away.*

9 Now, you have to use your knowledge as one skilled in
10 the art, about how far away from the oil you need to be without
11 spraying, but you also got to consider costs, user ergonomics.
12 There's always a lot of things that go into design choice, but
13 the number one thing you must do is be below the seal and not
14 lose oil when you push the button. Everything else is up to
15 you as one to practice.

16 Q Dr. Slocum, that same paragraph, the last sentence, it
17 starts with the word *Thus; Thus in sum*. Could you please read
18 that sentence?

19 A Yes, I apologize, that's what I just said. *Thus, in sum,*
20 *the air bleeds assembly 300, is located below the applicant's*
21 *lower leg seal, and far enough away from the oil bath*
22 *lubrication such that a substantial portion of the oil bath*
23 *lubrication is enabled, to remain within the lower fork tube*
24 *even when the air is being released.*

25 So, my -- excuse me -- my more explanation of what all

DR. SLOCUM - Redirect

1 of those sentences mean is now --

2 *THE COURT:* I get it. She asked you to read it, you
3 read it, I read it too; we're all good.

4 *MS. BHATTACHARYYA:* Okay. Thank you, Your Honor.

5 *THE COURT:* You may step down.

6 *THE WITNESS:* Thank you, Your Honor.

7 *THE COURT:* As I understand things, your only
8 remaining witness is a potential rebuttal witness; is that
9 right?

10 *MR. McCAULEY:* That's right, Your Honor.

11 *THE COURT:* Then let's come over to Mr. Walsh.

12 *MR. WALSH:* We have a witness. We're going to submit
13 a short motion that they have not met their burden of showing
14 this is an emergency situation. They have not shown
15 irreparable harm. They said they would take a royalty. They
16 haven't. There is definitely going to be some battle of the
17 experts, et cetera, and there's nothing to show a causal nexus
18 between the claim patent. So I would move to end, close
19 business, because they have not come forth with substantial
20 evidence.

21 They can't just say -- they just can't say, we're
22 going to be hurt. The only testimony that you have heard is
23 they have lost some spec from one of 150 customers.

24 *THE COURT:* I understand what you are saying. I deny
25 it. Let's get the rest of the evidence on. Let's move on.

1 THE COURT: Hold on. I will tell you that this was --
2 that having heard Mr. Allinger, I'm not sure what was so
3 sensitive that I needed to seal the courtroom; but that being
4 said, I'm not going to change horses in midstream.

8 THE COURT: You don't want this treated the same way.
9 Fine. Let's go.

11 (SANDER RIGNEY was sworn.)

13 THE COURTROOM DEPUTY: Please be seated. State your
14 name and spell your last name for the court reporter, please.

17 DIRECT EXAMINATION

19 Q Mr. Rigney, can you just explain to the Court what your
20 title is and what you do?

25 Q All right. So we don't just -- some background, but so we

SANDER RIGNEY - Direct

1 don't try and repeat everything that's happened before. In
2 terms of distribution, these particular suspension forks are
3 made in Taiwan?

4 A That's correct.

5 Q And they are then sold to bicycle factories or trading
6 companies to factories to assemble for OEMs?

7 A That is correct.

8 Q Those OEMs then distribute those bicycles all over the
9 world?

10 A Yes.

11 Q All right. And you have -- for the record, OEMs are
12 original equipment manufacturers?

13 A Yes, that's correct. That's what we refer to as the
14 bicycle brands like Trek or Specialized.

15 Q Okay. And you also sell some in the aftermarket here in
16 the United States, that's from mostly independent bicycle
17 dealers, right?

18 A Yes, that's correct.

19 Q And the percent that you sell in that aftermarket is about
20 how much?

21 A It's similar to what Mr. Allinger referenced, 80/20, 85/15
22 percent, with the larger number towards the OEM channel.

23 Q Okay. And with respect to the -- the idea of the causal
24 nexus, I will talk about this area for awhile, which is, are
25 these bleeder valves that are being complained about, are they

SANDER RIGNEY - Direct

1 things that are driving sales? I want to ask you some
2 questions about that.

3 The -- the pleading papers that you read were showing
4 that Fox is representing to the Court that OEM's choose the
5 forks at issue, because of the pressure release valve. In
6 truth, why do you think they choose a particular fork?

7 A Yeah. I think, you know, there's a number of features --
8 number of decisions that they make; everything from price,
9 availability, lead times, things like that, you know, on the
10 commercial side of things, but then getting over into the
11 performance attributes of the product and, you know, there's
12 many, you know, in our case with the products that are in
13 question. You know, two of the three were all new product
14 designs that were, you know, built ground up during that
15 product cycle. You know, all new chassis, new features like
16 new damping systems, new air spring systems, features like our
17 ButterCup Vibration Absorption Mechanism. So a variety of
18 different features and technologies go into the decision for
19 the bike.

20 Q Also have a lockout function. Sometimes you can operate it
21 from the handlebar, as well?

22 A Sure. Sure. There's a number of different ways that you
23 can upgrade the products. You know, a variety of different
24 aspects to the product.

25 Q One of the things was mentioned is a Flight Attendant. The

SANDER RIGNEY - Direct

1 one in particular that they bought had a Flight Attendant. Can
2 you describe to the Court what a Flight Attendant is?

3 A Absolutely. Flight Attendant was a new product for us,
4 introduced in late calendar year '21. Really big advancement
5 forward in technology for bicycle suspension. It's an
6 electronic, wirelessly controlled electronic system. Allows
7 the fork in the rear shock to firm up to respond to rider
8 inputs and balance between what might be happening on the trail
9 and any loss of efficiency that's coming from the rider.
10 Revolutionary new product for us. Really nothing like that
11 ever on the market for bicycle suspension.

12 Q And does it -- you also describe for the Court what preload
13 adjustments are on a bicycle?

14 A Sure. Preload adjustment, you know, particularly on a
15 product that has a spring as -- we talked about the spring.
16 It's the resistance to the fork or the shock to compress and
17 preload is generally the force that you may apply to that
18 spring to adjust the sensitivity of that ride. So whether it's
19 firmer or softer for the rider.

20 Q Okay. And with respect to the bleeder valves that are at
21 issue here, do you believe that's driving sales?

22 A No. I don't believe that's driving sales.

23 Q Do any of your customers say that's driving sales?

24 A None of our customers have ever said that to us.

25 Q You are not aware of any survey or statement saying that,

SANDER RIGNEY - Direct

1 customers, whether they be OEMs or ultimate consumers who are
2 riding those bikes, see that these bleeder valves are driving a
3 demand?

4 A I have not seen anything that the bleeder valve was driving
5 the demand. I think, for us, and a lot of the excitement that
6 we have had with the new products are really coming more from
7 what you have seen or heard referenced a number of times, which
8 is the Buttercups, that technology is something that is really
9 new for the industry, and that's created a lot of excitement.
10 You will see references in a lot of the media reports on how it
11 improves performance for the rider, and as kind of a recent
12 example, just a few weeks ago I was at a really big industry
13 event in California called the Sea Otter Classic. We had a big
14 booth there. One of the displays we had was a display that
15 allowed the rider to really feel the difference between a fork
16 with Buttercups and without. It was kind of a display model in
17 our booth where a rider could hold the fork and feel the
18 difference between one that has Buttercups and one that
19 doesn't.

20 It was a really exciting display, and there was over
21 50,000 attendees, at that event, and, you know, really great
22 response to that demo in our booth.

23 Q Okay. And with respect to the -- the changes that
24 occurred, at the same time that you added some bleeder valves
25 below the bushing, are these some of the things that you added,

SANDER RIGNEY - Direct

1 a Charger 3 RC2 Damper?

2 A Yes.

3 Q The DebonAir Plus Air Spring?

4 A Yes.

5 Q Buttercups, that we talked about?

6 A Yes.

7 Q Ultimate bushing package?

8 A Yes.

9 Q Maximum plush dynamic lube system?

10 A Yes.

11 Q And when you compare all of those different changes, how
12 was Fox, if any, making changes to their comparable products?

13 A Yeah. By comparison, from my knowledge, you know, they had
14 no changes to the comparable products during that time period.

15 Q And so what do you attribute your success in 2023 and 2022?

16 A We introduced all new products that had some really
17 exciting features that attracted the attention of customers and
18 riders and during that same time period Fox was unchanged, to
19 my knowledge.

20 Q Even so, do you think that you have gained a significant
21 market share in that timeframe compared to other years?

22 A Compared to other years, I don't believe we've gained a
23 significant market share. You know, we've referenced the --
24 the Santa Cruz spec gains, and as mentioned, we picked up some
25 models at Santa Cruz. We also know that we lost some of the

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1 bike models, and, you know, we have covered a lot of ground
2 within this, but, you know, within Santa Cruz's line, they have
3 multiple models of bikes that may then have, you know, we will
4 say multiple platforms of bikes that then have various models
5 there.

6 So, you know, while we have picked up some models, we
7 know that we've also lost at least some models there. We spoke
8 to it earlier, and I think, you know, one of those,
9 particularly, is telling related to this, is one model, Santa
10 Cruz, Tallboy, which had our forks, the new Pike fork on it,
11 and we lost that model to a Fox model that doesn't have bleeder
12 valves on them.

13 Q And the model, that had the push button bleeder valve?

14 A Yes.

15 Q So do you disagree with the testimony earlier that there
16 was some stickiness and incumbency and once you change, you are
17 never going to change again?

18 A Yes. I disagree with that. You know, it's something that
19 I think what we've observed over the years, and Mr. Allinger
20 referenced it, that, you know, it's a constant selling cycle,
21 and, you know, at any given brand in any given year or selling
22 cycle, you know we see changes back and forth between us and
23 Fox.

24 Q Okay. Now, when we're talking about consumer demand for
25 this, you said you haven't seen anything that shows any kind of

SANDER RIGNEY - Direct

1 survey or customer survey or anything listing bleeder valves as
2 a driver of demand, have you?

3 A That's correct. Yes.

4 Q And you haven't talked -- no customer has said that to you?
5 What about, are there other evidences that lead you to conclude
6 that there's really not consumer demand for the bleeder valve,
7 and in particular, you heard me talk earlier about, we have an
8 aftermarket kit?

9 A Sure.

10 Q That permits you to change from a plug on a fork to a push
11 button bleeder valve?

12 A Correct, yes.

13 Q And can you tell the judge how many of those you have sold?

14 A Yeah. So, as of yesterday, we've sold 109 of the kits that
15 allow you to install the push button bleeder valve into a fork
16 that has the plug to it. I just -- to be clear, that's, you
17 know, sales from SRAM, sort of, out into the industry, which
18 could be either distribution or retailers. So that's not even
19 really direct sales to riders, and those could be sitting on
20 shelves waiting for a rider to purchase them. So it's not
21 even, you know, really a clear sign of a rider demand, and by
22 comparison to other, you know, similar types of kits that we
23 offer, that's a really low number.

24 Q The other kits you offer, for example, the chargers that
25 you talked about, where you are changing the cartridges for the

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1 dampers, approximately how much do those cost and how many have
2 you sold?

3 A So by comparison, the Charger 3 Damper Upgrade Kit, which
4 was, you know, one of the other really big improvements that we
5 did for our model year '23 product offering and, you know, I
6 know Mr. Allinger said for somebody like himself or myself that
7 have years of experience in suspension design might not be
8 particularly difficult to install. I think for the average
9 rider that's a pretty tough install for them. That kit retails
10 for about \$380. It's a lot more expensive than the bleeder
11 valves, and we've sold approximately 1600 of those kits.

