

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

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FOX FACTORY, INC.,

Plaintiff, Civil Action No.
V. 1:23-cv-00313-RM-KAS
SRAM, LLC,
Defendant.

-----X

*** [REDACTED] ***
ZOOM VIDEOTAPED DEPOSITION OF
EVERET ERICKSEN
Thursday, February 15, 2024
12:00 p.m. PST

TAKEN BY:

MICHAEL HICKEY, ESQ.
ATTORNEY FOR DEFENDANT

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Testimony of:

EVERET ERICKSEN

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1 THE VIDEOGRAPHER: Good morning.
2 We're on the record at 9:18 a.m. on
3 February 15, 2024. Please --

4 (Whereupon, a brief discussion
5 is held off the record.)

6 THE VIDEOGRAPHER: Please note
7 that this deposition is being
8 conducted virtually and the quality of
9 the recording depends on the quality
10 of the camera and the internet
11 connection of the participants. What
12 is seen from the witness and heard on
13 screen is what will be recorded.

14 Audio and video recording will
15 continue to take place unless all
16 parties agree to go off the record.
17 This is media unit 1 of the video
18 recorded deposition of Everet Ericksen
19 in the matter of Fox Factory, Inc.,
20 versus SRAM, LLC, filed in the United
21 States District Court for the District
22 of Colorado, Case No.
23 1:23-cv-00313-RM-KAS.

24 The location of this deposition
25 is via Zoom remote meeting. My name

1 is Terrence Weiss and I represent
2 Veritext Legal Solutions and I am the
3 videographer. Our court reporter
4 today is Belle Vivienne from the firm
5 of Veritext Legal Solutions. I am not
6 related to any party in this action,
7 nor am I financially interested in the
8 outcome.

9 Counsel and everyone attending
10 remotely will now state their
11 appearances and affiliations for the
12 record. If there are any objections
13 to proceeding, please state them at
14 the time of your appearance beginning
15 with the noticing attorney.

16 MR. HICKEY: Michael Hickey from
17 the law firm of Lewis Rice
18 representing SRAM LLC.

19 MR. MCCAULEY: Robert McCauley
20 representing plaintiff Fox Factory,
21 Inc., and the witness, Mr. Ericksen.

22 MR. HICKEY: Mr. Walsh.

23 MR. WALSH: Representing SRAM
24 LLC.

25 THE VIDEOGRAPHER: Will the

1 court reporter please swear in the
2 witness.

3 EVERET ERICKSEN,
4 having been first duly sworn by the
5 Certified Stenographic Realtime Reporter,
6 testified as follows:

7 EXAMINATION

8 BY MR. HICKEY:

9 Q. Good morning, Mr. Ericksen.
10 Could you please state your full name for
11 the record?

12 A. Everet Owen Ericksen.

13 Q. And what is your current
14 home address?

15 A. 644 First Street, Woodland,
16 California 95695.

17 Q. And have you ever been
18 deposed before?

19 A. No.

20 Q. So I'll just go -- since you
21 haven't been deposed before, I'll just go
22 through a couple of things just to make
23 sure that we have a clear record.

24 When -- when I ask you a
25 question, I'm going to assume that you

1 understand it unless you tell me that you
2 don't. If you don't understand the
3 question, ask me to -- just tell me that
4 you don't understand the question and
5 I'll try to rephrase it.

6 You do need to provide
7 verbal responses for the court reporter,
8 and I think Mr. McCauley already said,
9 you know, before we started, make sure,
10 you know, you give him a chance to make
11 any objection that he might have. I'll
12 try not to talk over you. If I do, I
13 apologize in advance.

14 But do you understand all of
15 that?

16 A. Yes.

17 Q. And have you taken any
18 medication that would affect your ability
19 to understand or remember?

20 A. No.

21 Q. Have you ever served as an
22 expert witness in any matters?

23 A. No.

24 Q. Have you ever testified at
25 trial?

1 A. No.

2 Q. Have you ever been a party
3 to a lawsuit?

4 A. No.

5 Q. Did you meet with the
6 lawyers for Fox before this lawsuit was
7 filed?

8 A. Which lawyers are you
9 referring to?

10 Q. The lawyers at Finnegan.

11 A. No. Let me clarify that. I
12 believe one lawyer came to Fox Factory
13 and we talked about the shock. I don't
14 know if that was before or after the
15 lawsuit was filed.

16 Q. And when was that?

17 A. Last year. I don't remember
18 exactly. I believe it was last year.

19 Q. And was that in the first
20 part of 2023 or the second part of 2023?

21 A. Well, it was right after
22 SRAM released the shock in question so I
23 think that was in the spring, summer
24 maybe.

25 Q. And when was the next

1 time that -- well, and was that a lawyer
2 from Finnegan that you met with at that
3 time?

4 A. Yes.

5 Q. And who was that?

6 A. I don't remember his name.

7 THE WITNESS: It was who we were
8 talking about yesterday, Robert, and
9 he is on the clerkship now. I don't
10 remember his name.

11 BY MR. HICKEY:

12 Q. But that was a lawyer from
13 Finnegan?

14 A. Yeah.

15 Q. And when was the next time
16 that you -- and have you met with lawyers
17 from Finnegan since that time?

18 A. No. Well, yesterday.

19 Q. And who did you meet with
20 from Finnegan yesterday?

21 A. Arpita and Robert.

22 (Reporter clarification.)

23 THE WITNESS: Arpita,

24 A-R-P-I-T-A.

25 BY MR. HICKEY:

1 Q. And how long did you meet
2 with them?

3 A. Six or seven hours.

4 Q. And did you review any
5 documents?

6 A. Yes.

7 MR. MCCAULEY: Objection to the
8 question the way it's phrased. You
9 need to lay a foundation, Michael.

10 BY MR. HICKEY:

11 Q. What is your educational
12 background, Mr. Ericksen?

13 A. I have a bachelor's and
14 master's in mechanical engineering.

15 Q. And where did you get those
16 degrees?

17 A. University of Nevada, Reno.

18 Q. And when did you get those
19 degrees?

20 A. Bachelor -- bachelor's in
21 '97, master's in '99.

22 Q. And could you describe your
23 work history with respect to engineering?

24 A. Yeah. After graduating with
25 master's, I moved to Detroit and worked

1 for Tenneco automotive. I worked in the
2 advanced suspension technologies group
3 for three years. And then I came to Fox
4 in 2002, and I worked for ten years in
5 the power sports group as a senior design
6 engineer.

7 In 2012, I was promoted to
8 engineering manager and I founded a
9 mechatronics engineering group, and I
10 continue to be the manager of that today.

11 Q. You said "mechatronics"?

12 A. Yes.

13 Q. And could you spell that for
14 the court reporter?

15 A. M-E-C-H-A-T-R-O-N-I-C-S.

16 It's a -- it's a blending of mechanical
17 and electrical engineering.

18 Q. And what was your job title
19 at Tenneco?

20 A. I think it was design
21 engineer, if I remember correctly.

22 Q. And what were your roles and
23 responsibilities in that position?

24 A. Shock absorber design and
25 development. I worked in a new product,

1 kind of a research group, new product
2 development group.

3 Q. And shock absorbers for what
4 types of applications?

5 A. Primarily passenger car --
6 well, pickup truck and passenger car
7 primarily.

8 Q. And can you describe to the
9 jury what a shock absorber is?

10 A. Yeah, it's a device that
11 converts mechanical energy to thermal
12 energy and it's part of the ride of a
13 vehicle.

14 Q. Are shock absorbers used for
15 applications other than vehicles?

16 A. Yes.

17 Q. What other kind of
18 applications can shock absorbers be used
19 for?

20 A. Like on a door. It's the
21 thing that keeps the door from slamming
22 shut. It's used in industrial situations
23 all the time, production lines, any time
24 you want to slow something down and not
25 damage it, there's typically a shock

1 absorber involved in that.

2 Q. Are you aware of any medical
3 applications for shock absorbers?

4 A. Yeah, prosthetics typically
5 have shock absorbers in them.

6 Q. And I've put into the
7 Exhibit Share an exhibit. If you could
8 open that up and take a look at it. It's
9 Exhibit 48.

10 (Exhibit 48, United States
11 Patent No. 8,550,223 B2, marked for
12 identification.)

13 A. Okay.

14 BY MR. HICKEY:

15 Q. And do you recognize that
16 document?

17 A. Yes.

18 Q. And what is that document?

19 A. It's the patent for the
20 device in question in this matter.

21 Q. And you're a named inventor
22 on this patent?

23 A. Yes.

24 Q. And there are two other
25 named inventors on the patent, correct?

1 A. Correct.

2 Q. And you've been named on
3 other patents as -- as an inventor,
4 correct?

5 A. Yes.

6 Q. And do you understand the
7 difference between being named as a sole
8 inventor and being named as one of
9 multiple inventors?

10 A. I've never considered that
11 question. If it's as simple as the
12 obvious, of one versus many, I think I
13 would understand.

14 Q. Okay. And what was your
15 contribution to the '223 patent?

16 A. Well, this is a long time
17 ago, so I will acknowledge that my memory
18 is a little fuzzy. I was the engineer on
19 the project and I was working with the
20 riders and I was the project owner. As I
21 remember, I think I came -- I brought the
22 basic idea to the table of what we wanted
23 to do here.

