

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

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

FOX FACTORY, INC.,

Plaintiff,

v.

SRAM, LLC

Defendant.

**DECLARATION OF WESLEY ALLINGER IN SUPPORT OF FOX
FACTORY, INC.'S MOTION FOR PRELIMINARY INJUNCTION**

REDACTED VERSION

I, Wesley E. Allinger, declare as follows:

1. I am the Executive Vice President, Cycling Business Unit, Specialty Sports Group of FOX Factory Holding Corp. and its wholly owned subsidiary, Plaintiff FOX Factory, Inc. (“FOX”). I submit this declaration in support of FOX’s Motion for Preliminary Injunction. I make this declaration of my own personal knowledge and will competently testify thereto if called upon to do so.

2. For over thirty years, FOX has been an industry leader in the design and development of high-performance shock absorbers and racing suspension products for mountain bikes, motorcycles, ATVs, UTVs, and off-road cars, trucks, and SUVs. FOX has earned a reputation for innovation and excellence in high performance, high quality suspension products, including mountain bike suspension forks. FOX values its reputation and continually strives to impress customers and the market with ever-evolving and improving suspension products that enhance the riding and racing experience.

A. Intense Competition Between FOX and SRAM

3. My responsibilities at FOX include operations for the Specialty Sports Group division, which includes mountain bike product line engineering and development. My responsibilities also require me to remain aware of the market and competition for sales of mountain-bike forks and suspension products, as well as FOX’s product offerings and those of our competitors, particularly our chief competitor in the market for medium- to high-end mountain bike suspension forks, Defendant SRAM, LLC (“SRAM”). Most medium- to high-end mountain bikes are sold with FOX and/or SRAM suspension forks. FOX and SRAM are the two main competitors and suppliers in the market for medium- to high-end mountain bike suspension

forks, both internationally and in the United States. Although we do not have precise market share figures (and I am not aware of any), I think those knowledgeable of the market (including SRAM) would agree that FOX and SRAM together supply the majority of medium- and high-end mountain bike suspension forks, both in the international and United States markets, and that FOX and SRAM compete directly against one another for these sales. Although there are other competitors in the market for medium- and high-end mountain bike suspension forks, those companies sell significantly fewer suspension fork products to fewer customers than do FOX and SRAM.

4. FOX sells the vast majority of its mountain bike suspension forks to bicycle original equipment manufacturers (“OEMs”), also known as brand customers or sellers (e.g., Pivot, Specialized, Santa Cruz, Trek). This includes sales of our products to third party bike assembly companies who purchase the components on behalf of the OEM/brand bike companies, at prices negotiated with FOX by the OEM/brand companies, and who then assemble completed bicycles for purchase and resale by the OEM/brand bike companies. For example, Pivot is an OEM/brand that makes high quality, high performance mountain bikes, and all of Pivot’s mountain bikes include FOX forks. *See, e.g.,* <https://global.pivotcycles.com/products/mach-6> (Pivot Mach 6 enduro bike with FOX 38 fork with bleeder valves).

5. Every year, FOX and SRAM are direct competitors for business from the OEM/brand mountain bike companies. FOX does its best to design and market superior suspension forks to convince OEM/brand companies to buy/include FOX forks in mountain bikes made and sold by the OEM/brand companies, and SRAM competes directly with FOX by doing its best to make or take those same sales from FOX. Such competition for OEM/brand

business is referred in the mountain bike industry as competing for “specs” or “spec position” on the OEM/branded mountain bike models, and there is intense competition between FOX and SRAM for these spec positions. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6. In addition to FOX forks that are “spec’ed” on OEM/brand bicycles, a small portion of FOX’s forks are also sold to bike shops and dealers in what are known as “aftermarket” sales. Bike shops and dealers will sometimes carry a small number of individual forks to sell them in the “aftermarket,” i.e., for end customers to purchase and self-install on their own bicycles. Based on my knowledge of the industry, I believe that SRAM similarly sells the vast majority of its mountain bike forks to OEM/brand customers, but sells a very small fraction of at least some models of the accused forks as “aftermarket” products to bike shops and dealers.