12 Q What's the price of the bleeder valve to change from the
13 plug?

14 A The bleeder valve upgrade kit retails for \$32.

15 Q And then the last question, consumer demand. With respect
16 to the fenders. You also have fenders that you can purchase.
17 Can you explain how many you have sold?

18 A Yes. So again, really trying to look at some of these
19 comparable things to understand how strong is the appetite or
20 the affinity from the market for some of these features. You
21 know, we sell a fender, that you can see kind of installed on
22 the back of the fork on display on this Trek bike here. You
23 know, for the OEM market, we don't ship those forks with that
24 fender, and so that would be an aftermarket upgrade for the
25 riders. We have shipped approximately 65,000 forks into the

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1 market that could benefit from that fender. It sells for 21,
2 \$22, and we've sold about 2600 of those, 200,600.

3 Q In comparison, how many bikes are out in the market that
4 could use that kit to change to a push button bleeder valve?

5 A Yes. And so the bleeder valve upgrade is about 65,000. I
6 misspoke related to the fender. That's actually a much higher
7 number, more like 110, 120,000 forks that could use the fender.

8 Q Okay. Now, in terms of the increase in sales in 2020 and
9 '21, you attribute those to the *COVID bump* that people call it?

10 A Yes that's correct.

11 Q Okay. And is that because during that timeframe people
12 were trying to buy bikes, a lot of bikes, and they also, if
13 they couldn't, they were buying upgrade things, right?

14 A Yes.

15 Q And now I want to ask you some questions about -- the
16 followup on my question about the idea of a customer is not
17 being sticky, as well as that Tallboy that we talked about for
18 Santa Cruz. Are there other bike customers, as well, that go
19 up and down each year that you have to keep selling and
20 changing?

21 A I'm sorry, can you repeat that?

22 Q In other words, you talked about Santa Cruz, the one bike
23 where it went to us, then it went back to them?

24 A Sure.

25 Q Ours had a bleeder valve and theirs did not, right?

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1 A Yes.

2 Q So would that lead you to conclude that it wasn't a driver
3 of sales?

4 A Yes.

5 Q Were there other customers out there, where, each year you
6 have to compete up and down?

7 A Yeah. I think all -- all customers were really competing,
8 each year on a bike-platform-by-bike-platform basis for the
9 business.

10 Q Okay. Now, I want to ask you some questions about
11 irreparable harm. Okay. And that is the -- the questions, is
12 it part of your job, is it to keep track of your competitors,
13 just like Mr. Allinger said he likes to keep track of SRAM and
14 what we're doing, as well?

15 A Of course.

16 Q All right. As part of that, are you reviewing and reading
17 the annual reports that are made by -- and quarterly reports,
18 the SEC filings by Fox, because it's a publicly traded company?

19 A Yes.

20 Q Did you read the -- Exhibit A1, you recognize that as the
21 copy of the Fox's annual report from 2022, filed in February of
22 2023?

23 A Yes.

24 Q And did you look at the statement in that, that said that
25 the outcome of any lawsuit, even a total loss to Fox, would

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1 have no material effect on Fox?

2 A Yes.

3 Q All right. And did you also look at the -- the -- let's
4 see ... and further down, did it also say, that management does
5 not believe that the ultimate resolution of any pending legal
6 matters, either individually or in the aggregate will have a
7 material adverse effect on the company's financial future?

8 A Yes.

9 Q Do you see that?

10 A Yes.

11 Q Do you -- and then if you -- you also -- there's an Also
12 section there that talks about patents and intellectual
13 property, and do you see the section that says, you know,
14 *Although intellectual wall property is important to the*
15 *business, we do not believe any single patent trademark or*
16 *trade secret is critical to the success of our business as a*
17 *whole?*

18 A That is correct, yes.

19 Q And throughout those annual reports, throughout all of the
20 different -- have you reviewed them, each of the years that you
21 have been in your position?

22 A Yes.

23 Q And how long have you been in your position?

24 A I have been -- I have been in my current position about six
25 years, you know. I believe, I think Fox went public around

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1 2012, I have reviewed them every year.

2 Q And so in your view of those things, does Fox also list
3 what they consider to be products as innovative or important?

4 A Yes.

5 Q Like fork damper, for example?

6 A Yes. They do occasionally reference particular, you know,
7 products or technologies. You mentioned the one, which I know
8 is a big development for them more recently the Grip2 Damper,
9 that was one called out, specifically, but I don't recall ever
10 seeing bleeder valve recognized as an important technology
11 within their documents.

12 Q All right. So throughout all of their reports about what
13 their company is and what -- why it's important and et cetera,
14 they have never listed the bleeder valve as one of those
15 inventions, although they have listed many others?

16 A To my knowledge, in any of the SEC filings, no.

17 Q All right. Also, you just as part of that -- did you also
18 listen to the earnings call that we referenced earlier with
19 Mr. Allinger?

20 A Yes, I did.

21 Q Did you, in fact, hear, the CEO's statement, that bicycle,
22 the sports specialty group, was maintaining and growing market
23 share?

24 A Yes.

25 Q Okay. Now, I want to ask you short questions about the

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1 balance of equities, which is that you are -- if SRAM is
2 prohibited from providing forks to OEMs, could Fox raise their
3 prices?

4 A Yeah, absolutely.

5 Q Okay. If they -- Fox raises price to say OEMs, how would
6 that affect the impact of bicycles to consumers, people who are
7 buying the bike, like the one at the desk?

8 A Very likely to drive up prices on bikes for consumers.

9 Q And in terms of other equities, like how would something
10 like that affect the factories in Taiwan where you sell these
11 products and the OEMs that are buying them from these
12 factories?

13 A I mean I think it would have -- it would have affects, you
14 know, sort of up and down the change -- or up and down the
15 chain. You know, for one, you know, we have produced a lot of
16 product that is, as was described, that we will sell or ship to
17 a bicycle assembly factory, that product then makes its way out
18 into the world, to the various bike brands, through their
19 distribution channel and then ultimately out into retailers,
20 and there's, you know, pockets of inventory throughout that,
21 that I can't even fathom how that would be impacted. You know,
22 the requirement, you know, back on bike brands to change, would
23 also be incredibly significant, as well.

24 Q With respect to the those bicycle factories, assemblers in
25 Taiwan, the bikes that are essentially finally made, those go

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1 all over the world, right?

2 A That's correct, yes.

3 Q And some percentage of them come into the United States
4 right; but the rest go all over the world?

5 A Yes, yes.

6 Q So it would be disruptive to where they are selling bikes
7 all over the world, right?

8 A Yes.

9 Q And you don't have any understanding of Fox having a patent
10 in Taiwan or other parts of the world involving this?

11 A Nothing, to my awareness.

12 Q All right. And has -- and you heard Mr. Allinger say that
13 Fox had a talked about accepting royalty for these products.
14 Would SRAM have enough financial resources to pay a royalty, a
15 few dollars associated with these bleeder valves?

16 A Absolutely.

17 MR. WALSH: That's all I have.

18 MR. McCAULEY: Your Honor, I'm tempted to replot some
19 more ground, but I have no questions.

20 THE COURT: All right. You can step down. Next
21 witness.

22 THE COURTROOM DEPUTY: Please raise your right hand.

23 (KEVIN WESLING was sworn.)

24 THE WITNESS: I do.

25 THE COURTROOM DEPUTY: Please be seated. State your

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1 name and spell your last name for the court reporter, please.

2 *THE WITNESS:* My name is Kevin Wesling, W E S L I N G.

3 **DIRECT EXAMINATION**

4 *BY MR. WALSH:*

5 Q Can you tell the court your name and what you do?

6 A I'm the director of advanced development at SRAM.

7 Q Okay. And as director of advanced development, what all do
8 you do, with respect to designing bicycle parts and suspension,
9 in particular?

10 A Yeah. My group works -- basically the R and D group. Work
11 on new ideas and new products. We have got groups, small
12 groups within all our different locations of SRAM. People in
13 Colorado Springs, where the suspension is developed, as well as
14 some groups of people in Taiwan, a little bit of suspension
15 done there.

16 Q In short, you run the engineers and designers that develop
17 new products and improve existing products?

18 A The newest products, yes.

19 Q All right. And you have -- a little bit about your
20 background. You have a Masters in mechanical engineering from
21 University of Illinois?

22 A I do.

23 Q All right. And, you have significant experience in bicycle
24 parts design, do you not?

25 A I do. I have been at SRAM for 27 years.

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1 Q And you have -- and during that whole time you were working
2 as an engineer designing bicycle components?

3 A Much of the time, yes. I am in management now, so I don't
4 design too much, but yes.

5 Q Do you have approximately 40 patents as an inventor?

6 A Or so.

7 Q Something like that. Okay. As part of your job keeping up
8 with the latest developments in high-performance bicycle
9 design?

10 A It is.

11 Q And you know we have heard a lot about what bicycle
12 suspension, bicycle forks and suspension systems are, and the
13 different elements about them, and I put up on the screen, in
14 opening, that x-ray --

15 THE COURT: There's going to be a question some time.
16 Let's try to make it sooner rather than later.

17 Q (By Mr. Walsh) Okay. I'm getting to the point that
18 there's a lot of things involved in the suspension system, are
19 there not?

20 A Yes, for sure. They are super complex, yes.

21 Q Part of your design is reviewing through all of those
22 things, right?

23 A Yes.

24 Q Do you consider yourself one who is skilled in the art, in
25 bicycle design and in particular design of suspension systems?

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1 A I do.

2 Q All right. And have you reviewed -- did you review and
3 analyze the '331 patent?

4 A I did.

5 Q And did you also look at the file history?

6 A I did.

7 Q And you did all of those even before the lawsuit was filed,
8 right before the products came out?

9 A Right, absolutely.

10 Q Okay. And as part of that, you have also -- you are very
11 familiar with our products, of what -- that have those
12 particular push button release valves, air pressure relief
13 valves?

14 A I have.

15 Q And what conclusions did you reach, after all of those
16 things, as to whether or not our products infringe those
17 patents?

18 A I mean, we clearly didn't infringe.

19 Q And why not?

20 MS. BHATTACHARYYA: Objection, Your Honor.

21 Mr. Wesling is not offered as an expert. If he is not offered
22 as an expert, he cannot opine as to infringement or validity.

23 MR. WALSH: We are offering him as an expert; 27 years
24 in bicycle design, he has got 40 different patents, he has a
25 Masters in it. He meets every definition of what someone an

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1 expert in bicycle design is.

2 MS. BHATTACHARYYA: I'm fine with that, Your Honor.
3 During deposition Mr. Walsh refused to offer Mr. Wesling as an
4 expert, so I was just bringing it up. If is he being offered
5 as an expert, that's fine, Your Honor.