24 Q. And the other named
25 inventors are Christopher Paul Cox and

1 Wesley Allinger; do you see that?

2 A. Yes.

3 Q. And do you recall what their
4 contributions were to the '223 patent?

5 A. I don't remember specifics.

6 Q. And you see that the
7 application that gave rise to the '223
8 patent is listed as application
9 12/463,927 and that was filed May 11,
10 2009?

11 A. I'm not sure I see that.

12 Q. If you go down in the column
13 on the first page on the left, there are
14 numbers 21 and 22; do you see those?

15 A. Yes.

16 Q. And the application number
17 that's listed is 12/463,927; do you see
18 that?

19 A. Yeah, thanks for clarifying.
20 Yes, I see that.

21 Q. Sure.

22 And it was filed on May 11,
23 2009?

24 A. Yes.

25 Q. And then you see under it,

1 it says, "Related U.S. Application Data";
2 do you see that?

3 A. Yes.

4 Q. And it lists, "Provisional
5 application No. 61/052,150, filed on
6 May 9, 2008"; do you see that?

7 A. Yes.

8 Q. And do you know who's listed
9 as the inventor on that provisional
10 application?

11 A. No.

12 Q. Would it surprise you if the
13 only inventor that was listed on that
14 application was Mr. Cox?

15 A. No.

16 Q. Does that refresh your
17 recollection as to whether you brought
18 the basic idea for the '223 patent to the
19 table?

20 A. No, it does not.

21 Q. You don't remember Mr. Cox
22 coming forward with this idea first?

23 A. No.

24 Q. And if you turn to the
25 claims that are listed at the end of the

1 patent, starting with claim 1.

2 A. Okay.

3 Q. And claim 1 identifies, "A
4 damper for a shock absorber"; do you see
5 that on the first line?

6 A. Yes.

7 Q. And comprising a number of
8 different elements; do you see that?

9 A. Yes.

10 Q. And is that invention that's
11 in claim 1, is that limited to use with a
12 vehicle?

13 MR. MCCAULEY: Objection, calls
14 for a legal conclusion.

15 Go ahead.

16 BY MR. HICKEY:

17 Q. You can answer the question,
18 Mr. Ericksen.

19 A. I think it applies to any
20 shock absorber.

21 Q. And claim 11, do you see
22 that?

23 A. Yes.

24 Q. And it identifies, "A fluid
25 damper" with a number of -- comprising a

1 number of elements; do you see that?

2 A. Yes.

3 Q. And do you understand claim
4 1 to be limited to any particular use
5 with a vehicle or otherwise?

6 MR. MCCAULEY: Objection, calls
7 for a legal conclusion.

8 Go ahead.

9 A. No, I don't.

10 BY MR. HICKEY:

11 Q. So the invention in claim 11
12 could be used for any of those types of
13 uses you described before in terms of
14 automobiles, trucks, doors, industrial
15 equipment, production lines, prosthetics,
16 et cetera; is that right?

17 A. Yes.

18 MR. MCCAULEY: Same objection.

19 THE COURT REPORTER: I heard
20 "yes"; is that correct?

21 THE WITNESS: That would have
22 been my answer, yes.

23 BY MR. HICKEY:

24 Q. And, again, Mr. Ericksen,
25 just so the record is clear, give Fox --

1 Mr. McCauley an opportunity to interpose
2 any objections that he might have.

3 A. Okay.

4 Q. And looking at claim 17 of
5 the '223 patent, do you understand claim
6 17 to be limited to any particular -- let
7 me strike that.

8 You see claim 17 and it
9 identifies, "A shock absorber comprising"
10 a number of different elements; do you
11 see that?

12 A. Yes.

13 Q. And do you understand claim
14 17 to be limited to use with a vehicle?

15 MR. MCCAULEY: Objection, calls
16 for a legal conclusion.

17 Go ahead.

18 A. I don't believe that it
19 refers to any particular vehicle.

20 BY MR. HICKEY:

21 Q. It's identifying a shock
22 absorber that could be used for, you
23 know, any application where a shock
24 absorber was needed, right?

25 MR. MCCAULEY: Same objection.

1 A. That's how I interpret it.

2 BY MR. HICKEY:

3 Q. And claim 19, do you see
4 that?

5 A. Yes.

6 Q. It identifies, "A damper for
7 a shock absorber comprising," a number of
8 different elements; do you see that?

9 A. Yes.

10 Q. And do you understand claim
11 19 to be limited to any particular
12 application for shock absorbers?

13 MR. MCCAULEY: Same objection.
14 Go ahead.

15 A. No, I do not.

16 BY MR. HICKEY:

17 Q. And going back to claim 1,
18 can you tell me how many pistons are
19 identified in claim 1?

20 A. Let me review it, please.

21 Q. Sure.

22 A. My cursory reading of that
23 claim, I think there's one piston
24 described.

25 Q. And if you look at claim 17,

1 how many pistons are identified?

2 MR. MCCAULEY: Objection --

3 BY MR. HICKEY:

4 Q. Take your time and read the
5 whole claim.

6 MR. MCCAULEY: Objection, vague.

7 A. Two pistons.

8 BY MR. HICKEY:

9 Q. And going up to claim 11,
10 how many pistons are identified there?

11 A. Two.

12 Q. And then turning to claim
13 19, how many pistons are identified in
14 claim 19?

15 A. Zero.

16 Q. And claim 19 refers to a
17 valve; do you see that?

18 A. We talking the first few
19 sentences?

20 Q. Yeah, in claim 19 it says,
21 "A damper for a shock absorber
22 comprising: A fluid; a compression
23 chamber; a bottom out cup; a" volve -- "a
24 valve wherein."

25 Do you see that?

1 A. Yes.

2 Q. Could you describe to the
3 jury what you understand a valve to be?

4 MR. MCCAULEY: Objection, vague.

5 THE WITNESS: Do I answer?

6 MR. MCCAULEY: Yes.

7 BY MR. HICKEY:

8 Q. You can answer.

9 A. I think a valve is a -- a
10 general term and the answer would depend
11 on the context in which it's used.

12 Q. What do you understand
13 "valve" to refer to in claim 19 here?

14 A. I -- with my cursory reading
15 of this without having studied it, I
16 would say it's the bottom out piston
17 engaging the bottom out cup that
18 constitutes the valve. It -- it -- I --
19 actually, it might be the -- the manual
20 adjuster in that circuit as well. I'd
21 have to study it further to know.

22 Q. Well, you're the named --
23 one of the named inventors on this
24 patent, correct?

25 A. Yes.

1 Q. And have you read the '223
2 patent before?

3 A. Yes.

4 Q. Have you read it recently?

5 A. I reviewed it yesterday.

6 Q. Did you read all of it
7 yesterday or just some of it?

8 A. Just some of it.

9 Q. What parts of it did you
10 read yesterday?

11 A. Some of the claims.

12 Q. Did you read the
13 specification?

14 A. Some of it.

15 Q. Did you review the figures?

16 A. Yes.

17 Q. Do you remember what parts
18 of the specification you reviewed?

19 A. No.

20 Q. Do you remember what claims
21 you reviewed?

22 A. No.

23 Q. And when it says, "A valve
24 wherein," do you have an understanding of
25 where that valve is located, if it's in

1 the compression chamber, the bottom out
2 cup, the damper generally?

3 A. Again, without studying it
4 more intensely, I -- if it's referring to
5 the manual adjuster portion of the bottom
6 out cup circuit, I would say it's part of
7 the bottom out cup circuit.

8 Q. Well, claim 19 doesn't say
9 anything about a manual adjuster portion
10 of the bottom out cup circuit; does it?

11 A. No.

12 Q. Would you agree that a valve
13 is generally described as something that
14 would open or close flow for air or
15 liquid?

16 A. I think the term "valve" is
17 contextual. I hesitate to answer that
18 question without knowing the specifics in
19 the hypothetical. I can't answer that
20 question.

21 Q. I'm not presenting a
22 hypothetical. I'm -- I'm asking you as
23 a -- as an engineer if you can tell the
24 jury what a valve is.

25 A. Can you repeat your question

1 then, please?

2 Q. Would you agree that a valve
3 is generally described as something that
4 would open or close flow for air or
5 liquid?

6 A. I think it's generally done.
7 I could agree to that. It doesn't mean
8 that's the only thing it could do.

9 Q. And in claim 19 it refers
10 to, "a fluid."

11 Do you see that?

12 A. Yes.

13 Q. Could you describe to the
14 jury what a "fluid" is?

15 MR. MCCAULEY: Objection to the
16 extent it calls for a legal
17 conclusion, vague.

18 Go ahead.

19 A. I think that would be a
20 liquid in this case.

21 BY MR. HICKEY:

22 Q. Is air a fluid?

23 A. Yes.

24 Q. So the damper for a shock
25 absorber that is in claim 19 could be

1 applied in a situation where the fluid
2 that was being used was air; is that
3 right?