B. FOX’s ’331 Patent and Patented Bleeder Valve Technology

7. I understand that FOX’s attorneys and technical expert have studied the SRAM RockShox Lyrik, Pike, and ZEB series of mountain bike forks accused of infringement in the First Amended Complaint in this action and determined that those SRAM forks infringe certain claims of FOX’s U.S. Patent No. 9,739,331 (“the ’331 patent”). All of the accused forks have telescopically engaged upper and lower leg tubes, with bleeder valves disposed on the lower fork

legs. I also understand that a declaration by FOX's technical expert supporting his infringement opinion is being submitted along with FOX's motion for preliminary injunction.

8. FOX's '331 patent covers, among other features recited in the claims, air bleed valve assemblies disposed on the lower fork legs. These air bleed valves are particularly useful when a mountain bike undergoes significant changes in elevation (up or down), which can happen during long/aggressive rides in the mountains, and when taking bikes up chairlifts to reach mountain bike parks. Increases in elevation can increase the air pressure in the lower fork legs beyond the ambient air pressure, which increases axial friction in the fork, which inhibits/reduces "travel" and degrades fork/suspension performance. ("Travel" in telescopic upper and lower fork legs refers to the distance the fork legs compress/expand when ridden over bumpy terrain. Full "travel" improves the riding experience; shortened or inhibited "travel" degrades it.) Elevation drops can also degrade fork performance when they cause the air pressure in the lower legs to fall below ambient pressure, which can cause the upper and lower fork legs to contract and impede the ride and handling of the bike. FOX's patented air bleed valve assemblies on the lower fork legs quickly improve fork performance in such circumstances by equalizing pressure in the lower fork tubes to the ambient pressure. This quickly and reliably restores full travel and fork/suspension performance.

C. FOX First Included its Patented Bleeder Valves on its FOX 40 Downhill Forks

9. FOX first commercially launched the patented bleeder valve assemblies on lower fork legs in 2013, when FOX added them to FOX 40 forks for "model year" 2014. (Bike products released in the spring of year X are typically referred to as being for "model year" X+1, similar to the release of new models by car manufacturers.) These bleeder valve assemblies were

not a trivial feature to design and incorporate into the lower legs, in part because the lower legs include oil baths, which made it important to design the forks and assemblies so that oil did not leak through the valves during shipment or use. FOX product design, testing, and engineering teams expended and engaged in extensive research and development over approximately one year to implement the bleeder valve assemblies in the lower legs of the FOX 40 forks.

10. FOX's 40 forks were and are designed for "downhill" racing bikes, i.e., relatively large and heavy bikes designed to be pointed and raced downhill over challenging terrain, often in high elevation bike parks reached via chairlifts. FOX's 40 forks with bleeder valves improved performance, were commercially successful and received praise in mountain bike publications and market. During that same year (2013), SRAM was not offering any fork products with bleeder valves in the lower fork legs to my knowledge.

D. By 2020, FOX Saw a New Opportunity and a Larger Market for its Patented Bleeder Valves

11. By 2020 (model year 2021), FOX saw the opportunity to expand its patented bleeder valves beyond the downhill market and into the much bigger "all mountain" bike market. (Non-downhill mountain bikes go by many names, including "all mountain" and "enduro," and are generally referred to as "all mountain" and "enduro" below.) Newer carbon bike frames and wheels meant that "all mountain" bikes had become considerably stronger and well-suited to the rigors of mountain bike parks and other demanding conditions that had previously required bigger, heavier downhill-style bikes and forks. In addition, electronic bike (e-bike) technology had also greatly improved, and by 2020 "all mountain" e-biking had become incredibly popular. Rather than having to pedal up mountains or use chairlifts, e-bike riders were motoring up to high elevations and challenging terrain. Because by 2020 "all mountain" bikes were being ridden

more aggressively and at higher elevations, FOX's patented bleeder valves had new utility in the "all mountain" bike market, which was and remains much larger than the downhill market.