6 THE COURT: All right. Fine, let's go.

7 Q (By Mr. Walsh) All right. And how did you come to
8 that conclusion that this patent was not infringed?

9 A Well, you read through -- first, you look at the patent,
10 and then you try to understand what it means. You look at the
11 specification, and then you go to the file history, and you get
12 the story of the patent, right. You get the story of what the
13 inventor is trying to sell, and trying to -- trying to get
14 claimed, right. And in going through the file history, the six
15 rejections, and all of the effort that the inventor did to keep
16 adding more and more features, none of which ever resulted in
17 getting a patent. Wasn't until after the sixth rejection that
18 they had these specific features about the location, that was
19 what triggered the -- basically, the one unique thing that was
20 added, in that last office action, that the Examiner saw.
21 Everything else had been cited and tried over and over again,
22 and when you see that it's clear that that's -- the argument
23 that was made, that said *This is how we are unique, we should*
24 *get a patent for this.*

25 Q All right. So we get some orientation, can we pull up the

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1 '331 exhibit, and can you go to figure three, please. All
2 right. So, on figure 3, the reference in the bracket for 300.
3 I'm looking on the left of it now, and the 150; that's the
4 pressure relief valve as described in the patent?

5 A Yes.

6 Q And then the top, the number 135, that's pointing to the
7 top of that lower two, that references the seal?

8 A Yes.

9 Q All right. And then, go to Exhibit 4, because, you can't
10 see the bushing that's in there. So, and if you could turn
11 orientate that the right way. Okay. Then kind of blow up on
12 the -- this is a cutaway. It shows the inside of that patent?

13 A Right.

14 Q Three hundred, again, is the air bleeds system, right? And
15 then 135 is the seal, right?

16 A Yes.

17 Q And then 120 is the bushing, right?

18 A Yes.

19 Q And it's located between that top seal and the bushing,
20 right?

21 A Yes.

22 MR. WALSH: Okay. Now, I want to go to a
23 demonstrative, Your Honor, about the file history, which we've
24 submitted to the Court that explains, kind of, what they
25 originally wanted to do. Hopefully we can go through this

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1 quickly. It's a long process, right; there were six different
2 rejections.

3 Q But what I want to point out is the first -- in the first
4 instance, they were just asking for an air-bleed system, a very
5 simple air-bleed system on a suspension system, right?

6 A Yeah.

7 Q Okay. And then the result of that, next page, is that the
8 PTO rejected that, right?

9 A It did.

10 Q And why did they reject it?

11 A They rejected it, specifically, because the Galasso
12 reference, because it had an air-bleed system that had existed
13 before.

14 Q It says, *The Galasso discloses an air-bleed system for*
15 *suspension fork or shock absorber.* It's already invented by
16 others; is what it said?

17 A Yes. Sure.

18 Q Go to the next slide. Fox doesn't come back and say, No,
19 *No, no, the Galasso thing is something different,* et cetera.
20 They, instead of denying what the PTO said about it being an
21 air-bleed system, they simply tried to amend it, right?

22 A Yes. They just added things to it. Yeah.

23 Q Then the result of that, in the next slide, is that it was
24 rejected for a second time, right?

25 A Correct.

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1 Q And then if you go on to the next thing that happened
2 again, they tried to amend it again. Again they denied,
3 Galasso showed an air-bleed system. They went on to the third
4 time. It was rejected. It was rejected a fourth time, for the
5 same reason. They had an interview. The Examiner didn't agree
6 with them. And then, it goes on to a fifth time, right?
7 Rejected again. And then it goes to a sixth time, that it's
8 rejected. And this is all things that you reviewed before SRAM
9 made any of these products, right?

10 A Yes.

11 Q And so, go on to the next slide, which is the -- what we
12 looked at earlier, here. This is something where it says, *In*
13 *contrast to Galasso, Applicant's features, recited in the*
14 *claim, located its air-bleed system in the lower fork for the*
15 *vent holes located between the lower leg seal and the bushing*
16 *that's attached thereto*, right?

17 A Yes.

18 Q It doesn't say anywhere in there that it's just one
19 embodiment or one example?

20 A No.

21 Q Throughout -- there's other parts in the patent where it
22 says, *Well, in one embodiment this happens*. It just says, *This*
23 *is where it's located*, right?

24 A Correct.

25 Q Okay. And then, the next thing that is goes through, it

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1 basically says, you know, we want to put somewhere between that
2 seal and the end of it, which is really basically saying *it's*
3 *somewhere on it*, but this is the specific location of where it
4 is, in contrast to the piece of prior art that has caused the
5 rejection six times, right?

6 A Absolutely.

7 Q And so did that lead you to a conclusion about whether or
8 not you could design around the patent by putting an air-bleed
9 system below that bushing, not in between those bushing?

10 A Absolutely. These are the words of the inventor. The
11 inventor saying, *In contrast to Galasso this is how we're*
12 *different it. We are novel to that.* So it's clear as day.

13 Q And it explains what it did. And then also on the next --
14 there was also a second reference that was referred to as
15 Mr. Slocum that I think you saw, that it's *located directly*
16 *below the lower leg seal. Applicant's air-bleed system is*
17 *located directly below the lower leg seal.* They don't just say
18 it once, they say it twice, right?

19 Q They didn't limit that to any particular example or
20 embodiment, et cetera, did they?

21 A No. I mean directly below it.

22 Q Okay. And that led you to the conclusion that you were
23 designing around a patent, which is what patents are designed
24 to do?

25 A Right. We chose to not put or valve directly below it.

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1 Q Okay. Now, in addition to this, can you pull up Exhibit
2 A18, please.

3 THE COURT: Hold on. So where did you put your valve?

4 THE WITNESS: We put our valve -- there's the seal,
5 there's the first bushing. What they are saying, it had
6 between there. We put ours below that bushing, which is a
7 couple inches lower, and it matters because the bushing,
8 itself, prevents the flow of oil to get further up. The gap
9 between the bushing and the upper tube is very, very small. So
10 like, if you want to get the least amount of oil to come out of
11 your fork when you push that button, the higher up it matters.
12 It's significant, so we put it much lower, therefore putting it
13 in a position where more oil could come out, but we
14 specifically designed around this patent for that reason.

15 THE COURT: Got it.

16 MR. WALSH: Could you pull up Exhibit A18, please. So
17 A18 is a copy of the -- our responses to Fox's infringement
18 contentions. And if I could show Exhibit A19, please, which
19 was an exhibit to that, Your Honor, where it goes through,
20 individual -- it's some 23 pages long. I won't trouble the
21 Court with going through it, but it explains all of the
22 different reasons why SRAM does not infringe these particular
23 patents.

24 Q Do you recall looking at those, working on those, and
25 helping prepare those?

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1 A Yes.

2 Q Okay. And do those contain also conclusions as to why you
3 believe that you did not infringe?

4 A Yes.

5 Q All right. And then, with respect to the -- you have heard
6 indication here by Mr. Slocum -- or Dr. Slocum rather, that
7 there are -- what he identified in the deposition as nipples,
8 that could be used for air bleeds, you, as someone who is
9 skilled in the art, what do you recognize those bosses to be?

10 A They are cantilever brake bosses. Nobody skilled in the
11 art would think those were pressure relief valves.

12 Q And with respect to -- his statement, *Oh gee, it can be*
13 *anywhere on that fork*, do you have a different conclusion, and
14 why?

15 A I think it's very specific. I mean, the prior art shows
16 plenty of examples of valves all over it. The idea of
17 equalizing pressure on a fork has been done in motorcycles for
18 years and years. Okay. Very, very common. I mean on almost
19 all of them, right. So, the idea of adapting it to a mountain
20 bike fork is only unique in regards to its positioning. The
21 function is not unique. So the specific position has to be
22 very, very specific, and they limited themselves to that
23 position, based on the Galasso patent.

24 Q After six rejections, because of that?

25 A Yes.

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1 Q Now, with respect to -- I'm going to bring up Exhibit A11,
2 please, which is the SRAM's' preliminary invalidity
3 contentions, why the patent is not valid, right. In short, so
4 you know, we are not here all weekend --

5 THE COURT: I assure you we won't be. Well, I won't
6 be. You can stay here as long as you like.

7 MR. WALSH: Thank you, Your Honor.

8 Q (By Mr. Walsh) Is the summary of your opinion is that
9 if it's SRAM -- if it doesn't -- if it -- if the argument is
10 that, *Oh, that can be anywhere on the fork*, there's so many
11 different pieces of prior art that it's clearly invalid, so
12 either don't infringe or if you want to accept their
13 interpretation of where it is, it's invalid.

14 A Exactly.

15 Q And then if you pull up the attachment to that, Exhibit
16 A18, which is the various charts that show the -- I'm sorry
17 A12. I gave you the wrong number. Okay. So these are --
18 start with this. Okay. Which is, these are the different
19 things that you went through, with charts, diagrams, et cetera,
20 showing how the prior art contains all of the different
21 elements in the claim, if you interpret it the way that Fox is
22 interpreting it; meaning, it can be anywhere on the fork.

23 A Correct.

24 Q All right. And so -- and I won't go through all of those
25 different references. I will say, let's just -- here, why

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1 don't you give me the ... there's ... there's 12 different
2 charts that show why you believe it's invalid, because of
3 *Becker*, right? And just so it's clear, that's an anticipatory
4 reference, right. Is that right?

5 A Yes.

6 Q And so if it anticipates, it has all of the different
7 elements?

8 THE COURT: You are not really going to have him tell
9 me about the law.

10 MR. WALSH: No, I'm not. I wanted to make sure it's
11 on the record.

12 THE COURT: Well, I will give you a chance to do it in
13 closing. I'm just not going to use him as a sock puppet.

14 MR. WALSH: Happy to do that. It's an anticipatory
15 reference right. It's not for obvious.

16 The next is Kojima, that is, Exhibit A20, is the
17 patent itself. And, in short, do you believe that there are,
18 in that Exhibit, A13, are the preliminary invalidity
19 contentions associated with Kojima? So 81 different pages of
20 why it's invalid in light of Kojima.

21 A Yes.

22 Q Did you work on those charts? Did you prepare those
23 charts? Do these contain your opinions, with respect to why
24 it's invalid in light of the prior art Kojima?

25 A I did, and I found the Kojima reference, so.

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1 Q And if you pull up Exhibit A18, please. These are -- these
2 are exhibits related to the preliminary invalidity contentions,
3 Your Honor, with respect to the prior art Ceriani, and can you
4 identify for the Court that this exhibit, it's at 15, that this
5 is, these 47 pages, are reference diagrams that contain your
6 opinions and references as to why the patent is invalid, in
7 light of Ceriani?

8 A Yes.

9 Q That's another anticipatory reference, right?

10 A Yes.

11 Q All right. And then if you go to Exhibits, let's see,
12 Exhibit A16. A16 is all of the same thing; diagrams,
13 explanations that contain your opinions, as to why the patent
14 is invalid in light of the prior art reference Hoose; is that
15 correct?

16 A It is.

17 Q And then if we go to Exhibit A17, that contains your
18 opinions and your why it is invalid in light of Kawamura, K A W
19 A M U R A. Is that what that describes and shows?

20 A Yes.

21 Q All right. And then -- and so to shorten those matters,
22 all of those different, you know, hundreds of pages of
23 different charts, contains your opinions and diagrams why this
24 patent is invalid, in light of those various art references.
25 Can you just describe, though, for the Court, in short, why

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1 that its invalid in light of those types of references?

2 A Yeah. I mean, Fox appears to be trying to own the idea of
3 even what they call a valve. It's just, you know, creating
4 some kind of opening between the lower fork and the outside of
5 the lower fork. They call it a valve, but it's just an
6 opening, one way or the other. It's either manually operated,
7 toolless opening or you use a tool or whatever. But they are
8 trying to own that. All of these references just show, you
9 know, a preponderance of the number of forks that do this, and
10 it's actually difficult to find these references because it's
11 so common on forks they don't usually get drawn in, because
12 it's just extra work for the person making the -- you know,
13 making the patent drawings, right. They are on everything.
14 This is a common, common thing. So the hardest part was
15 finding one that showed oil, because they don't usually show
16 oil, even though every forks has oil in it. Kojima is nice
17 because it shows an oil level. It's in every fork. The screws
18 and things in the sides of forks is super common.