4 MR. MCCAULEY: Objection to the
5 extent it calls for a legal
6 conclusion.

7 Go ahead.

8 A. Perhaps.

9 BY MR. HICKEY:

10 Q. And claim 19 refers to, "A
11 compression chamber"; do you see that?

12 A. Yes.

13 Q. Could you describe to the
14 jury what a compression chamber is?

15 A. It's a volume that has
16 pressure in it on the compression stroke
17 of the shock absorber.

18 Q. And how is that volume
19 defined?

20 A. It's encaptured by the
21 cylinder walls and the bottom of the
22 shock absorber, and then the piston --
23 the main moving piston defines the top
24 end of the chamber, so the chamber is
25 decreasing in sizes. The shock absorber

1 is compressing and fluid is moving in and
2 out of that chamber.

3 Q. So the compression chamber
4 is an enclosed space?

5 A. I think that's an accurate
6 description.

7 Q. And claim 19 refers to, "A
8 bottom out cup"; do you see that?

9 A. Yes.

10 Q. Could you explain to the
11 jury what a bottom out cup is?

12 A. It's a separate chamber that
13 engages when the shock absorber is near
14 the end of the stroke and when the bottom
15 out piston enters the bottom out cup, it
16 now defines the second compression
17 chamber that adds compression damping
18 force for the last portion of the travel
19 of the shock absorber.

20 Q. And when you say, "It's a
21 separate chamber that engages when the
22 shock absorber is near the end of the
23 stroke," are you referring to the end of
24 the compression stroke?

25 A. Yes.

1 Q. And when you say, "It's a
2 separate chamber that engages," what does
3 that separate chamber engage with?

4 A. There's a bottom out piston
5 that's attached to the shaft and so the
6 shaft is compressing into the shock
7 absorber as -- on the compression stroke,
8 and at a certain point that piston -- the
9 bottom out piston engages the bottom out
10 cup and then that defines the second
11 chamber.

12 Q. And if you go on in claim
13 19, it says, "In a compression stroke of
14 the damper, the fluid flows from the
15 bottom out cup to the compression chamber
16 at a first rate with the valve in a first
17 position and at a second rate with the
18 valve in a second position [wherein] the
19 first rate is greater than the second
20 rate and the valve includes an adjuster
21 accessible from an exterior of the shock
22 absorber."

23 Do you see that?

24 A. Yes.

25 Q. Does that give you a better

1 understanding of what valve is being
2 referred to? Is that valve the bottom
3 out piston?

4 A. I think so.

5 Q. And that -- that bottom out
6 piston has an adjuster associated with
7 it?

8 A. Yes.

9 MR. MCCAULEY: Objection.
10 Objection to the extent it calls for a
11 legal conclusion.

12 His answer was yes.

13 Mr. Ericksen, please pause to
14 give me an opportunity to object.

15 THE WITNESS: Sure.

16 BY MR. HICKEY:

17 Q. And is that -- when it's --
18 when it says, "The valve includes an
19 adjuster accessible from an exterior of
20 the shock absorber," is that adjuster a
21 separate part from the valve?

22 MR. MCCAULEY: Objection to the
23 extent it calls for a legal
24 conclusion.

25 Go ahead.

1 A. It says "includes," so I
2 read that as it's part of it.

3 BY MR. HICKEY:

4 Q. So there's an adjuster that
5 is part of the bottom out piston; is that
6 right?

7 MR. MCCAULEY: Same objection.

8 A. I don't know what the --
9 what you mean by a "part," the definition
10 of that is -- what that means.

11 BY MR. HICKEY:

12 Q. Well, you said, "It says
13 'includes,' so I read that as it's part
14 of it."

15 Do you remember that?

16 A. It's part of the system.
17 It's not physically attached to it, if
18 that's what you mean.

19 Q. It's -- it's part of the
20 system as a whole?

21 A. Yes.

22 Q. Okay. So the valve and --
23 and I'm just trying to understand this.
24 So I'm -- the -- your view is that for
25 claim 19, the valve is the bottom out

1 piston and then there's a separate
2 adjuster accessible from the exterior of
3 the shock absorber that is part of the
4 entire system described in claim 19; is
5 that right?

6 MR. MCCAULEY: Objection to the
7 extent it calls for a legal
8 conclusion.

9 Go ahead.

10 A. Yes, that's how I would
11 interpret that.

12 BY MR. HICKEY:

13 Q. So when you said before that
14 claim 19 didn't identify any pistons, do
15 you now believe that claim 19 identifies
16 a piston?

17 MR. MCCAULEY: Objection, vague
18 as to the term identify.

19 THE WITNESS: Do I answer?

20 MR. MCCAULEY: Yes.

21 BY MR. HICKEY:

22 Q. Yes.

23 A. Yeah, I think it would
24 include that bottom out piston.

25 Q. And could you describe what

1 kind of suspension systems you worked on
2 at Tenneco?

3 A. Passenger car and pickup
4 truck suspension systems primarily. I --
5 as part of that group, I worked on lots
6 of different vehicles, but I did some
7 electronic suspension development and I
8 did ride work for half of my time there,
9 which is tuning vehicles in the field for
10 the Big Three primarily.

11 Q. And then you went over to
12 Fox, you said in 2002; is that right?

13 A. Yes.

14 Q. And you said you worked in
15 the power sports group?

16 A. Correct.

17 Q. And what was your title
18 initially in the power sports group at
19 Fox?

20 A. Senior design engineer.

21 Q. Can you describe your roles
22 and responsibilities in that position?

23 A. I was primarily responsible
24 for new product development, so I think
25 that speaks for itself.

1 Q. And what type of products
2 did the power sports group develop?

3 A. Yeah, it was powered
4 vehicles primarily with a handlebar was
5 the delineation between -- there was
6 another off-road group that did off-road
7 trucks. So we did snowmobiles,
8 motorcycles, ATVs and then later got into
9 side-by-sides.

10 Q. And by "side-by-sides,"
11 are -- you are referring to something
12 like a Polaris?

13 A. Yeah, a Polaris Razer.

14 Q. And how long were you in
15 that position?

16 A. Ten years.

17 MR. MCCAULEY: Michael, I'm
18 sorry to -- I know it hasn't been a
19 full hour, but when you get to a
20 convenient transition point, can we
21 take a break? I need to take a call.

22 MR. HICKEY: Sure. We can take
23 a break right now, Rob.

24 MR. MCCAULEY: Thank you. I
25 appreciate it.

1 MR. HICKEY: Not a problem.

2 How - -

3 THE VIDEOGRAPHER: This ends
4 media 1. We're now going off the
5 record. The time is 10:05.

6 (Whereupon, a brief recess is
7 taken.)

8 THE VIDEOGRAPHER: This begins
9 media 2. We're now back on the
10 record. The time is 10:32.

11 BY MR. HICKEY:

12 Q. Mr. Ericksen, previously we
13 were talking about bottom out piston.

14 Could you describe to a jury
15 what "bottom out" refers to?

16 A. The - - the focus of this
17 patent is a vehicle, and in the context
18 of a vehicle, it's when you've reached
19 the end of the travel of the suspension
20 and you feel a harsh impact by the
21 occupants of the vehicle. That's
22 generally referred to as a "bottom out
23 event" on a vehicle.

24 Q. A bottom out condition can
25 occur for any shock absorber; is that

1 right?

2 A. I would not be comfortable
3 answering that question, "any shock
4 absorber." I don't know. We would have
5 to take a specific case for me to
6 comment.

7 Q. Well, isn't a bottom out
8 condition when the -- the piston reaches
9 the end of -- the end of this compression
10 travel?

11 A. I think that's generally a
12 correct statement. I could think of
13 other scenarios where that's not true.

14 Q. And so there are devices
15 that have been used to address that
16 condition when the piston reaches the end
17 of its compression travel such as bottom
18 out bumpers, correct?

19 A. I think a bottom out bumper
20 addresses the situation in a different
21 manner than a bottom out cup.

22 Q. And how does the bottom out
23 bumper address the bottom out condition?

24 A. A bottom out bumper is a
25 storage -- energy storage device, so it's

1 like a spring. On a bottom out cup,
2 you -- you dissipate the energy into
3 heat.

4 Q. A bottom out condition could
5 occur with a prosthetic device if there
6 were an especially harsh impact, correct?

7 A. I know nothing about
8 prosthetic devices. I can't comment on
9 that.

10 Q. Well, you're an engineer,
11 correct?

12 A. Yes.

13 Q. And you have a master's in
14 engineering from the University of
15 Nevada, Reno, correct?

16 A. Correct.

17 Q. And the University of
18 Nevada, Reno, has a well-regarded
19 engineering program; doesn't it?

20 A. I think so.

21 Q. And -- and in fact, it's got
22 a well-regarded engineering program
23 related to suspension technology,
24 correct?

25 A. I think so.

1 Q. So are you telling the jury
2 that as an engineer with a master's in
3 engineering from a highly regarded
4 engineering program like the University
5 of Nevada, Reno, with a specialty in
6 suspension technology that -- that you
7 don't know if a bottom out condition
8 could ever occur in a shock absorber for
9 a prosthetic device?

10 MR. MCCAULEY: Objection,
11 argumentative, and asked and answered.
12 Go ahead.

13 A. I do not know anything about
14 prosthetics. I've never worked on one.
15 I've never studied one. I have no idea
16 how they work.