12. Seeing this opportunity in the "all mountain" market, for 2020 (model year 2021) FOX added its patented bleeder valve assemblies to its previous model FOX 36 "all mountain" fork. FOX also introduced new FOX 38 "enduro" fork that included the patented bleeder valve assemblies. These new FOX 36 and 38 forks with bleeder valves quickly gained market traction and have been a huge commercial success in "all mountain" mountain bikes since 2020, far outselling FOX prior fork models.

13. In 2020, SRAM had still not commercially sold any forks with bleeder valves on the lower legs to my knowledge. Indeed, SRAM did not commercially release any mountain bike forks with bleeder valves in the lower legs for eight years after FOX released its initial FOX 40 forks in 2013, i.e., not until 2022 (for SRAM's "model year" 2023 products) to my knowledge. This is significant because SRAM has been selling mountain bike forks having telescopically engaged upper and lower leg tubes for about two decades, and RockShox, the fork company SRAM acquired in 2002, has been making the same style of forks since the early 1990s. Yet to my knowledge neither RockShox nor SRAM commercially offered for sale any bike forks that include air bleed valves on the lower fork legs until 2022.

14. The FOX and SRAM middle- to high-end mountain bike forks at issue in this case are expensive; they generally retail for more than \$1,000 and are a significant cost to OEM/brand customers when they "spec" out their mountain bike offerings. Customers who buy these expensive forks are paying for an optimized riding experience. Based on our communications with mountain bike riders and OEM/brand customers, we at FOX understand that mountain bike

enthusiasts have become increasingly aware of how equalizing the pressure in lower fork legs enhances performance in all-mountain bikes. We also understand that many mountain bike riders and OEM/brand product managers now want and expect middle- and high-end all-mountain bike forks with at least 140mm travel to include bleeder valves in the lower fork tubes (in addition to other features on the forks).

E. In a 2020 Recorded Interview, a Mountain Bike Reviewer Asked SRAM the “Obvious Question” Why its Latest Forks Did Not Include Bleeder Valves

15. There can be no reasonable doubt that starting circa 2020 and 2021, SRAM was very well aware of FOX’s exploding sales of its FOX 36 and 38 forks with the patented bleeder valve assemblies, and thus the market opportunity that this technology offered. Based on our market intelligence, FOX knows that SRAM pays close attention to trends and market opportunities. It is also clear from a recorded interview with Vital MTB¹ dated July 2020 that SRAM was well aware that mountain bike riders and the market wanted lower leg bleeder valves on mountain bike forks, but SRAM’s forks did not include them because of SRAM’s concerns about FOX’s patents on same.

16. More specifically, SRAM/RockShox product manager John Cancellier claimed during that July 2020 interview that SRAM and its sponsored enduro mountain bike athletes had evaluated SRAM’s new ZEB fork, and that “everyone was super happy with where we ended up with the stock [ZEB fork] configuration.”² **The Vital MTB interviewer followed up by asking,**

¹ Vital MTB is a popular web site and media company that caters to mountain bike and motocross enthusiasts. See www.vitalmb.com. It offers, among other things, reviews of new mountain bike products.

² See podcast of interview at <https://www.vitalmtb.com/product/guide/Forks,33/RockShox/ZEB-Ultimate,30683>, at approximately time 29:25-31:00.

“this might be another obvious question that you get a lot, but why no bleeders on the fork?” *Id.* SRAM’s product manager responded, “Mmm, that’s an interesting one. Umm ... [long pause] it’s one of those things where, uhmm, in the world of -- in the bike industry world -- navigating IP is an interesting one. And we need to be sensitive to, you know, we have technologies that we patent, and there are other technologies that are patented in the suspension world, and we have to respect that kind of stuff.” *Id.* But it’s clear that despite FOX’s patents on the bleeder valve assemblies, SRAM could not resist the market temptation because SRAM launched the accused infringing forks with bleeder valve assemblies in spring 2022.