19 Q And the other thing you said a moment ago, you said
20 something about how it's been on motorcycles for years. When
21 you say years, is it decades? Can you describe for the Court
22 why you say that's been on motorcycles?

23 A I mean, we know that it was early on, we knew it was on
24 motorcycles, right, because people at Rockshox said, Yeah,
25 *these have been on motorcycles forever.* It was a little bit

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1 difficult to find patents on it, because it was so common that
2 it wasn't patented. We found Bruckbauer from 2005, which
3 clearly shows an air-bleed on top of the fork. It's an
4 improvement on other bleed systems. It's not even the first
5 one. It references other versions. It's an improvement on it,
6 and it's a clear indication that the need has been around
7 forever; that forks have had the problem with built up air on
8 the inside that need to be relieved. I don't mean relieved --
9 these aren't air springs. These are forks that are -- they
10 just have air on the inside from going to a higher altitude.
11 It's an old idea.

12 It's interesting that all of the prior art citing when
13 this patent was filed by the company that makes motorcycle
14 forks, they didn't cite any of these things. They were not
15 mentioned. They brought in all of the old patents that have
16 nothing to do with air equalization. So we knew that when we
17 were evaluating this, whether or not to do this, we took that
18 into account.

19 Q And another thing I want you to clear up, I thought there
20 was a statement earlier that if you -- if you go up to the top
21 of a mountain, your fork is not going to work. It's going to
22 disrupt it, et cetera. Can you explain, to the Court, you
23 know, what's the difference between going up, you know, from
24 7,000 feet to 8500 or 9,000 feet?

25 A For the most part, the longest downhill run is going to be

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1 a couple thousand feet at best. The difference between the top
2 and the bottom. You know, being in a plane is like being at
3 10,000 feet, that's what it's pressurized to. The amount of
4 pressure is generated, is probably equivalent of what is
5 inside, when you open up a yogurt on a plane, a little bit of
6 pressure there; that's the only difference. It's a couple of
7 PSI. Being represented that the fork doesn't work anymore,
8 doesn't work, is misrepresenting. It works just fine. It's
9 just a few PSI higher from the top to the bottom.

10 Q All right. And then, the last question I want to ask you
11 about was the prior lawsuit that I talked about saying, *Hey, we*
12 *didn't want to file this because of this prior lawsuit*, when
13 that was being settled did you say -- did you have direct
14 conversations saying to Fox, *If there's any issue with us,*
15 *anything, let's deal with it; come to us directly?*

16 A Yeah. I mean I took over the legal group -- the management
17 of the legal group. I'm not a lawyer or technically GC or
18 anything, but I just manage the people. But when I took over,
19 we had been in a long-running lawsuit with Fox, I had
20 conversations. When I took over, Mr. Allinger reached out to
21 me, which was great, him and I worked out a settlement very
22 quickly and very easily, which Mr. Gouse and Toby, from Fox,
23 did the fine details on it, and we had built up a working
24 relationship. So, to be honest, I wish, at this time, if this
25 had been known, it had been brought up to me, at that time, but

ERIC WANG - Direct

1 it wasn't.

2 MR. WALSH: That's all I have, Your Honor.

3 THE COURT: Cross.

4 MS. BHATTACHARYYA: Your Honor has Fox's Reply Brief,
5 so, no questions for Mr. Wesling.

6 THE COURT: All right. Step down. You have one more,
7 do you not?

8 MS. BHATTACHARYYA: Objection, Your Honor.
9 Mr. Wesling has already testified about both infringement
10 issues and validity, so we do not not see the need for another
11 expert.

12 THE COURT: Overruled.

13 THE COURTROOM DEPUTY: Please raise your right hand.

14 (ERIC WANG was sworn.)

15 THE WITNESS: I do.

16 THE COURTROOM DEPUTY: Please state your name and
17 spell your last name for the court reporter.

18 THE WITNESS: My name is Eric Wang E R I C, W A N G.

19 **DIRECT EXAMINATION**

20 BY MR. HICKEY:

21 Q Dr. Wang, what's your job and work history, especially
22 related to bike school components?

23 A I'm the Associate Professor Mechanical Engineering,
24 University of Nevada, Reno. I have been doing that job for 28
25 years now, I think. What was the other question? Sorry.

ERIC WANG - Direct

1 Q And then work history, especially related to bicycle
2 components?

3 A So I'm one of the few people that do research in cycling.
4 It's called The Cycling Of Science. So I published over 20
5 papers actually in bicycle technology, various aspects of
6 suspension design, tire stiffness, helmet cooling. I do
7 research in cycling science. I have been doing that for over
8 30 years.

9 Q And do you own bicycles? Do you service bicycles?

10 A I own several bicycles. I'm slowly selling them all
11 because of my accident, recent accident, but I own many
12 bicycles, mountain bikes, road bikes, tandems, unicycles. I
13 serviced them all. I only take my bikes to bike shops rarely,
14 if something is really bad. I disassemble shocks, do whatever
15 service is necessary, bleeding brakes, everything.

16 Q What is your educational back ground?

17 A I have a BS degree from UC Berkeley. I have a Masters
18 Degree from Massachusetts Institute of Technology. I have a
19 Ph.D., from that UC Davis. My dissertation was on the design
20 and optimization of mountain bikes.

21 Q What materials have you reviewed for this case?

22 A I have reviewed various materials, obviously '331 patent
23 itself, the patent history, the prior art. Let's see, Fox's
24 initial motions. What else did I review? Lots of things
25 supplied by both sides.

ERIC WANG - Direct

1 Q And you have been paid -- you have been hired by SRAM in
2 this matter?

3 A By Lewis Rice directly, yes.

4 Q You are being paid for your work in this matter?

5 A Yes.

6 Q Have you testified in the last four years?

7 A No.

8 Q And what conclusions did you reach after reviewing these
9 materials?

10 A Regarding invalidity or infringement?

11 Q Both.

12 A Both. I -- my opinion is it doesn't infringe. My opinion,
13 is that the '331 patent is also invalid.

14 Q Would you consider yourself to be one of ordinary skill in
15 the art, with respect to the '331 patent?

16 A Yeah. By the SRAM's definition or Dr. Slocum's definition.
17 Yes.

18 Q Do you believe your testimony would be helpful in assisting
19 the Court in understanding the facts of this case?

20 A Yes.

21 MR. HICKEY: Your Honor, at this time I tender
22 Dr. Eric Wang as an expert in the fields of mechanical
23 engineering and vehicle suspension technology, more
24 specifically bicycle suspension, fork technology as applied to
25 the relevant matters in this case.

ERIC WANG - Direct

1 MS. BHATTACHARYYA: No objection, Your Honor.

2 THE COURT: Received. Let's go.

3 Q (By Mr. Hickey) Why did you conclude that SRAM's
4 forks do not infringe Claim 1 of the '331 patent?

5 A For non-infringement I looked at the claim, for Claim 1,
6 particularly.

7 Q Correct.

8 A And I go through and look at all of the elements of that
9 claim, and I concluded that the infringed forks, there's the
10 ZEB, Lyrik and Pike, various models, did not contain all of
11 those elements.

12 Q Okay. And what is your view on the validity of Claim 1?
13 Let's assume, for the sake of argument, that Fox was not bound
14 by its statements about the position of the air-bleed assembly
15 during prosecution of the '331 patent?

16 A A few spots of definitions or explanations. I think that
17 the prior art is sufficient. There's a lot of prior art that
18 shows either, in single prior art or combinations, obvious
19 combinations thereof, that every aspect of Claim 1 existed in
20 the prior art.

21 Q Okay. And let's move to Exhibit A12, which is Exhibit 1,
22 to the SRAM's preliminary infringement contention. And if we
23 go to this, this principally, talks about three patents,
24 Exhibits A24, A27 and A28, which are the Kashima, Bruckbauer
25 and Becker patents. And I ask you to just identify to the

ERIC WANG - Direct

1 Court, kind of talk about this, and in language that's
2 hopefully readily understandable.

3 Why do you think that Claim 1 is obvious, in view of
4 the combination of the prior reference -- prior art references
5 that are identified in this chart?

6 A We can do this one-by-one in each of these claims, if
7 that's what the Court wants to do.

8 *THE COURT:* The Court does not.

9 *THE WITNESS:* But it's obvious. I mean, it says lower
10 fork, showing here this is a lower fork.

11 *THE COURT:* For what its worth --Hold on. For what
12 its worth, you can draw on this screen, if you wanted to.

13 *THE WITNESS:* Okay. Thank you.

14 *THE COURT:* And I think there's a stylus. If not, we
15 can get you one. Either way it works.

16 *THE WITNESS:* Part of this also, as I go through this,
17 there are various terms that I consider indefinite. That's one
18 of the problems with -- that makes the claim invalid.

19 Q (By Mr. Hickey) So starting with this first element,
20 you said it, Becker shows lower fork and air-bleed assembly.

21 A Becker shows a lower fork too, whether you consider that
22 lower fork, I think that's part of the indefiniteness of this.
23 It shows two lower fork tubes, left and right. Becker does
24 show, if you accept Fox' definition, a lower fork.

25 Q Okay. Going to the next page further?

ERIC WANG - Direct

1 A This is Bruckbauer. This is motorcycle patent, which I
2 think the last witness just testified that this is showing an
3 improvement on releasing air from the motorcycle, push button
4 release and you can let air out, because of the the temperature
5 rise inside the fork.

6 Q And the next page shows Kashima?

7 A This is showing that again we can have, in this case,
8 manually operable valve, which I don't agree with the idea of
9 manual operable; meaning, a screw. I think manually means your
10 hand, um, but, um, we can accept their definition that there's
11 a valve there, probably not shown, but must have some type of
12 sealing mechanism or oil would come out. So that's a manually
13 operable valve.

14 Q And why -- why would one of ordinary skill in the art
15 combine those three together to solve this problem?

16 A I think it's obvious, I mean, the need to do it was there,
17 it's been known for years in motorcycles. The technology
18 existed in motorcycles, which is where bicycle forks came from
19 motorcycles, essentially. Many people working on bicycle
20 suspensions worked on motorcycles. And it's just showing an
21 oil port there, you could easily replace that with a little
22 push button if you wanted to have a truly manual pressure
23 relief valve.

24 Q Okay. And going on to the next element of Claim 1?

25 A This is just showing where you have to have first and

ERIC WANG - Direct

1 second, et cetera, et cetera, this is pretty obvious stuff I
2 think, where, again, the lower fork, meaning lower fork tube,
3 obviously, interpreted as that. It is just showing -- again
4 it's just showing Becker has the first and second end on these
5 things, and the seal.

6 Here we have the lower leg seal. Another question.
7 Lower leg seal located the outer most edge, in the very third
8 line, the outer most edge of second end of said fork, and of
9 course the outer most edge is an indefinite term. It can mean
10 lots of things.

11 Here we have upper fork two, now they are calling it
12 fork two, rather than upper fork and lower fork. They are
13 calling it lower fork two, which is different than the other
14 parts of the claim.