17 BY MR. HICKEY:

18 Q. And you said previously that
19 the focus of this patent is a vehicle; is
20 that right?

21 A. Yes.

22 Q. But you acknowledge that the
23 claims of this patent are not limited to
24 shock absorbers for vehicles, correct?

25 MR. MCCAULEY: Objection to the

1 extent it calls for a legal
2 conclusion.

3 Go ahead.

4 A. My understanding is that you
5 read the claims in the context of the
6 patent. In the description of the
7 patent, we talked about the vehicle and
8 we talked about bottom out -- bottom out
9 events associated with vehicles.

10 BY MR. HICKEY:

11 Q. So now are you saying that
12 the claims of the '223 patent are limited
13 to use for vehicles only?

14 MR. MCCAULEY: Same objection.

15 Go ahead.

16 A. I don't know the answer to
17 that question.

18 BY MR. HICKEY:

19 Q. Well, it's your patent.

20 Are you saying you can't
21 tell the jury whether or not this patent
22 is limited to vehicles or not?

23 MR. MCCAULEY: Objection, calls
24 for a legal conclusion.

25 Go ahead.

1 BY MR. HICKEY:

2 Q. Well, let me -- let me ask
3 you a different question, Mr. Ericksen.

4 Did you write this patent
5 for lawyers or for engineers?

6 MR. MCCAULEY: Objection, vague.

7 BY MR. HICKEY:

8 Q. You can answer. Is there
9 something that's vague about that
10 question, Mr. Ericksen, that you don't
11 understand?

12 A. I submitted an invention
13 disclosure and the patent attorneys wrote
14 the patent.

15 Q. And is there anything vague
16 about the claims of your patent?

17 MR. MCCAULEY: Objection,
18 compound, calls for a legal
19 conclusion.

20 Go ahead.

21 A. I think the claims of the
22 patent are very simple. This is an
23 adjustable bottom out cup. The
24 adjustability function of the bottom out
25 cup is like -- is novel here and was the

1 focus of the patent.

2 BY MR. HICKEY:

3 Q. So is this patent intended
4 to be read by lawyers or by people of
5 skill in your field?

6 A. I think both.

7 Q. Okay. And there -- are you
8 aware of bottom out conditions occurring
9 for shock absorbers in any area besides
10 for vehicles?

11 A. Is that a general question?

12 Q. Are you aware of bottom out
13 conditions occurring for shock absorbers
14 in any area besides for vehicles?

15 A. I think -- I think that
16 could happen, yes.

17 Q. So you could have a damper
18 for a shock absorber that has a bottom
19 out cup that could be used for
20 applications besides vehicles, correct?

21 MR. MCCAULEY: Objection to the
22 extent it calls for a legal
23 conclusion, incomplete hypothetical.

24 Go ahead.

25 A. If it's a hypothetical, I

1 think perhaps that could be true. It
2 would be a case-by-case dependent --
3 dependency.

4 BY MR. HICKEY:

5 Q. Would you agree that this is
6 a technology disclosed in the '223 patent
7 that's dedicated to control a last few
8 millimeters of travel during the
9 compression stroke of a piston?

10 A. The distance, the "few
11 millimeters," as you put it, doesn't
12 matter. It could be any amount of
13 travel, whether it's the last portion --

14 (Reporter clarification.)

15 A. He says the last few
16 millimeters. Doesn't have to be
17 millimeters. It's the last portion of
18 the travel of the compression stroke.

19 BY MR. HICKEY:

20 Q. And does the technology
21 that's claimed in the '223 patent, does
22 that provide an extra damping force
23 against bottom out?

24 A. Yes. That's one thing that
25 it does, yes.

1 Q. Does the technology that's
2 claimed in the '223 patent allow you to
3 use softer springs?

4 MR. MCCAULEY: Objection to the
5 extent it calls for a legal
6 conclusion, vague.

7 Go ahead.

8 A. We never deployed it that
9 way. We never changed the spring rate in
10 culmination with this.

11 BY MR. HICKEY:

12 Q. Does the technology that's
13 claimed in the 23 -- '223 patent allow
14 you to use softer springs?

15 MR. MCCAULEY: Same objections.

16 Go ahead.

17 A. I don't know the answer to
18 that because we never experimented with
19 it and I -- I don't have a conclusion
20 based on that, but perhaps.

21 BY MR. HICKEY:

22 Q. Does the system claimed in
23 the '223 patent use both a secondary
24 position -- a secondary piston and a
25 bottom out cup?

1 A. Yes.

2 Q. And do those two parts
3 together help absorb the biggest hits to
4 the shock absorber?

5 MR. MCCAULEY: Objection, vague.
6 Go ahead.

7 A. "Biggest hits" is -- I don't
8 know exactly what you mean by that, but
9 in a harsh bottom out event, yes, the
10 secondary piston would help absorb that
11 energy.

12 BY MR. HICKEY:

13 Q. And when the shock absorber
14 is compressed during that last portion of
15 the compression stroke, the secondary
16 piston goes inside the bottom out cup; is
17 that what's claimed in the '223 patent?

18 MR. MCCAULEY: Objection to the
19 extent it calls for a legal
20 conclusion.

21 Go ahead.

22 A. Yes.

23 BY MR. HICKEY:

24 Q. And by the adjuster that's
25 claimed in the '223 patent, the user is

1 able to act on the oil flow, correct?

2 A. In the -- in that last
3 portion of travel where the bottom out
4 piston has entered the bottom out cup,
5 the adjuster adjusts the level of damping
6 in that -- in that circuit, yes.

7 Q. And by the use of that
8 adjuster, the user is also obviously able
9 to act on the -- the pressure of that
10 fluid, correct?

11 A. Correct.

12 Q. And then by passing through
13 a calibrated or adjusted orifice, the
14 fluid pressure increases and then you can
15 count on firm support, correct?

16 MR. MCCAULEY: Objection, vague.

17 A. Yeah, the adjuster has many
18 positions on a particular position of
19 that orifice, as you referred to it,
20 would set the pressure in the bottom out
21 cup, which would set the end-of-stroke
22 damping levels.

23 BY MR. HICKEY:

24 Q. And during your ten years as
25 a senior design engineer at Fox, could

1 you describe some of the particular
2 products that you worked on or developed?

3 A. I -- the first portion of my
4 time there, I worked on snowmobile
5 applications, snow-cross, which is a kind
6 of a motocross-style discipline for
7 snowmobiles. Then I moved into ATV,
8 which is like four-wheeler motocross
9 racing. We -- I developed a novel
10 suspension system. We did a lot of
11 racing and won a national championship,
12 and I learned a lot in that activity and
13 that was the parlay into the moto --
14 motorcycle/motocross activity that we
15 developed the shock absorber for.

16 Q. And when you say "that we
17 developed the shock absorber for," are
18 you referring to the shock absorber for
19 the '223 patent?

20 A. Correct.

21 Q. And on the ATV side, you
22 said you developed a novel suspension
23 system. What was that?

24 A. It was an air spring-based
25 shock absorber for the front, the front

1 wheels of that four-wheeler. We had a
2 more conventional shock absorber for the
3 rear that we had -- we also developed,
4 but there wasn't anything patentable or
5 special about it.

6 Q. And what was the -- was
7 there a product name that was given to
8 the air spring-based shock absorber for
9 the front?

10 A. Yeah, it was called the
11 Float X Evol. E-V-O-L.

12 (Reporter clarification.)

13 A. Yeah, Float X and then Evol,
14 E-V-O-L.

15 BY MR. HICKEY:

16 Q. Any other products or
17 projects that you worked on as senior
18 design engineer?

19 A. We did some sprint car
20 racing. I -- I developed a shock --
21 shock system for that. Nothing special
22 about that. Yeah, that -- I have to
23 think -- I think that brings me up to the
24 time that I moved over to the
25 mechatronics management position.

1 Q. And the -- your movement to
2 the mechatronics position was in 2012; is
3 that right?

4 A. Roughly, yes.

5 Q. And could you describe,
6 again, what "mechatronics" refers to?

7 A. It -- when I -- when I moved
8 in 2012, the group's name was the
9 advanced products group. So we were
10 working on future technologies for
11 multiple divisions within the business.
12 What that became to mean is electronic
13 suspension systems, and so quickly we
14 changed the name to mechatronics because
15 we were blending mechanical engineering
16 conventional shock absorbers with
17 electronically controlled --
18 electronically controlled version of
19 that. And so it was -- it was a blending
20 of electrical and mechanical engineering.

21 Q. And what were some of the
22 products that you worked on in that role?

23 A. We've done a lot of
24 research, activities that have not come
25 out, but the main product that we have

1 launched is called Live Valve, L-I-V-E,
2 Valve, and we developed that for
3 bicycles. It's on the Ford Raptor and on
4 various side-by-side vehicles and I
5 worked on each of those.

6 Q. And could you describe what
7 is involved with the Live Valve
8 application?

9 A. Yeah, it --

10 MR. MCCAULEY: Wait, wait. If
11 there's anything confidential here
12 that has not been made public, I'm
13 going to need an opportunity to speak
14 with -- with Mr. Ericksen to see what
15 he can say about answering your
16 questions. I don't think any of this
17 is relevant to the case.