17. In an apparent attempt to downplay the market’s desire for bleeder valves not offered on SRAM’s forks in 2020, SRAM’s product manager noted in that same interview that people could release unwanted pressure in the lower fork legs by pressing a zip tie between the airtight seals positioned between the upper and lower fork legs. *Id.* But it is also well known that doing that can damage the fork seals, degrade fork performance, and/or hasten the need to service the fork. These seals must remain airtight to maintain the necessary air pressure in the lower leg for the fork to function properly, and also to prevent dirt, fluids, or debris from getting between the fork legs or into the lower leg. Pressing a zip tie or similar object between the seal(s) and down into the lower fork legs can damage the seals, causing an air leak that degrades fork performance and requiring unwanted repair. It can also push dirt or debris between the seals into the lower fork leg, also degrading performance and shortening the interval between fork services. For these reasons, “burping” the fork with a zip tie or the like is far inferior to using a bleeder valve, which SRAM apparently acknowledged when it released the accused forks with bleeder valves in spring 2022.

F. Irreparable Harm from SRAM's Infringement

18. When SRAM first commercially offered its accused forks with bleeder valves in the spring of 2022, it is my understanding that SRAM had limited success in winning spec positions due to market and supply chain disruptions that had been caused by the COVID-19 pandemic.³ At that time, OEM/brand customers were more interested in selling off their excess inventories than taking on new contracts or liabilities. But for 2023, the mountain bike industry and market are expecting a much more typical spring and early summer for OEM/brand companies and for winning "spec" positions with them. Because the first half of the calendar year is the busy season for competing for fork spec positions with OEM/Brand mountain bike companies, the imminent harm to FOX from SRAM's infringing activities has been steadily increasing since we filed this suit in July 2022 and as we approached the first half of 2023. By December 2022 and January 2023, repeated settlement efforts had not been successful, FOX had already lost eighteen spec positions to SRAM's accused forks (explained below), and FOX had every expectation that SRAM would step up its infringing activities in early 2023 (which is typical for that time of year). Accordingly, FOX believed that it had no choice but to file a motion for preliminary injunction to prevent further irreparable harm. (FOX first filed its PI motion on January 23, 2023, while this case was venued in the Central District of California, then promptly refiled it following transfer to this Court.)

³ In spring of 2022 (when SRAM first commercially offered the accused forks for sale), many OEM/brand companies had an overstock of some components but no inventory of other components, so that they were unable to use many of the components they had purchased on assembled bikes, as desired. Because these kinds of inventory problems were ongoing in the spring of 2022 when SRAM launched the accused forks, many of the fork spec positions SRAM wanted had already been locked in because of long lead times. When SRAM launched its infringing products in early 2022,

19.

[REDACTED]

20.

[REDACTED]

[REDACTED]

21. In addition to the spec position losses explained above, we at FOX know from our history competing against SRAM, market intelligence, customer feedback, and common sense that SRAM is no doubt continuing aggressive efforts to take fork spec positions from FOX with SRAM's accused forks, and that SRAM's efforts will only intensify as during the busy season during the first half of 2023. [REDACTED]

[REDACTED]

[REDACTED] FOX will be irreparably harmed if SRAM's infringing activities are not enjoined for the reasons explained herein.

22. [REDACTED]

[REDACTED] We at FOX also believe SRAM, without its infringing forks with bleeder valves, would not be able to secure many "spec" wins for middle- to high-end bicycle forks. This is because in recent years, particularly since 2020 (MY2021) when FOX introduced its FOX 36 and 38 forks with bleeder valves, mountain bike enthusiasts and OEM/brand sellers have come to expect bleeder valves on mountain bike forks, as explained above. FOX has worked hard for decades and at substantial expense to earn its reputation as a market leader in new suspension technologies, and believes that it should be able to enjoy market exclusivity under FOX's '331 patent. We also believe that FOX's business and reputation for innovation and leadership in the suspension market will be irreversibly harmed if SRAM is not enjoined from selling its infringing forks. Specifically,

allowing SRAM to continue to infringe will undermine the perceived value of FOX's air bleed valve technology and harm FOX's ability to market itself to OEM/brand customers as the exclusive seller of mountain bike forks with air bleed valves.