15 I think there was another issue here. No, this was --
16 okay. Keep going. Starting again, first and second fork.

17 Q Now, for this element, Dr. Wang?

18 A This is an expansion of the Becker. We're showing that
19 there is the upper bushing is attached to the -- adjacent to
20 the lower leg seal. So it's attached, again, I think I
21 disagree with Dr. Slocum, what his definition of attachment is,
22 because the bushing is attached to the fork leg and the seal is
23 attached to the fork leg. I don't agree that the bushing and
24 the seal are attached to each other. But here, again, if you
25 interpret it according to Fox, you have upper bushing attached,

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1 positioned adjacent to the lower leg seal. So Becker's of
2 course he showing it clearly.

3 Q Okay. For the next element, what's your analysis here?

4 A So the air-bleed system, lower fork tube, equalizing
5 ambient pressure within said lower fork. Again, what we're
6 showing here is Bruckbauer showing a motorcycle system where
7 you can push the button, equalize the pressure, as being fairly
8 obvious to adopt that to Becker.

9 Again, I have issues with this wording of the patent
10 in terms of the terminology, because it says *for equalizing*
11 *ambient pressure within said lower fork*. I don't know how you
12 equalize the pressure within something. It's equalizing
13 between two things. So I have issue with this here saying.
14 I'm not sure what he is talking about equalizing. But it's
15 saying *within the fork*. It's usually between the fork.

16 Fluid passage disclosed between interior and outer.
17 Yes, fluid passage, the interior of the fork leg, meaning the
18 interior of the cast bottom and the exterior.

19 So again, this is a fluid passage, which goes from the
20 interior to the exterior just showing the simple push button.
21 Here we are showing examples of a manually operable valve.
22 This is similar to a Schrader valve or something else. If you
23 wanted to put a push button on there, this from the Bruckbauer
24 patent, showing essentially a nice simple manually operable
25 push button valve which could have adopted to Becker in light

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1 of Kashima very easily.

2 Q And going to the next page, going to the last element, 1G
3 what is your analysis?

4 A This is long. Let me read this again to refresh myself.
5 Located distance from oil bath within said lower fork tube,
6 such when manually operated valve -- sorry. I'm reading to
7 myself.

8 So again, this has to do with indefiniteness. That's
9 one of the problems if have. When you say, *most, if not all of*
10 *said oil ball lubricant remains within said lower fork.* It
11 doesn't say anything about what *most* is. Also doesn't say
12 anything about orientation, that got brought up earlier. You
13 could be servicing this bike. It could be upside down. It
14 could be laying on its side. We don't know what position it's
15 in when you got it to retain the oil.

16 Q Dr. Wang, usually a bike fork is not just strictly....

17 A It's not vertical. It's 78 degrees, whatever the normal
18 tube angle is or something.

19 Q It's at an angle?

20 A It's at an angle.

21 Q When you are servicing a fork or disassembling a fork,
22 what's the orientation of the fork, at that time?

23 A Well, disassembled there's lots of things you would do.
24 One is you release all of the air pressure. You definitely do
25 not want to take a fork apart without releasing the air

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1 pressure.

2 Q What would happen if you disassembled a fork without
3 relieving the air pressure within that fork?

4 A I never tried it, but it wouldn't be pleasant. I think
5 you -- you are working with a lot of stored potential energy,
6 that would be released, rapidly. I have never tried it. I
7 don't know exactly what would happen. I predict it would not
8 be good. Here again --

9 THE COURT: He has answered the question, so let's
10 have another one.

11 Q (By Mr. Hickey) Okay. And so if we could move to
12 Exhibit A11.

13 A Can I go back just one second, because I have another
14 problem with this --

15 THE COURT: No. No. No. No. Ask a question, you
16 will give the answer.

17 Q (By Mr. Hickey) Okay. Going to Exhibit A -- sorry.
18 Not A11. A13. This is the Kojima reference which is Exhibit
19 A20 in combination with Wang A21, and Schrader A30. You have
20 already, kind of, talked about the elements, but this one looks
21 a little bit unique in terms of showing an oil bath directly at
22 the bottom.

23 Could you give your assessment and provide your
24 analysis to the Court on the Kojima reference. This -- is it
25 your view that Kojima anticipates; meaning it's a single

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1 reference that shows all of the elements of the claim?

2 A Kojima is unique and it shows all of the elements in one
3 particular, including the oil bath, in one particular
4 reference. So we can step through it all, but I'm sure the
5 Court doesn't want to do it, but it contains everything, all
6 the elements in one single reference.

7 Q And it's -- it's this manually operable valve is above the
8 oil bath. It's not that far above, correct?

9 A It's shown, but it doesn't specify -- my recollection is
10 doesn't specify exactly where. Doesn't say, 5D or whatever, it
11 is just above the oil bath.

12 Q Moving that manually operable valve up and down that tube
13 would not be a significant engineering change, would it?

14 A That would be -- in terms of manufacturing and design, it
15 would be simple. To move it after the fact would be difficult.

16 Q Correct. And if the -- if this Kojima, was tilted at an
17 angle, that valve may be even further away from the oil bath,
18 correct?

19 A Depending which way you tilted it, it could be further or
20 closer.

21 Q Okay. And so just looking quickly at Kojima, the next
22 element?

23 THE COURT: How many more of these do you have?

24 MR. HICKEY: There are four, but I could just
25 simply -- this one and a third one are unique, compared to what

ERIC WANG - Direct

1 was previously submitted to the Court.

2 *THE COURT:* All right. Let's ... knock those two out.

3 I don't need to see all four of them. I also was trying to
4 figure out when to take a break and I will take a break at
5 3:15.

6 *MR. HICKEY:* If it --

7 *THE COURT:* No, let's go.

8 Q (By Mr. Hickey) So quickly, Dr. Wang, for Kojima,
9 this shows the lower fork?

10 A The lower fork elements, couple showing coupled to a wheel.

11 Q Next page?

12 A Shows again for all of the elements of the suit in the
13 claim or clearly present in Kojima.

14 Q All right, going to the next one?

15 A Again, for Claim 1C the elements are clearly -- clearly
16 appear in Kojima.

17 Q One for Claim Element 1D?

18 A They have a manually operable air-bleed assembly, which,
19 according to Fox's definition, it's manually operable, it's a
20 screw valve, which is a fluid passage between the inner and
21 outer surfaces.

22 Q Okay. Similar for the fluid passage?

23 A This is the fluid passage between the exterior and the
24 interior.

25 Q Okay. Claim element 1F?

ERIC WANG - Direct

1 A Here we have a first position being closed. You just screw
2 it closed and you have a second, where you unscrew it enough to
3 break that seal. You don't have to unscrew all the way, just
4 enough to break the seal.

5 Q Okay. And finally, for 1G?

6 A Here we are just showing that you could -- obviously you
7 could convert that from a screw-type valve to a
8 push-button-type valve, by incorporating something from what
9 was previously shown.

10 Q If we could move to chart A14, is the Kashima reference,
11 which is Exhibit A24, and, can also be combined with A31 and
12 A32 the Keller and Kraft references. You believe that the
13 Kashima reference also has all of the elements of Claim 1; is
14 that right?

15 A Yes.

16 Q And so we look at the first element, that has got that,
17 correct?

18 A The -- yes.

19 Q And then if we move to the next page?

20 A Yes. Showing the element of Claim 1A.

21 Q Claim 1B?

22 A Showing all of the elements of Claim 1B.

23 Q Claim 1C, Kashima?

24 A Upper bushing, yes, showing the elements of Claim 1B.

25 Q One D?

ERIC WANG - Direct

1 A Showing a valve -- screw valve labeled number six there; a
2 manually operable valve.

3 Q One E?

4 A That valve communicates between the interior and exterior
5 of the fork.

6 Q One F, your analysis?

7 A One F, again, if we assume the screw valve is a valve,
8 manually operable valve, then it has two positions, one where
9 it's closed one where it's open. And we can easily combine
10 that with Bruckbauer's which is a push button. To add a
11 push-button-type valve, replacing that with a screw-type valve.

12 Q And then, finally, for one -- element 1G, what's your
13 analysis?

14 A One G. This one is actually talking about if the oil would
15 come out, you would open this valve and it would -- the oil
16 would remain inside the fork, unless you actually removed or
17 displaced the fork, somehow.

18 MR. HICKEY: Okay. And, at this time, Your Honor, we
19 previously referenced, with our other charts, but we would move
20 to admit our Exhibits A11 through A32, which are the invalidity
21 and non-infringement contentions of SRAM, as well as the
22 accompanying prior art?

23 THE COURT: I will consider everything that I have, so
24 if you want a formal admission, you have it. I don't know that
25 you need it.

ERIC WANG - Cross

1 MR. HICKEY: Thank you, Your Honor, I appreciate it.

2 I have no further questions, for Dr. Wang.

3 THE COURT: Recess until 3:30.

4 THE COURTROOM DEPUTY: All rise. Court is in recess.

5 (Recess at 3:15 p.m.)

6 (In open court at 3:33 p.m.)

7 THE COURT: Please be seated. Counsel, please.

8 **CROSS-EXAMINATION**

9 BY MS. BHATTACHARYYA:

10 Q Good evening, Dr. Wang, when were you hired to work on this
11 case?

12 A Oh, um, I don't know the exact date. Probably about a year
13 ago. I don't know the exact date when I first started.

14 Q But you did not provide a declaration in support of SRAM's
15 opposition of this lawsuit?

16 A No.

17 Q You were not deposed in connection with this action?

18 A No.

19 Q You read through invalidity claim charts, were you very
20 involved in the preparation of those charts?

21 A They consulted me early on, and I proofread drafts and gave
22 feedback to them. Yes.

23 Q Are you involved in the selection of any of the prior art
24 that you testified about today?

25 A Not that I testified about today.

ERIC WANG - Cross

1 Q Have you served as an expert for SRAM in any case prior to
2 this one?

3 A Yes.

4 Q How many cases?

5 A I think at least one, maybe two or three. I can't remember
6 the exact number. Goes back a number of years.

7 Q When was the last case, prior to this one?

8 A I would have to go back and look at my resume', probably
9 six years ago, five years ago, maybe.

10 Q And have you served as an expert for the law firm of Lewis
11 Rice, in any case, besides this one -- besides the one for
12 SRAM's?

13 A All of the one I involved with SRAM were through Lewis
14 Rice.

15 Q Not for my other clients?

16 A Not for any other the clients.

17 Q So earlier you testified about four different prior art
18 references, Becker, Bruckbauer, Kojima, and Kashima. Did I
19 miss any?

20 A I think the -- there are others, but we didn't cover them.
21 I think if you go back, but I think that's the four that we
22 covered. There are others that we didn't have time to cover.

23 Q I will stick with the four that you testified about, and I
24 will ask you some questions about those. Okay?

25 A Yeah.

1 Q And let's start with the Kojima reference, which is in your
2 binder, it's Exhibit A20.

3 A The black binder?

4 Q It will be in SRAM's binder, which is the blue binder.

5 A Which one?

6 THE COURT: The number.

7 Q Twenty.

8 A Twenty?

9 Q Yeah.

10 A Yep.

11 Q Let me direct your attention to figure nine, which is the
12 figure that you were referring to.

13 A Yes, figure nine.

14 Q And you have mapped air valve 215 of Kojima to the claimed
15 air-bleed assembly in Claim 1 of the '331 patent, right?