18 A. I could answer that with
19 everything that's in the public domain.

20 BY MR. HICKEY:

21 Q. That's fine.

22 (Cross talk.)

23 BY MR. HICKEY:

24 Q. That's all I was looking
25 for.

1 A. There's various sensors on
2 the vehicle that -- there's a
3 microprocessor in the system that
4 collects data from the sensors and then
5 changes the damping of the shock absorber
6 accordingly. It's via an algorithm. And
7 each of the products that I mentioned are
8 on -- in the market for sale right now.

9 Q. And going back to the -- the
10 shock that you said that you developed
11 associated with the '223 patent, what --
12 what was the name of that shock?

13 A. The Podium RC3.

14 Q. And are there any other Fox
15 products that have incorporated the
16 technology of the '223 patent?

17 A. Not to my knowledge, but I
18 will freely admit that I don't have
19 frequent interaction with the power
20 sports group anymore, so I don't know
21 what they've released in recent time, but
22 I don't believe so.

23 Q. Obviously, Fox has alleged
24 that SRAM -- SRAM's products infringe the
25 '223 patent.

1 Are you aware of any other
2 companies in the market that are using
3 the technology of the '223 patent?

4 A. I -- I have seen magazine
5 articles that looked to me like perhaps
6 they are violating our patent as well.

7 Q. And what -- what companies
8 were referenced in those magazine
9 articles?

10 A. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

11 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
12 Q. And why do you say you think
13 that they're using that technology?

14 A. I saw a magazine article
15 that showed a cross-section of the shock
16 absorber.

17 Q. Do you recall the name of
18 the shock absorber?

19 A. No.

20 Q. When did you see that
21 article?

22 A. I believe it was last year
23 as well.

24 Q. And do you know if Fox has
25 accused that company of infringement of

1 the '223 patent?

2 A. I do -- I don't know.

3 Q. [REDACTED]
[REDACTED]

5 A. No.

6 MR. MCCAULEY: For the record,
7 I'm going to designate this discussion
8 about EXT, et cetera, as attorneys'
9 eyes only, confidential under the
10 Protective Order.

11 Go ahead.

12 I think it's highly confidential
13 attorneys' eyes only.

14 Go ahead.

15 MR. HICKEY: Well, he's talking
16 about something that he said was
17 published in a magazine article, so
18 I'm not sure how it's attorneys' eyes
19 only at all.

20 MR. MCCAULEY: The fact that he
21 thinks it infringes based on what he
22 saw -- or might infringe, I should
23 say, based on what he saw, because
24 that's what he testified to, I think
25 that's highly confidential attorneys'

1 eyes only and people at SRAM don't
2 need to know that. The existence of
3 that product is something different.

4 MR. HICKEY: So just to be clear
5 on the record, [REDACTED] [REDACTED] [REDACTED]

6 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
7 absorber as attorneys' eyes only.

8 MR. MCCAULEY: Its mere
9 existence, no, but the fact that
10 Mr. Ericksen, based on something he
11 saw online, thinks that it might
12 infringe his patent, I do think it is
13 attorneys' eyes only, highly
14 confidential. And, you know, we -- we
15 can discuss that later if you disagree
16 with me. I don't want to hold up the
17 deposition over it.

18 MR. HICKEY: No, and all I'm
19 trying to do, Rob, is I just wanted to
20 make sure that we're clear on the
21 record. And I can ask a separate
22 question, if you want to have it
23 separately designated so that it
24 doesn't have that same thing. I could
25 just ask and say, are you aware of a

1 shock absorber that [REDACTED]
[REDACTED] sells that includes
3 adjustable bottom out control.

4 MR. MCCAULEY: I wouldn't object
5 to that or I wouldn't -- I should say
6 I wouldn't -- I wouldn't see a need to
7 designate that confidential.

8 BY MR. HICKEY:

9 Q. You can answer the question,
10 Mr. Ericksen.

11 A. Would you mind repeating the
12 question, please?

13 Q. Are you aware of a shock
14 absorber that a company called EXT out of
15 Italy sells that includes adjustable
16 bottom out control?

17 A. Based on the marketing
18 material from that company, that's what
19 they call it, so I believe that they do.

20 Q. Any other companies that
21 you're aware of that you believe are
22 using the technology of the '223 patent?

23 A. Other than SRAM?

24 Q. Other than the allegations
25 that have been made against SRAM and the

1 [REDACTED] that you've referred to.

2 A. I'm not aware of others.

3 (Whereupon, a brief discussion
4 is held off the record.)

5 MR. MCCAULEY: I apologize. I'm
6 not trying to be a problem. I have a
7 very sick German shepherd that's being
8 treated today and I'm having to
9 correspond with the vet. I apologize
10 for that. I'm going to go on mute. I
11 thought I was on mute a minute ago.

12 Michael, please proceed. I'll
13 jump in if I need to.

14 MR. HICKEY: Okay. If you -- if
15 you need time, just let me know, Rob.

16 MR. MCCAULEY: I appreciate
17 that, but please go ahead. I'll -- I
18 won't be shy about jumping in if I
19 need to.

20 BY MR. HICKEY:

21 Q. Okay. Mr. Ericksen, in
22 addition to the Live Valve product that
23 you were talking about, are there any
24 other products that have come to market
25 that you have worked on in your position

1 with the mechatronics group?

2 A. No.

3 Q. And remind me, again,
4 Mr. Ericksen, what did you say that your
5 position is with the mechatronics group?

6 A. Engineering manager.

7 Q. And that's your current
8 position?

9 A. Yes.

10 Q. And besides the lawyers from
11 Finnegan, have you talked with anybody
12 else about your deposition here today?

13 A. No.

14 Q. Are you aware that William
15 Becker was deposed two days ago?

16 A. Yes.

17 Q. Have you had any
18 conversations with Mr. Becker outside the
19 presence of counsel regarding his
20 deposition?

21 A. No.

22 Q. And in the Podium RC3
23 product that you were referencing, does
24 that product have a reservoir?

25 A. Yes.

1 Q. And can you explain to the
2 jury what the function of the reservoir
3 is in the RC3 product?

4 A. It's a -- it's a device that
5 accepts the shaft volume as the shock
6 absorber's compressing. So the oil that
7 is displaced by the shaft moving into the
8 shock absorber has to go somewhere; it
9 goes into a reservoir, which is a
10 spring-backed element that can take up
11 that oil volume.

12 Q. And that reservoir is a
13 separate compartment compared to the
14 compression chamber of the damper; is
15 that right?

16 A. Yes.

17 Q. And what is the function of
18 the reservoir during this last portion of
19 the compression stroke in the RC3?

20 A. Are you referring to in the
21 context of the bottom out cup engagement?

22 Q. Yes.

23 A. It's separate. They are --
24 they are two separate circuits.

25 Q. And when you say "separate

1 circuits," could you explain to the jury
2 what you mean by that?

3 A. A little difficult without
4 looking at the picture, but the shaft
5 volume that's entering the system as the
6 shock is compressing, that oil is what
7 goes to the reservoir. The oil that is
8 displaced in the bottom out cup stays in
9 the main part of the damper. So they're
10 not in series, they're in parallel, I
11 would say. And I'm sorry if the -- the
12 jury doesn't understand that. It's a
13 little esoteric.

14 Q. And the reservoir on the
15 Podium shaft has a floating piston rather
16 than a bladder, correct?

17 A. Correct.

18 Q. There's nothing in the
19 claims of the '223 patent about a
20 reservoir, right?

21 MR. MCCAULEY: Objection to the
22 extent it calls for a legal
23 conclusion, vague.

24 Go ahead.

25 A. I don't think so, but I

1 don't know. I'd have to study more to
2 know for sure.

3 BY MR. HICKEY:

4 Q. If you could take a look at
5 claims 1 through 19 and tell me if
6 there's any reference to a reservoir in
7 those claims.

8 MR. MCCAULEY: But you're asking
9 about the entire patent.

10 MR. HICKEY: I'm asking about
11 claims 1 through 19.

12 MR. MCCAULEY: We all know those
13 are read in the context of the patent.
14 So if you need to read the whole
15 patent to answer counsel's question,
16 go ahead, Mr. Ericksen.

17 A. I'm going to need to read
18 the whole patent to answer that question.

19 BY MR. HICKEY:

20 Q. Let's look at claim 1.
21 Is there a reservoir
22 identified in claim 1?

23 MR. MCCAULEY: Objection, vague
24 and to the extent it calls for a legal
25 conclusion.

1 Go ahead.

2 A. No.

3 BY MR. HICKEY:

4 Q. Let's look at claim 2.

5 Is there a reservoir
6 identified in claim 2?

7 MR. MCCAULEY: Same objections.

8 Go ahead.

9 A. No.

10 BY MR. HICKEY:

11 Q. Let's look at claim 3.

12 Is there a reservoir
13 identified in claim 3?

14 A. No.

15 MR. MCCAULEY: Same objections.

16 BY MR. HICKEY:

17 Q. Looking at claim 4, is there
18 a reservoir identified in claim 4?

19 MR. MCCAULEY: Same objections.

20 A. No.

21 BY MR. HICKEY:

22 Q. Looking at claim 5, is there
23 a reservoir identified in claim 5?

24 MR. MCCAULEY: Same objections.

25 A. No.

1 MR. HICKEY: And, Mr. McCauley,
2 I'm -- to move it along, I'll
3 stipulate that you object to all
4 these -- make the same objections to
5 claims 6 through 19, but I am going to
6 walk through those, but, you know,
7 however you want to proceed.