23. In addition, "spec" positions with OEM/brand customers tend to be sticky, meaning that winning a "spec" position in one year often gives the winner an incumbency position and advantage to win future "spec" positions with the same customer. I understand that FOX's motion for a preliminary injunction does not ask to enjoin or void any written purchase orders for accused forks received by SRAM on or before January 15, 2023. FOX is limiting its requested injunction in this way to avoid detriment or harm to FOX and SRAM's mutual fork customers. But otherwise, if SRAM is permitted to compete against FOX in the remainder of 2023 for future fork spec positions, SRAM will be forcing FOX to compete against FOX's own patented technology, and any "spec" wins by SRAM would give SRAM an incumbency advantage and increased market share in future years. If this were permitted, I believe it would be very difficult to calculate with any precision how financially compensate FOX for price erosion caused by infringing competition from SRAM, SRAM's destruction of FOX's rightful market share, and SRAM's damage to FOX's reputation as a market leader in new suspension technologies.

G. FOX's Careful Consideration Before Suing SRAM

24. SRAM filed a patent suit against FOX's subsidiary in 2015, and that suit grew into multiple patent litigations venued in San Francisco, Chicago, Denver, Taiwan, and Germany and related patent office challenges involving no fewer than four SRAM patents and four FOX patents. In December 2021, FOX and SRAM finally settled these patent disputes. Having just

concluded six years of expensive litigation against SRAM, FOX carefully weighed whether it needed to file this suit against SRAM.

25. SRAM did not commercially release any mountain bike forks with bleeder valves in the lower legs until April and May 2022 (for SRAM’s “model year” 2023 products) to my knowledge; FOX repeatedly tried to purchase such forks before that time but they were not commercially available. Although there was an online article dated October 5, 2021 that described SRAM’s forthcoming RockShox Ultimate Flight Attendant fork with bleeder valves on the lower fork legs, under my direction FOX diligently and regularly tried to purchase that fork from October 2021 through April 2022, but the OEM/Brand websites advised that the bikes outfitted with those forks were not yet available and would be coming in the spring 2022.⁴

26. FOX was finally able to purchase a mountain bike with a RockShox Ultimate Flight Attendant fork on April 6, 2022. By about that same date, FOX was also aware of SRAM’s MY23 Product Communication, which described SRAM’s upcoming new technologies and products for model year 2023, and which I understand is being concurrently filed as Ex. 9 to the McCauley Declaration. That SRAM MY23 Product Communication touted its “New Pressure Relief Valves” on the lower legs of SRAM’s forthcoming Pike Ultimate, Lyrik Ultimate, and ZEB Ultimate forks (*id.* at 6), which SRAM’s Product Communication indicated would not be commercially released (“embargoed”) until May 26, 2022. *Id.* at 1 (note the “Embargo” date of May 26, 2022 stated on the first page). FOX purchased a Pike Ultimate fork

⁴ By October 2021, SRAM had presumably shown potential OEM/Brand customers SRAM’s not-yet commercialized infringing fork design (likely under non-disclosure agreements), but FOX could not obtain one for an infringement analysis until April/May 2022, as explained above.

with bleeder valves on the first day it was commercially available, May 26, 2022, as stated on SRAM's Product Communication.

27. FOX filed this suit July 13, 2022, and the very next day, FOX's Chief Legal Officer spoke with SRAM's in-house patent counsel about this action to explore the possibility of an informal resolution in a Rule 408 discussion. Since that time, they have had at least nine further Rule 408 discussions about this case by phone, at least once each calendar month since July 2022 (except November), and this does not count their many texts and emails over that same period.⁵ In fact, FOX and SRAM agreed to meet in person on January 30, 2023, to try to informally resolve this case, but SRAM cancelled that meeting the week before it was scheduled to happen. The parties also discussed potential settlement via videoconference on February 9, 2023, but were unsuccessful.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 16th day of February, 2023 at Scotts Valley, California.



Wes Allinger

⁵ In the course of my duties as Executive Vice President, Cycling Business Unit, Specialty Sports Group, I frequently communicate with FOX's Chief Legal Officer, who has regularly informed me about his various communications with SRAM attempting to settle this dispute as described in this declaration.