16 A Yes.

17 Q The air valve 215 opens into air chamber 210, in the
18 embodiment shown in figure nine?

19 A It's 210A, but yes.

20 Q Air chamber 210A, in that embodiment, shown in figure nine
21 of Kojima, right?

22 A Yes.

23 Q Let's go to paragraph 0078. In the English translation
24 part, which is towards the end of the exhibit there?

25 A Yes.

1 Q Are you there?

2 A Yes, I'm here. I see it.

3 Q Paragraph 0078 of Kojima states that *initial operating*
4 *smoothness and sensitivity during extension, within*
5 *parenthesis, during the minus stroke, are improved by*
6 *pressurizing the air chamber to 210a at, for example, an air*
7 *pressure of 50 PSI.* Do you see that?

8 A Yes.

9 Q So air chamber 210a, to which -- with which the air valve
10 215 communicates is -- has a positive air pressure, of example
11 50 PSI, correct?

12 A Yes. Well according to this -- according to what's written
13 here for example, pressure 50 PSI; that's one example.

14 Q So at least in this embodiment of figure nine, Kojima
15 teaches that the chamber 210a has a positive air pressure of
16 example 50 PSI, right?

17 A That's what it says here, yes.

18 Q So, if valve 215 is opened and pressure inside the chamber,
19 210a is equalized to the ambient air pressure, there will be no
20 positive air pressure in chamber 210a, correct?

21 A Again, describing the wording issues I had earlier, but yes
22 it would equal ambient air pressure.

23 Q Okay. And so when the air pressure is equalized, there's
24 no positive pressure in chamber 210a, correct?

25 A Yes.

ERIC WANG - Cross

1 Q And so according to Kojima, the operating smoothness and
2 sensitivity will be diminished if valve 215 is opened, and air
3 pressure is equalized in the chamber, correct?

4 A True.

5 Q Does Kojima teach anywhere in its disclosure to use valve
6 215, to equalize the air pressure in chamber 210a, to the
7 ambient pressure?

8 A It teaches that you can open and close that valve.

9 Q I understand that. My question is, does Kojima teach
10 anywhere in its disclosure to use valve 215 to equalize
11 pressure in chamber 210a with the ambient pressure?

12 A No.

13 Q Let's turn to the Becker reference. It's Exhibit A28. Go
14 to Exhibit 28 in your binder.

15 A Twenty-eight?

16 Q Yes.

17 A Yep.

18 Q Does the Becker reference teach anywhere in its disclosure
19 an air-bleed system that can be used to equalize air pressure,
20 in a chamber, with the ambient air pressure?

21 A I do not believe so. But in combination with other prior
22 art.

23 Q Okay. So earlier you testified about combining Bruckbauer
24 with Becker, so let's go to Exhibit A27. So 27 in your binder.

25 A Yes.

1 Q Bruckbauer teaches a valve on the top cap of the fork, to
2 relieve excess pressure from the coil spring and damper element
3 of the fork, right?

4 A From the interstitial space, yes. Not from the primary
5 spring.

6 Q It teaches releasing pressure from the coil spring element
7 an upper element, correct?

8 A Yes. The point being though, it's again it's not you are
9 not diminishing the prior spring.

10 Q Okay. Does Bruckbauer teach anywhere using that valve to
11 equalize air pressure in the lower leg of a fork, to the
12 ambient air pressure?

13 A In the lower leg of the fork, no. It equalizes within
14 that -- that interstitial space taken by the coil spring.

15 Q You are combining Becker and Bruckbauer, but neither Becker
16 nor Bruckbauer teaches an air-bleed system to equalize air
17 pressure within the lower leg of -- lower leg of a fork with
18 the ambient air pressure, correct?

19 A Bower -- I'm sorry -- Becker, Bruckbauer and Kojima. Is
20 that the one you are talking about? Yes.

21 Q My question to you is neither of these references teach an
22 air-bleed system to equalize air pressure within the lower leg
23 of a fork, with the ambient air pressure, correct?

24 A Correct. But I think that somebody of ordinary skill in
25 the art would have motivated to -- you could place it anywhere,

1 whether in the top or the -- or the lower leg.

2 Q But you agree with me that neither of these references
3 actually teach that, correct?

4 A Neither of these two directly teach it.

5 Q Neither Becker or Bruckbauer. Okay. Let's go to the last
6 reference Kashima, which is Exhibit A24. Number 24 in your
7 binder?

8 A Yes. Yes.

9 Q Does Kashima -- strike that.

10 A This is Kashima, yes.

11 Q There's no disclosure of an air-bleed valve for -- in
12 Kashima for equalization of air pressure of the lower leg of
13 the fork, with the ambient pressure, correct?

14 A If my memory serves, this actually does talk about bleeding
15 the air out in that space, that's what number six is four.

16 Q I will take -- I will direct you to paragraph four of
17 Kashima?

18 A Hm-hm.

19 Q Paragraph four of Kashima reads, *Because this air breather,*
20 *which you are referring to as the air relief valve, is provided*
21 *in the outer tube. If the treaded hole five is opened, the*
22 *inner tube is compressed, and the leakage of hydraulic fluid*
23 *from inside the outer tube is observed. The user can confirm*
24 *that any air present in the clearance has been exhausted. Do*
25 *you see that?*

ERIC WANG - Cross

1 A Yes. But I think the translation is not super -- I don't
2 know if accurate is the right word, because air breather, which
3 is just air valve we are talking about, is provided in the
4 outer tube -- if the thread hole five is opened, I think it
5 says, and probably is missing. Because if you open the screw
6 valve nothing happens. It just equalizes the pressure. The
7 inner tube is compressed. You don't open the screw, and the
8 inner tube is compressed. You open the inner tube and you
9 compress the inner tube, then you can keep compressing it until
10 hydraulic fluid comes out.

11 If I compress one of these forks here enough,
12 depending where the screw is located, they will eventually
13 start coming out.

14 Q But Kashima screw valve allows air to purge from the
15 internal volume until hydraulic fluid begins flowing from the
16 hole the screw is threaded into, right?

17 A What I read is, again, the translation isn't perfect. I
18 read this, my interpretation is you take the threaded hole, you
19 open it and you compress the tube until hydraulic fluid comes
20 out. I think the key word missing is *and* the inner tube is
21 compressed. You shouldn't be just the threaded hole is opened,
22 the inner tube is compressed, that from a grammatical sense
23 doesn't make sense. What would cause it to compress?

24 Q The purpose of Kojima is an air-bleed system to remove
25 trapped air in just the clearance between the upper and lower

1 forks that prevents the lubrication fluid from reaching the
2 upper fork bushing, right?

3 A The way it's written, the way I look at is it contains the
4 elements of the '331. You open the valve, it equalizes
5 pressure, it is above the oil bath, the oil level, unless you
6 compress the fork.

7 Q Can you point to me where in Kashima is it teaching to use
8 that screw valve to equalize air pressure within the lower leg
9 of the fork with the ambient air pressure?

10 A When you open the screw valve, you will equalize the
11 pressure.

12 Q Listen to my question. I'm asking you to point to me
13 where, in Kashima, is it teaching to use that screw valve to
14 equalize air pressure, within the lower leg of the fork, to the
15 ambient air pressure?

16 A Maybe we're just having a misunderstanding of the words,
17 but I read this as, open the hole, it equalizes the air
18 pressure, and now you can, in this case, extract all of the
19 remaining air out of that space, by compressing the fork.
20 That's what it's teaching you to do, is open the valve, to
21 equalize, let the air out. Compress the fork to bleed out all
22 of the air. It is literally a bleed valve, which bleeds out
23 all of the air, until oil comes out basically.

24 Q And if oil comes out of the threaded hole and significant
25 oil amount of oil will leak out, the requirement -- the claim

1 requirement, most, if not all, remains in the lower fork, is
2 not met, right?

3 A I don't know. It says here, *in the leakage the hydraulic*
4 *fluid inside the inner tube is observed*, that could be as
5 Dr. Slocum says, a millimeter cube of oil, that would not be a
6 substantial amount.

7 In fact, by definition, if you went to bleed the air
8 out of the system, you purposely wouldn't bleed all of the oil
9 out of the system. You would allow a certain amount, a small,
10 tiny bit amount. Soon as the first oil came out, you would
11 close that valve.

12 Q You would allow oil to come up all the way to the upper
13 bushing, correct?

14 A Yes. All to the screw valve, not the upper bushing, but
15 the screw valve, which is just below the bushing.

16 MS. BHATTACHARYYA: No further questions, for
17 Dr. Wang.

18 THE COURT: All right.

19 MR. HICKEY: No redirect, Your Honor.

20 THE COURT: You are excused.

21 THE COURT: Back to Fox. You had an additional
22 witness.

23 MR. McCAULEY: Yes, Your Honor. Mario Galasso.

24 MS. BHATTACHARYYA: For the next witness, Fox calls
25 Mr. Mario Galasso.

MARIO GALASSO - Direct

1 (MARIO GALASSO was sworn.)

2 THE WITNESS: I do.

3 THE COURTROOM DEPUTY: Please be seated. State your
4 name and spell your last name for the court reporter, please.

5 THE WITNESS: Mario Michael Galasso, Jr., last name
6 spelled G A L A S S O.

7 DIRECT EXAMINATION

8 BY MS. BHATTACHARYYA:

9 Q Good afternoon, Mr. Galasso. We have heard a lot about a
10 certain Galasso reference being used during prosecution of this
11 '331 patent. Are you the same Mr. Galasso who is the first
12 named inventor of that draft that was used in prosecution?

13 A Yes.

14 Q All right. And, Mr. Galasso, we will get into the details
15 soon, but, generally, what has Fox asked you to investigate and
16 opine in this case?

17 A Fox has asked me to look at the various references
18 associated with the '331 patent, specifically, looking at
19 Mr. Wesling's declaration and the patents that he used in his
20 various arguments, and then most recently with Dr. Wang.

21 Q SRAM recently brought several new references to our -- to
22 Fox's attention in the invalidity contentions; those are the
23 Becker, Bruckbauer, Kashima, Kawamura references. Have you
24 reviewed those references?

25 A I have.

MARIO GALASSO - Direct

1 Q And you are prepared to testify about them today?

2 A I am.

3 Q Before we discuss your opinion, I would like to go to some
4 of your background for the Court. What is your undergraduate
5 degree in?

6 A Mechanical engineering.

7 Q And where did you get your mechanical degree?

8 A Worcester Polytechnic Institute.

9 Q In when did you start working in the bicycle and motorcycle
10 industry?

11 A In 1991, through Cannondale.

12 Q Okay. And can you briefly describe your experience, roles
13 and responsibilities, in the bicycle and motorcycle industry?

14 A Sure. When I joined Cannondale, I joined as a mechanical
15 engineer, sort of an individual contributor. I became engineer
16 and manager and then head of product, which I had product
17 management and engineering. I had a brief entrepreneurial
18 stint between Cannondale and Fox, where I worked on some novel
19 suspension fork ideas for the bicycle industry, and some rear
20 geometry adjustments associated with the rear shock of a
21 suspension frame.

22 I joined Fox in February of 2003 as the general
23 manager of the bicycle products division and overall vice
24 president of Fox, where I now have full P and L responsibility
25 for the bicycle products division, which included product

MARIO GALASSO - Direct

1 development and R and D.