8 MR. MCCAULEY: Thank you. I'll
9 accept your stipulation.

10 MR. HICKEY: Thanks.

11 BY MR. HICKEY:

12 Q. Looking at claim 6, is there
13 a reservoir identified in claim 6?

14 A. No.

15 Q. Looking at claim 7, is there
16 a reservoir identified in claim 7?

17 A. No.

18 Q. Moving to claim 8, is there
19 a reservoir identified in claim 8?

20 A. No.

21 Q. Looking at claim 9, is there
22 a reservoir identified in claim 9?

23 A. No.

24 Q. Looking at claim 10, is
25 there a reservoir identified in claim 10?

1 A. No.

2 Q. Moving to claim 11, is there
3 a reservoir identified in claim 11?

4 A. No.

5 Q. Looking at claim 12, is
6 there a reservoir identified in claim 12?

7 A. No.

8 Q. Is there a reservoir
9 identified in claim 13?

10 A. No.

11 Q. Is there a reservoir
12 identified in claim 14?

13 A. No.

14 Q. Is there a reservoir
15 identified in claim 15?

16 A. No.

17 Q. Is there a reservoir
18 identified in claim 16?

19 A. No.

20 Q. Is there a reservoir
21 identified in claim 17?

22 A. No.

23 Q. Is there a reservoir
24 identified in claim 18?

25 A. No.

1 Q. Is there a reservoir
2 identified in claim 19?

3 A. No.

4 Q. And you've previously used
5 the -- you referred to the reservoir as
6 being a separate circuit, so I'm going to
7 ask the question just slightly
8 differently, but -- because I just want
9 to make sure I understand what you're
10 saying.

11 Is the reservoir circuit or
12 any part of the reservoir circuit
13 identified in claims 1 through 19?

14 A. No.

15 Q. In your years as a -- as an
16 engineer, you're aware that parties other
17 than Fox have patents in the suspension
18 technology area, correct?

19 A. Yes.

20 Q. And do you think it's a good
21 thing to design around competitors'
22 patents?

23 MR. MCCAULEY: Objection, vague.

24 Go ahead.

25 A. What do you mean by "good"?

1 I think it's acceptable.

2 BY MR. HICKEY:

3 Q. Have you ever designed
4 around a competitor's patent?

5 A. Yes.

6 Q. How many times have you done
7 that?

8 A. I've been doing this a long
9 time. I don't know and --

10 Q. More than once?

11 A. It's probably fair to say.

12 Q. In Fox's amended initial
13 disclosures, you were identified as a
14 named inventor on the '223 patent and as
15 having knowledge regarding the
16 inventorship, ownership, conception and
17 reduction to practice of the -- of
18 inventions claimed in the 22 -- '223
19 patent, okay?

20 Do you have any knowledge or
21 understanding about this case besides
22 that knowledge that was identified?

23 MR. MCCAULEY: Objection, vague.

24 THE WITNESS: Do I answer?

25 BY MR. HICKEY:

1 Q. Yes.

2 A. I don't think I have any
3 other knowledge.

4 MR. HICKEY: I'm going to put
5 into the Exhibit Share, Exhibit 49.

6 (Exhibit 49, United States
7 Patent Application For: Methods and
8 Apparatus for Position Sensitive
9 Suspension Dampening, marked for
10 identification.)

11 BY MR. HICKEY:

12 Q. And ask you if you recognize
13 that as the patent application for the
14 '223 patent. And take your time to
15 review it.

16 A. This looks like the
17 application, yes.

18 MR. HICKEY: And I'm going to
19 put into the Exhibit Share, Exhibit
20 50.

21 (Exhibit 50, Declaration for
22 Utility or Design Patent Application
23 (37 CFR 1.63), marked for
24 identification.)

25 BY MR. HICKEY:

1 Q. And ask you if you recognize
2 that document.

3 A. Yes.

4 Q. And what is that?

5 A. I think this is the document
6 that I signed prior to submitting to the
7 Patent Office.

8 Q. That's a declaration
9 regarding your patent application; is
10 that right?

11 A. I believe so, yes.

12 Q. And on the first page of
13 that document, FOX_0000065, about midway
14 down the -- well, first it says, "I
15 hereby declare...(2) I believe the
16 inventor(s) named below to be the
17 original and first inventor(s) of the
18 subject matter which is claimed and for
19 which a patent is sought on the invention
20 entitled: Methods and Apparatus For
21 Position Sensitive Suspension Dampening."

22 Do you see that?

23 A. That portion that's in the
24 box there?

25 Q. Yes.

1 A. Yes.

2 Q. And if you go to page 4 of
3 that document, which is Fox 68, that's
4 your signature in the first box, correct?

5 A. Yes.

6 Q. And going back to page 1,
7 Fox 65, in the larger box that starts
8 with, "I hereby declare," if you move
9 about halfway down it says, "I hereby
10 state that I have reviewed and understand
11 the contents of the above identified
12 specification, including the claims, as
13 amended by any amendment specifically
14 referred to above."

15 Do you see that?

16 A. Yes.

17 Q. And you agreed to that,
18 correct?

19 A. Yes.

20 Q. And then it also says that,
21 "I acknowledge the duty to disclose
22 information which is material to
23 patentability as defined in 37 CFR 1.56."

24 Do you see that?

25 A. Yes.

1 Q. And you agreed to that as
2 well, correct?

3 A. Yes.

4 Q. And if we go back to Exhibit
5 49, and if you go to page FOX_0000029, in
6 that top paragraph, it says -- the last
7 sentence says, "A configuration of a side
8 reservoir, including a floating piston,
9 is described in US patent no. 7,374,028
10 which patent is entirely incorporated
11 herein by reference."

12 Do you see that?

13 A. Yes.

14 Q. Do you know what that U.S.
15 Patent 7,374,028 is?

16 A. No.

17 Q. Did you review that patent
18 at the time that this application was
19 filed?

20 A. I don't remember.

21 Q. And if you go to the 11th
22 page FOX_0000034, that top paragraph it
23 says, "For instance, the valve cartridge
24 485 may be equipped with fluid flow
25 resistors (chokes), filters or other

1 micro-fluidic devices as, for example,
2 are illustrated in The Lee Company
3 Technical Hydraulic Handbook, which is
4 copyright 1996 by The Lee Company and
5 entirely incorporated by reference
6 herein."

7 Do you see that?

8 A. Yes.

9 Q. And do you recall reviewing
10 The Lee Company Technical Hydraulic
11 Handbook at the time that this
12 application was filed?

13 A. No.

14 Q. Do you know how many pages
15 The Lee Company Technical Hydraulic
16 Handbook was at that time?

17 A. No.

18 Q. Would it surprise you if
19 that handbook was approximately 800
20 pages?

21 A. No.

22 Q. And I'm assuming you didn't
23 read those 800 pages before this
24 application was filed, correct?

25 A. Probably not. I don't

1 remember.

2 Q. Going back to page 3,
3 FOX_0000026, I think that was five zeros,
4 in what is paragraph 5, it refers to,
5 "US patent no. 6,446,771 (which patent is
6 incorporate by reference herein in its
7 entirety."

8 Do you see that?

9 A. Yes.

10 Q. Do you know what patent that
11 is or what's disclosed in that patent?

12 A. No.

13 Q. Okay. And then similarly in
14 paragraph 6 just below that, it refers
15 to, "US patent No. 6,029,958, which is
16 also incorporated by reference herein in
17 its entirety."

18 Do you see that?

19 A. Yes.

20 Q. And do you know what the
21 '958 patent is or what it discloses?

22 A. No.

23 Q. And do you have an
24 understanding of -- when something is
25 incorporated by reference in its

1 entirety, do you have an understanding of
2 what that means?

3 A. No.

4 Q. Do you understand that it
5 means that it's incorporated into the
6 patent as if you had, you know, copied it
7 all down here?

8 A. Okay.

9 Q. Do you know why those other
10 patents were incorporated by reference in
11 their entirety?

12 A. I don't remember.

13 Q. Do you know if there are any
14 special definitions of terms that are
15 included in those -- these patents or
16 that handbook that were incorporated by
17 reference in their entirety into the '223
18 patent?

19 A. No, I don't have memory of
20 that.

21 Q. And you said before that you
22 have -- you've been named as an inventor
23 on other patents, correct?

24 A. Yes.

25 Q. So I'm going to put into the

1 Exhibit Share, Exhibit 51, and ask you to
2 take a look at that, and tell me if you
3 recognize that document.

4 (Exhibit 51, United States
5 Patent No. 9,682,604 B2, marked for
6 identification.)

7 A. I do recognize it.

8 BY MR. HICKEY:

9 Q. And what is that document?

10 A. It's a patent.

11 Q. And that's U.S. Patent
12 9,682,604?

13 A. Yes.

14 Q. And you're one of the named
15 inventors on that patent?

16 A. Yes.

17 Q. And generally, what does
18 this patent relate to?

19 A. I haven't seen this patent
20 in a long time, but we invented a spring
21 pre-cup preload collar design that was
22 novel. I believe that's the focus of
23 this one.

24 Q. And that's for a suspension
25 system?

1 A. Yeah, this was also on the
2 Podium RC3 shock.

3 Q. Okay. And Mr. Cox
4 contributed to this invention as well?

5 A. Yes, I -- I don't remember
6 the details, but yes.

7 Q. And was this simply to
8 connect the reservoir to the main damper
9 tube?

10 MR. MCCAULEY: Mr. --
11 Mr. Ericksen, if you need to review
12 this document before you get
13 questioned on it, you're entitled to
14 do that.

15 A. Could you ask the question
16 again, please?

17 BY MR. HICKEY:

18 Q. And was -- yeah. Was this
19 simply to connect the reservoir to the
20 main damper tube?

21 MR. MCCAULEY: Objection, vague,
22 lacks foundation.

23 Go ahead.

24 A. I -- I would need to spend
25 some time to review this document in its

1 entirety to refresh my memory.

2 BY MR. HICKEY:

3 Q. If you go to figure 4,
4 there's a clamp 250; do you see that?

5 A. Yes.

6 Q. And then there is a rotating
7 screw 260; do you see that?

8 A. 260?

9 Q. Yes.

10 A. Yes.

11 Q. And I guess just going back
12 to, you know -- let's -- let's go to
13 figure 1, actually. So that again shows
14 clamp 250, correct?

15 A. Yes.

16 Q. And screw 260, right?

17 A. Yes.

18 Q. And spring 175, right?

19 A. Yes.

20 Q. Okay. And so if we go to
21 column 5, line 24, it says, "In one
22 example, the clamp 250 is loosened by
23 inserting an appropriate hex or blade
24 type wrench or screw driver (not shown)
25 through a predetermined" --

1 (Whereupon, a brief discussion
2 is held off the record.)

3 A. Can you -- can you say again
4 where you're reading? I'm not following.

5 BY MR. HICKEY:

6 Q. Oh, yeah. Sorry. Let's
7 start again. Column 5, line 24.

8 MR. MCCAULEY: Michael,
9 oftentimes you don't give him time to
10 find where you're referring to in a
11 document before you start reading and
12 I would ask that you pause and allow
13 him to find it and make sure he's
14 there before you read it into the
15 record.

16 A. Okay, I think I'm there.

17 BY MR. HICKEY:

18 Q. Okay. So do you see the
19 sentence that begins, "In one example"?

20 A. Yes.

21 Q. Okay. So at column 5, line
22 24, it says, "In one example, the clamp
23 250 is loosened by inserting an
24 appropriate hex or blade type wrench or
25 screw driver (not shown) through a

1 predetermined shock absorber access space
2 available in the vehicle (vehicle such as
3 a monoshock rear shock motorcycle) and
4 rotating screw 260 counterclockwise
5 (assuming a right hand thread screw 260)
6 to loosen the clamp," correct?

7 A. Yes.

8 Q. So you use a tool to loosen
9 screw 260; is that right?

10 A. Yes.

11 Q. And then it says, "Once the
12 clamp 250 is loose, the spring 175 can be
13 manually gripped, through the access
14 space, by a user and rotated manually,
15 for example, in one embodiment having
16 right hand threads 190 from the top axial
17 view of the shock absorber, clockwise as
18 viewed from the upper end, to increase
19 compression or pre-load in the spring
20 175."

21 Do you see that?

22 A. Yes.

23 Q. So when it says that it's
24 "manually gripped...by a user and rotated
25 manually," do you understand that to mean

1 that the user is using their hands rather
2 than a tool?

3 MR. MCCAULEY: Objection, calls
4 for a legal conclusion.

5 Go ahead.

6 A. "Manually" always means with
7 your hands or some body part or with the
8 use of a tool, to me. So I could put a
9 strap wrench around that spring and move
10 it with my arms. I've used a tool, but
11 I'm manually turning that spring.

12 BY MR. HICKEY:

13 Q. You never used "manually"
14 just to refer to using your hands
15 excluding tools?

16 A. No.

17 Q. And going back to the '223
18 patent, if we go to -- back to the
19 claims, let me know when you're there.

20 A. Okay.

21 Q. And if we go to claim 1, it
22 refers to, "A fluid flow path formed in
23 the bottom out cup." Do you see that?

24 A. Yes.

25 Q. Okay. And if you go to

1 column 5, are you there?

2 A. Yes.

3 Q. I'm sorry. I said column 5.
4 I meant claim 5. If you could go to
5 claim 5, please.

6 A. Okay.

7 Q. It says, "The damper of
8 claim 1, further including a fluid path
9 between the cup and the rebound portion
10 of the chamber, the path formed in the
11 shaft."

12 Do you see that?

13 A. Yes.

14 Q. Okay. Then if you see
15 claim 8, it says, "The damper of claim 7,
16 wherein the volume of fluid traveling
17 through the fluid path is
18 user-adjustable."

19 Do you see that?

20 A. Yes.

21 Q. Can you tell me in claim 8
22 when it's referring to the fluid path, is
23 it referring to the fluid path in the
24 bottom out cup or the fluid path between
25 the cup and the rebound portion of the

1 chamber?

2 MR. MCCAULEY: Object to the
3 extent it calls for a legal
4 conclusion.

5 Go ahead.

6 A. I -- I need a moment to
7 study that, okay?

8 BY MR. HICKEY:

9 Q. Sure.

10 A. That's referring to the cup
11 in the rebound portion of the chamber.

12 Q. And why do you say that?

13 A. Because it's --

14 (Cross talk.)

15 MR. MCCAULEY: Same objection.

16 Go ahead, Mr. Ericksen.

17 A. Because it's a dependent
18 claim based on the prior multiple claims
19 that refer to the -- there is a fluid
20 path between the bottom out cup and the
21 rebound chamber, but it's checked.

22 BY MR. HICKEY:

23 Q. And claim 8 is dependent on
24 claim 7, correct?

25 A. Yes.

1 Q. And is claim 7 is dependent
2 on claim 6, correct?

3 A. Yes.

4 Q. Claim 6 is dependent on
5 claim 5, correct?

6 A. Yes.

7 Q. Claim 5 is dependent on
8 claim 1, correct?

9 A. Yeah.

10 Q. And both claim 1 and claim 5
11 refer to fluid paths, correct?

12 A. Yep.

13 Q. So how do you know that the
14 fluid path in claim 8 is referring to the
15 fluid path in claim 5 or the fluid path
16 in claim 1?

17 MR. MCCAULEY: Object to the
18 extent it calls for a legal
19 conclusion.

20 Go ahead.

21 A. It's a fair question. As I
22 reread it, the -- this patent is
23 pertaining to an adjustable bottom out
24 cup and adjustable needle that controls
25 the pressure in the bottom out cup.

1 There also is an adjustable rebound
2 needle. It -- it is -- it is unclear
3 which one it refers to. I think in the
4 spirit of the patent, it would be
5 referring to the adjuster associated with
6 the bottom out cup.

7 BY MR. HICKEY:

8 Q. What do you mean by "the
9 spirit of the patent"?

10 A. This patent pertains to a
11 bottom out cup with an adjustable feature
12 to it and adjust the pressure in the
13 bottom out cup.

14 MR. HICKEY: We've been going
15 for a little bit more than an hour so
16 we can take a break here if you want,
17 Rob.

18 MR. MCCAULEY: Yeah, thank you,
19 Michael. I was going to suggest that.
20 We have lunch coming in and I think
21 they're bringing it up so can we
22 tentatively say 45 minutes.

23 MR. HICKEY: Sure.

24 MR. MCCAULEY: And then if we
25 need more than that because lunch is a

1 little delayed, I'll -- I'll jump back
2 on and let everybody know that at some
3 point.

4 MR. HICKEY: That works.

5 MR. MCCAULEY: Okay.

6 THE VIDEOGRAPHER: This ends
7 media 2. We're now going off the
8 record. The time is 11:42.

9 (Whereupon, a luncheon recess is
10 taken.)

11 THE VIDEOGRAPHER: This begins
12 media 3. We're now back on the
13 record. The time is 12:35.

14 BY MR. HICKEY:

15 Q. Mr. Ericksen, I've put an
16 exhibit into Exhibit Share. It's
17 Exhibit 52. If you could take a look at
18 that.

19 (Exhibit 52, U.S. Patent No.
20 10,047,817 B2, marked for
21 identification.)

22 BY MR. HICKEY:

23 Q. Do you recognize this
24 document?

25 A. I'm embarrassed to say I

1 don't. I don't even remember this one.
2 Can I have a moment to look it over a
3 little bit?

4 Q. Yeah, take your time.

5 A. Thanks. Okay.

6 Q. And this is U.S. Patent
7 10,047,817 to -- for a method and
8 apparatus for an adjustable damper.

9 Do you see that?

10 A. Yes, yes.

11 Q. And you're the first listed
12 inventor on that, correct?

13 A. Yes.

14 Q. And -- and after reviewing
15 this, do you have a -- can you tell me
16 what this invention was about?

17 A. I believe that this
18 relates -- this is a predecessor, one of
19 the first patents related to Live Valve.
20 There's -- there's been many patents that
21 spurred off of this. It's -- I -- I
22 haven't seen this particular one in quite
23 a while, so...