2 In 2011 we got -- well in 2008 Fox sold -- Bob Fox,
3 who was the founder and sole owner, sold the private equity in
4 2008. I participated in that process. We got a new CEO in
5 2011, and in 2013 the company went public and I participated in
6 the roadshow, along with that new CEO and the CFO at the time.

7 I left Fox in late November of 2018, and between 2011
8 and the time I left, I had titles of president of the company,
9 executive vice president, CTO. But not in the IT sense, more
10 in the product sense, and ran Fox's advanced technology group,
11 along with international sales and corporate market.

12 Q Currently, do you have any financial relations with Fox
13 Factory?

14 A No.

15 Q And after leaving Fox in 2018, what did you do?

16 A I had another entrepreneurial notion in the motorcycle
17 industry, more specific to the Heavy V-Twin Harley Indian
18 Segment? We got -- we got a couple patents in that space,
19 around improving the interior function of saddlebags and tour
20 packs, and such; 2019 was when we started, 2020 came the
21 pandemic, that wasn't a great timing to be a startup, and so
22 along the way I invested in a Harley dealership, and that's
23 currently where I spend the majority of my time.

24 Q Are you the inventor or joint inventor of patents and
25 patent applications related to bicycle or motorcycle suspension

MARIO GALASSO - Direct

1 technologies?

2 A I am. Over that, from 1991 to present, I believe it's
3 somewhere around 90 patents.

4 Q And do you have personal experience with mountain biking?

5 A I do. I have raced mountain bikes, both the cross-country
6 discipline, which is more of an endurance event, along with
7 this downhill, that we have talked about, which is more of an
8 adrenalin-fueled event; downhill as fast as you can. Raced all
9 over the country. Raced as an expert. Have been to Whistler
10 and various other places right here in Colorado and Canada and
11 Portes Soleil in France and ridden at a high level in a bunch
12 of different places.

13 Q Would it be fair to say that you have extensive experience
14 with bicycle design, development and operation?

15 A Yes.

16 MS. BHATTACHARYYA: Your Honor, at this time Fox
17 factory offers Mr. Galasso as an expert in the field of bicycle
18 and motorcycle suspensions and shock absorbers.

19 MR. HICKEY: No objection, Your Honor.

20 THE COURT: Received.

21 Q (By Ms. Bhattacharyya) Mr. Galasso, you have studied
22 the '331 patent, correct?

23 A Yes.

24 Q And you have considered its prosecution history, as well?

25 A Yes, I have.

MARIO GALASSO - Direct

1 Q And I will dive right into the prior art references that
2 have been discussed earlier today, but before we go into
3 specific references, I want to ask you, you have reviewed all
4 of the references that SRAM has presented in the case. Have
5 you seen any prior art reference in which an air leak valve is
6 being used to equalize air pressure in the lower leg of a fork
7 with ambient air pressure?

8 A I have not.

9 Q Let's go to the Ceriani reference, it's Exhibit A25. So in
10 the blue binder, if you go to the tab 25, you will find this
11 area that I am referencing. Are you there?

12 A I'm getting there.

13 Q Okay. Just let me know when you are there?

14 A I'm here.

15 Q Okay. Earlier, you heard Mr. Wesling and -- Mr. Wesling
16 mostly arguing that Claim 1 of the '331 patent is invalidated
17 by Ceriani. Do you agree with that?

18 A I don't agree with that. With Mr. Ceriani, what this
19 invention is about is about maintaining, what we in the art
20 call, pure damping oil. So there's no air. It doesn't get
21 aerated and frothed up, because as that happens, the damping
22 degrades the more frothed up it gets with intermixing of air
23 and oil, and so what this invention is about maintaining pure
24 oil, up to and including having some pressurized oil in the
25 various chambers that Ceriani points to, are supposed to be

MARIO GALASSO - Direct

1 filled with oil, and so we've talked about valves and screws
2 and such, through the day, this screw which Ceriani didn't take
3 the time to label or describe, in my opinion, is an oil-fill
4 port used for assembly primarily, and not as a in use or
5 ongoing use adjustment.

6 Q That unlabeled, undescribed screw in the Ceriani
7 embodiment, it communicates with the piston chamber 19 of the
8 Ceriani fork, correct?

9 A That's correct.

10 Q Let's take a look at Ceriani, at column three, lines 13
11 through 17.

12 A Okay.

13 Q Ceriani specifically discloses that *The piston chamber 19*
14 *and 19A of the portion of the expansion chamber 26, occupied by*
15 *the pocket 29, are completely filled up by the hydraulic fluid,*
16 *within parenthesis oil, before the introduction of the fluid*
17 *under pressure in said pocket.* Do you see that?

18 A I do.

19 Q So Ceriani discloses that the piston chamber with which the
20 valve communicates is completely filled with hydraulic oil,
21 right?

22 A That's correct.

23 Q So, if piston chamber 19 is completely filled with oil, is
24 there any ambient air in that chamber that would be released
25 through that screw valve to have pressure?

MARIO GALASSO - Direct

1 A No, there's not. The only gas in this portion of the
2 drawing is in the pocket that's referenced here, pocket 29,
3 which, of course, is separated by what's probably a bladder, so
4 that there can't be any intermixing. Another thing that can
5 cause aeration is cavitation within the damper, and so this
6 pocket that he has provided, which is supposed to be
7 pressurized, keeps a positive pressure on the oil, so that it
8 can't aerate as easily. So A, it wants to have no air in those
9 chambers that he just described, and B, it wants to have
10 pressurized oil in it to remove cavitation, you know,
11 introduced air.

12 Q And so if the piston chamber has pressurized oil in it, and
13 I am not talking about maintaining or assembly process. During
14 operation, in the course of a ride, if the user removed that
15 unlabeled screw, would a significant amount of oil leak out of
16 the hole that is -- the screw it is threaded into?

17 A For sure, if it's compressed a little bit. What I don't
18 know, by looking at the drawings, is whether that -- whether
19 that pocket is compressed at rest, but if you opened it, oil
20 would bleed out.

21 Q And what will happen if a significant amount of oil did
22 leak out?

23 A Well, it would be replaced by air, therefore defeating what
24 Ceriani was trying to accomplish, which is not have air in
25 those chambers.

MARIO GALASSO - Direct

1 Q And would the functioning of the fork be degraded, if
2 Ceriani's purpose of the invention is defeated?

3 A Yes.

4 Q So a person skilled in the art, reading Ceriani, would not
5 be motivated to use that screw valve to equalize air within
6 the -- that chamber to the ambient, correct?

7 A Correct.

8 Q Let's go to the Hoose reference, which is Exhibit A22. So
9 that's 22 in that blue binder.

10 A Okay.

11 Q You heard Mr. Wesling argue that Claim 1 of the '331 patent
12 is invalidated by Hoose. Do you agree?

13 A I do not.

14 Q Would you please explain why not?

15 A So what Hoose -- Hoose's invention, we've talked about sets
16 of tubes today, upper set of tubes, a lower set of tubes; two
17 sets. Hoose introduces a third set. What he is trying to do
18 here is provide more wheel travel for a given geometry
19 restriction, and be able to independently adjust different air
20 chambers and damper chambers, so that you can have, through the
21 travel of this increased travel fork, different spring and
22 damping curves, and so Hoose references on page five, figure
23 nine, a valve 129 and a chamber 126, that chamber is intended
24 to have positive pressure in it, and 129 is a pressurization,
25 and sort of pressure adjustment, positive pressure adjustment

MARIO GALASSO - Direct

1 valve. It's not a valve intended to be used to equalize the
2 pressure between chamber 126 and an ambient -- and an ambient
3 pressure. You could, but you wouldn't, because if you did, it
4 would -- the fork would collapse, and it would perform poorly,
5 at best, and, you know, largely be inoperable or fail.

6 Q So nowhere does Hoose teach that valve 129 be used to vent
7 air and equalize the pressure inside the shock chamber with the
8 ambient, correct?

9 A That's correct.

10 Q A person skilled in the art would recognize that valve 129
11 as a valve for adjusting positive pressure in a primary spring
12 element or primary damping chamber, correct?

13 A That's correct.

14 Q Now, let's move to the Kojima reference, which is Exhibit
15 20 in the binder. And you may have heard me talk about Kojima
16 with Dr. Wang?

17 A Yes.

18 Q I will direct your attention to figure nine of Kojima.

19 A What page is that?

20 Q Figure nine is in -- it's towards the end. It's on -- if
21 you look at the numbers --

22 A I got it. Yes sorry.

23 Q Page 35. Is the air valve 215 of Kojima, which
24 communicates with the chamber 210a, an air-bleed valve for
25 equalization of air pressure?

MARIO GALASSO - Direct

1 A It is not. It's a valve to pressurize chamber 210a,
2 because 210a is taught to have a positive pressure in it, up to
3 and including an example by the inventor of 50 PSI.

4 Q So persons skilled in the art, reading Kojima, would not be
5 motivated to use that valve 215 to equalize pressure in chamber
6 210a with the ambient pressure?

7 A Right. One skilled in the art would recognize that you
8 could, but that you wouldn't, because it renders this invention
9 poorly performing or inoperable.

10 Q And quick to Becker and Bruckbauer. You heard Dr. Wang
11 combine those two references. You have reviewed both of them,
12 correct?

13 A I have.

14 Q They are in the binder at -- as Exhibit 28, Becker;
15 Bruckbauer is Exhibit 27, if you need to refer to that. But
16 just generally, does either Becker or Bruckbauer provide any
17 disclosure of an air-bleed valve for equalization of air
18 pressure in the lower leg of the suspension fork to the ambient
19 pressure?

20 A No. Bruckbauer speaks to a valve communicating with a
21 damper and a spring chamber. Its location is at the top of the
22 fork, in the top cap of a fork, and Becker has an air valve,
23 but it's an air valve used to communicate with its positive
24 spring pressure chamber and not for venting.

25 Q Quickly, to the Kashima reference, which is Exhibit 24?

MARIO GALASSO - Direct

1 A Okay.

2 Q And, let me know when you are there?

3 A Hm.

4 Q Are you there?

5 A I am.

6 Q Okay. Do you agree that Kashima teaches an air-bleed
7 system for equalization of air pressure?

8 A No. With Kashima what the invention here is, is again this
9 item six, which has a seal seven, so a valve, is used as an
10 assembly feature, upon initial assembly of the product. This
11 fork, up in the area of six and specifically the bushing that
12 it references, doesn't want any air in it. So this is used to
13 make sure that oil is up there, because the invention is to
14 provide a way to vent trapped air at assembly, so that
15 lubricating oil can be up in the area of the bushing right from
16 the get go.

17 Once that assembly process is completed, you really
18 wouldn't use that valve. If you did, oil would come out of it.
19 It wouldn't vent air after it's initial use was put in place
20 and completed at assembly, and you wouldn't use it again until
21 you were going to service the fork.

22 Q So during the course of a ride, when you are on the top of
23 a high elevation, a rider would not use that valve to equalize
24 air pressure in the lower fork with the ambient pressure,
25 correct?

MARIO GALASSO - Direct

1 A Correct.

2 Q And the last reference Kawamura it's Exhibit 29. Let me
3 know when you are there.

4 A Okay.

5 Q Kawamura refers to a mechanism five to supply oil to
6 lubricate between the upper and lower forks, right?

7 A That's correct.

8 Q Is there any disclosure in Kawamura about mechanism five
9 being used to relieve or equalize air pressure within the fork,
10 ambient?

11 A No. No. In a similar vein to Kashima, what Kawamura is
12 trying to create is a way to make sure there's oil up in the
13 area of the bushing so that that can be lubricated.

14 Q So we have quickly gone through a lot of different
15 references; just to summarize, has SRAM presented any reference
16 that teaches an air-bleed system in a lower leg for
17 equalization of air pressure in the leg, to the ambient
18 pressure?

19 A No. In summary, there have been a lot of valves referred
20 to in the attempt to have a valve, be a valve, be a valve,
21 regardless of the application, regardless of the problem that
22 it's solving, and none of those references where various valves
23 are shown, knowing that the '331 patent shows a valve, none of
24 those valves accomplish what the '331 teaches, which is
25 venting, using that valve to vent the internal air volume

MARIO GALASSO - Cross

1 within lower leg to ambient air pressure.

2 Other references were more -- were more assembly-type
3 features. Using that feature to initially build and prepare
4 the fork, you know for use. After that, they are not intended
5 to be used as in use features, but, initial build, and service.

6 MS. BHATTACHARYYA: No further questions for
7 Mr. Galasso.

8 THE COURT: Cross.

9 **CROSS-EXAMINATION**

10 BY MR. HICKEY:

11 Q Mr. Galasso, counsel already identified that you are the
12 Galasso of the Galasso publication that was -- that the patent
13 office used to reject, the '331 patent application multiple
14 times.

15 You disclosed an air-bleed system to the world in your
16 publication, correct?

17 A What I disclosed is an invention to help automatically or
18 more easily set sag in a rear shock.

19 Q And it was a bleed port that was used to vent air?

20 A Without ever not having positive pressure in either the
21 negative chamber or the positive chamber. It was trying to
22 achieve force equilibrium.

23 Q Each time that the '331 patent was rejected, based on your
24 publication, Fox's lawyers admitted that you invented an
25 air-bleed system first, correct?

MARIO GALASSO - Cross

1 A Um, I believe that was talking about position, but it was
2 an invention, it does vent air for a specific purpose, which is
3 to achieve force equilibrium within a negative chamber -- well
4 within a -- within two chambers within the fork. One has a
5 larger cross section one has a smaller cross section, therefore
6 the force equilibrium and the valve, in this case, is used to
7 provide that equilibrium state, after which you don't really
8 need it anymore.

9 Q You were employed by Fox at the time of the '331 patent
10 application, correct?

11 A That's correct.

12 Q And, in fact, you were the president of Fox at the time
13 that the '331 patent application was filed, correct?

14 A Um, I don't know exactly, but ... likely. Of the positions
15 that I said that I had while I was there, I had one of them
16 during this time.

17 Q Okay. And so you could have signed a declaration before
18 the patent office to say that you didn't invent air bleeds in
19 lower legs of suspension forks, correct?

20 A I could have.

21 Q Yes?

22 A I don't understand the question.

23 Q I mean, you were president of Fox. You could have
24 submitted that declaration in support of this application,
25 correct?

MARIO GALASSO - Cross

1 A I suppose so.

2 Q Okay. And you didn't do that?

3 A Because it's not ... go ahead. Sorry.

4 Q Well, let me ask you this, you testified, when I -- when I
5 deposed you, that air bleeds were used to vent air in a variety
6 of applications in motorcycles and bicycles, correct?

7 A I don't have that, specifically, in front of me, but as
8 we've -- as you guys have talked about, there's been a lot of
9 air valves in communication with air chambers in motorcycles
10 and bicycles.

11 Q That was true for many years prior to the '331 patent?

12 A For use -- for different uses --

13 Q Okay.

14 A -- as we have described.

15 Q And Mr. Galasso you talked in your declaration, in
16 paragraph 34, about how the prior art is different from the
17 '331 patent, because the '331 patent is directed to relieving
18 secondary pressure in the air volume above the oil bath in the
19 lower fork of a suspension fork; is that correct?

20 A Can you repeat that?

21 Q That the '331 patent is directed to relieving secondary
22 pressure in the air volume above the oil bath in the lower fork
23 of a suspension fork, correct?

24 A Yes.

25 Q Okay. When I took your deposition, you testified that the

MARIO GALASSO - Cross

1 word secondary pressure aren't used in Claim 1 of the '331
2 patent; is that right?

3 A That was my term, yeah.

4 Q Okay. And you also testified that there's no primary
5 spring -- either primary air spring or coil spring that's
6 identified in Claim 1, correct?

7 A That's correct.

8 Q Okay. So your opinion is that the prior art described in
9 detail by Dr. Wang and Mr. Wesling, isn't good because they
10 don't equalize secondary air pressure, even though that
11 language doesn't actually appear in Claim 1, correct?

12 A Um, I think that the references that they have provided we
13 have spoken a lot about today, don't teach what's taught in
14 Claim 1.

15 Q Okay. And Claim 1 doesn't say when the rider would relieve
16 the air pressure, correct?

17 A Claim 1 doesn't say that.

18 Q Okay. And you testified in your deposition that a rider
19 would not relieve the air pressure while riding, right?

20 A I don't specifically know that I said that, but I would
21 agree with myself if I did.

22 Q Okay. I believe you testified that it was your opinion
23 that if the rider attempted to perform that equalization
24 process while riding, that wouldn't be a good decision; does
25 that refresh your recollection?

MARIO GALASSO - Cross

1 A Yes.

2 Q Okay. And you said you reviewed the file history of the
3 '331 patent, correct?

4 A Yes.

5 Q And if we could pull up Exhibit 14, page ten. Exhibit 14.
6 Go down, page ten, next page. Okay. Right there. You
7 testified that there was nothing vague in the sentence that
8 reads, *In contrast to Galasso, applicant's features as recited*
9 *in newly amended Claim 1, locate its air-bleed system in a*
10 *lower fork, wherein the vent hole is located between the lower*
11 *leg seal and the bushing that is attached thereto, correct?*

12 A I see what you highlighted.

13 Q That wasn't -- my question was, you testified that there
14 was nothing vague in that sentence, when I deposed you, right?

15 A Um ... I don't recall the question, I don't recall the
16 answer.

17 THE COURT: I don't think this is useful. I mean, if
18 you want to ask him what he testified to before, I can just
19 read his deposition. So ask him a question now, we will hear
20 what his answer is now, and if you think it's inconsistent with
21 what he said before, then we can get to what he said before,
22 but all we're doing is *I don't remember*, and I am not
23 criticizing the witness or the attorney, but I just don't think
24 it's a productive way of moving forward.

25 MR. HICKEY: Thank you, Your Honor.

MARIO GALASSO - Cross

1 Q (By Mr. Hickey) Do you think there's anything vague
2 in this sentence that's highlighted?

3 A I don't think there's anything vague in that sentence, but
4 I do think that that sentence needs to be read against a total
5 paragraph, not taken out of context with everything else below
6 it.

7 Q Okay. And page eleven, starting at -- pull back. With
8 respect to the sentence, *However, due to the positioning of*
9 *applicant's air-bleed system*, and highlighting that entire
10 sentence, do you think that there's anything vague or unclear
11 in that sentence. Go down a little bit further?

12 THE COURT: Can't we just scroll in and magnify?

13 THE WITNESS: That's okay. So, same answer, about
14 taking one sentence out of context with the rest of the
15 paragraph, but I see what it is there.

16 Q (By Mr. Hickey) And there's nothing vague or unclear
17 in that sentence?

18 A Um, not when taken in the context of the entire paragraph.

19 Q And Bill Becker, the inventor of the '331 patent, he still
20 works for Fox?

21 A As far as I know.

22 MR. HICKEY: I have no further questions, Your Honor.

23 THE COURT: Any Redirect?

24 MS. BHATTACHARYYA: No Redirect, Your Honor.

25 THE COURT: All right. You may step down. Thank you.

MARIO GALASSO - Cross

1 My assumption is that neither side has any further evidence to
2 present today?

3 MR. McCAULEY: That's correct.

4 MR. WALSH: That's correct.

5 THE COURT: Let me give the two of you an option. I
6 can give you 15 minutes now. You can take 15 minutes and
7 that's all you get. Or I can take closings on Thursday at
8 2:30, but I don't want to make you all jump on planes again. I
9 can do it remotely on video. Doesn't matter to me. But I want
10 to give you the option. I guess I -- guess I'm not being
11 completely candid, and what I mean by that is, my preference
12 would be you do it on Thursday, because my back is starting to
13 go, and I am just being frank about that.

14 MR. McCAULEY: That was our guess, Your Honor, and
15 that would be our hope.

16 THE COURT: You agree?

17 MR. WALSH: Yes, Your Honor.

18 THE COURT: On Tuesday, would you call my -- my
19 regular courtroom deputy is named Cathy Pearson. She is not
20 here today. That's not Cathy. That being said, would you call
21 her. I'm not sure she will be here. If she is not, call
22 chambers, and my judicial assistant will give you the
23 instructions.

24 MR. McCAULEY: Yes, sir.

25 THE COURT: And if there are things -- I will tell you

MARIO GALASSO - Cross

1 now that our video is a little wonky. What I mean by that is,
2 I believe there are better systems Zoom, and some other ones,
3 that various states and other agencies have been using, but the
4 Federal Judiciary insists on using its own soft -- it's own
5 application for security reasons, and sometimes it's not as
6 good as others in kind of split screening and things like that.
7 So, what I would tell you is that if you wanted to email to
8 chambers any slides that you have in advance, I can put them on
9 a tablet and sit here and control manually while you are doing
10 things, and actually see what you are talking about. And I
11 wouldn't need those until, frankly, Thursday morning, because,
12 I could load them up on a -- if you email them to chambers, I
13 can get them in chambers into my tablet, and I can bring it out
14 here. All right. All right. That's all I have got anything
15 else.

16 *MR. McCAULEY:* Forgive me, Your Honor, I'm tired. Did
17 you say how long the closings would be.

18 *THE COURT:* I will give -- I will listen -- I don't
19 want to put a time limit on Thursday.

20 *MR. McCAULEY:* Half hour.

21 *THE COURT:* That's fine.

22 *MR. McCAULEY:* Thank you, Your Honor.

23 *THE COURT:* Somewhere in there. I'm not a big fan of
24 clocking people -- well, if lawyers annoy me, and I use the
25 clock in a different way, perhaps I'm a fan of it, but in

MARIO GALASSO - Cross

1 general I don't like to put people on a clock, because I just
2 don't. I don't -- but I think a half an hour should do it, but
3 of course, that also would require me to stay silent and not
4 ask questions and that's not going to happen.

5 So we'll see how it goes. I don't want to lock you in
6 too much. Plan for a half an hour, but it's going to go a
7 little longer than that, I would suspect. Okay.

8 *MR. McCAULEY:* Thank you, Your Honor.

9 *THE COURT:* All right. We are on the same page?

10 *MR. WALSH:* Absolutely. Your Honor, last question, do
11 you want any briefing?

12 *THE COURT:* I don't think so.

13 *THE COURT:* All right. We will be in recess, and you
14 and I will see you Thursday. Thank you.

15 *THE COURTROOM DEPUTY:* All rise. Court is in recess.

16 (Recess at 4:26 p.m.)

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15 **REPORTERS' CERTIFICATE**

16 I certify that the foregoing is a correct transcript
17 from the record of proceedings in the above-entitled matter.

18 Dated at Denver, Colorado, this 30th day of May, 2023.

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Tammy Hoffschmidt, FCRR, CRR, RMR

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