24 Q. And in the abstract on -- on
25 page 1, are you there?

1 A. Yes.

2 Q. Okay. About halfway down,
3 it -- it refers to, "Monitoring a state
4 of at least one valve within at least one
5 vehicle suspension damper of the
6 vehicle."

7 Do you see that?

8 A. Yes.

9 Q. And is that electronic
10 monitoring that's going on?

11 A. Yes.

12 Q. And when it's referring to
13 the valve within the damper, is that a
14 valve that's inside the damper?

15 A. Yes.

16 Q. If we could go back to the
17 '223 patent, and ask you to take a look
18 at figures 3A and 3B.

19 A. Okay.

20 Q. Okay. And 250 is
21 designating the piston, correct?

22 A. I think so.

23 Q. Okay. And --

24 A. Isn't -- isn't 251 the
25 piston --

1 MR. MCCAULEY: Mr. Ericksen, if
2 you need to review this document
3 before you answer the questions, you
4 can do that.

5 BY MR. HICKEY:

6 Q. We can go -- do you want to
7 go to column 3, line -- starting at line
8 48, there's a discussion about figure 3A.

9 A. Okay. What you said
10 originally was correct.

11 Q. Okay. And then 251 is
12 identified as either a piston ring or a
13 dynamic seal.

14 Do you see that?

15 A. Yes.

16 Q. And in the figure 3A
17 embodiment, there is -- as the bottom out
18 piston is moving into the bottom out cup
19 275, initially there's some space between
20 the interior wall of the bottom out cup
21 and the exterior of seal 251; is that
22 right?

23 A. Yes. Would you like me to
24 be looking at the figure or that
25 paragraph at this point?

1 Q. Whatever is easiest for you.

2 A. Okay. Yes, what -- your
3 question is correct.

4 Q. Okay. And as depicted in
5 figure 3A and as identified in column 3
6 of the '223 patent, "The piston by-pass
7 flow of fluid through the annular area
8 and into a compression portion 222 of
9 chamber 220 is illustrated by arrow 281";
10 is that right?

11 A. Yes.

12 Q. So could you explain to the
13 jury what the piston bypass flow of fluid
14 is that's illustrated by arrow 281?

15 A. There -- well, there's two
16 things. As -- as the piston enters into
17 the cup, we don't want an abrupt change
18 in pressure. We kind of want to ease it
19 into the cup and that's just for comfort
20 of the occupant. So there's a taper zone
21 and as the piston enters that -- the
22 start of that zone, there's a larger
23 anulus and more oil flows through so less
24 pressure builds.

25 As the taper goes down, the

1 anulus decreases and it gets into a
2 constant diameter portion of the cup, but
3 there's still an anulus even in that
4 portion so there's always oil back
5 flowing through the piston, it's just the
6 nature of hydrodynamic seal in this case
7 where we try to make the anulus as small
8 as possible, but there's tolerances of
9 machining and other things, you know,
10 that -- just practical issues that
11 there's always an anulus there.

12 Q. And can you explain what you
13 mean by "taper zone"?

14 A. There's an angle in the
15 machining of the first part of the cup
16 where it's -- it's kind of a taper and so
17 it's just meant to ease the cup, the
18 piston into the cup.

19 Q. And can you explain to the
20 jury what you mean by "anulus"?

21 A. Anulus is a gap between any
22 two parts. In this case, it's like a --
23 if you put a circular rod into a round
24 bore, there's a gap around the outside
25 and if there were no gap, you wouldn't be

1 able to move it. It would be seized and
2 so that annulus is the gap around the --
3 the perimeter.

4 Q. And so in figure 3B, when
5 O-ring 251 is -- at least appears --
6 depicted as touching the interior wall of
7 the bottom out cup 275, would you regard
8 the O-ring as sealing that space?

9 A. It's -- it's not -- I want
10 to be clear. It's not an O-ring. It's a
11 metal component.

12 Q. Okay. When -- when you're
13 talking about a metal component, you're
14 referring to 251?

15 A. Yes.

16 Q. And it indicates that 251 is
17 a piston ring or a dynamic seal, in -- in
18 column 3, line 52?

19 A. Yeah.

20 Q. So you're saying that the
21 dynamic seal is metallic?

22 A. Yes, in -- in the embodiment
23 that you're showing here. It's a
24 metallic piece.

25 Q. Okay.

1 A. And, therefore, it's -- it's
2 not a perfect seal. I referred to that
3 as a hydrodynamic seal so it builds
4 pressure, but it does allow oil to leak
5 by. You know, we do that because it's --
6 it's very beneficial for low friction,
7 which is important in this case.

8 Q. Okay. You indicated before
9 that you had not written the '223 patent,
10 correct?

11 A. That's correct.

12 Q. And you had sent a invention
13 disclosure statement to Fox's lawyers and
14 Fox's lawyers had written the '223
15 patent; is that right?

16 A. That's generally correct.

17 Q. And when you say "generally
18 correct," is there something that --

19 A. That is --

20 Q. -- that you need to add?

21 A. That is correct. I don't
22 need to add anything else.

23 Q. Okay. And you signed the --
24 you signed the declaration that you had
25 reviewed the contents of the patent

1 application, correct?

2 A. Yes.

3 Q. And you signed the statement
4 in the declaration that if you're aware
5 of any prior art, you would bring that to
6 the attention of the Patent Office as
7 appropriate, correct?

8 A. Yes.

9 Q. And you understand why the
10 United States Patent and Trademark Office
11 requires inventors to -- to make such a
12 statement?

13 A. Yes.

14 Q. And why is that?

15 A. So that we're -- we're
16 alerting them of any issues why our
17 patent wouldn't be valid.

18 Q. And after you sent that
19 declaration, after you signed that
20 declaration, when was the next time that
21 you found out about the status of the
22 application?

23 A. I don't remember.

24 Q. Do you remember hearing
25 anything that the patent had gone through

1 right away or that it had been rejected?

2 A. I don't remember anything
3 specific in this case, but generally, I
4 don't learn anything and -- I don't learn
5 anything at all. It's usually a surprise
6 when it gets awarded has been my
7 experience, but I don't have any specific
8 memory in this one.

9 Q. Okay. So I'm going to put
10 an exhibit in Exhibit Share. It's
11 Exhibit 53.

12 (Exhibit 53, United States
13 Patent and Trademark Office,
14 Application No. 12/463,927, Office
15 Action Summary, marked for
16 identification.)

17 A. Okay.

18 BY MR. HICKEY:

19 Q. All right. And ask you to,
20 you know, review that page by page
21 because my question is going to be
22 whether or not you remember seeing that
23 document before.

24 A. I can tell you right now,
25 I've never seen this document.

1 Q. Okay. And if you look at
2 the top of this document on the first
3 page, it has an application number that's
4 listed as 12/463,927 and a filing date of
5 May 11, 2009, and the first named
6 inventor is Christopher Paul Cox.

7 Do you see that?

8 A. Yes.

9 Q. Okay. And if you -- if you
10 you go back to Exhibit 48 for a second?

11 A. Okay.

12 Q. And if you go -- if you go
13 to the first page of Exhibit 48, which is
14 the '223 patent, do you see that the
15 application number is the same,
16 12/463,927 and filed May 11, 2009, with
17 Christopher Paul Cox as the first named
18 inventor?

19 A. Yes.

20 Q. So you understand that this
21 is an office communication that was
22 issued in the application process for the
23 '223 patent?

24 A. Yes.

25 Q. And if you turn to page 2 of

1 that document?

2 (Cross talk.)

3 A. The office action document?

4 BY MR. HICKEY:

5 Q. The -- the office action
6 document, yeah, thank you, Exhibit 53,
7 which is Fox underscore three zeroes --
8 five zeroes, 86.

9 A. Okay.

10 Q. Under the heading
11 Disposition of Claims, do you see that?

12 A. Yes.

13 Q. It says claims 1 through 20
14 pending in the application and claims 1
15 through 20 are rejected.

16 Do you see that?

17 A. Yes.

18 Q. Okay. And if you go to
19 page 4, which is FOX_0000088.

20 A. Okay.

21 Q. It indicates that the claims
22 were rejected under 30 -- well, "Claims
23 1-4, 8 [and] 12 are rejected under 35
24 U.S.C. 102(b) as being anticipated by
25 Larsson" -- L-A-R-S-S-O-N -- "et al.

1 '958."

2 Do you see that?

3 A. Yes.

4 Q. And are you familiar with
5 the Larsson reference?

6 A. No.

7 Q. Okay. So if you go to the
8 last page of Exhibit 53?

9 A. Okay.

10 Q. It's a Notice of References
11 Cited.

12 Do you see that?

13 A. Yes.

14 Q. And the fourth reference
15 that's listed is U.S. 6,029,958 to
16 Larsson, et al.

17 Do you see that?

18 A. Yes.

19 Q. Okay. So that's the full
20 number of the patent. I'm assuming that
21 that doesn't refresh your recollection as
22 to whether you've seen that reference
23 before?

24 A. Correct.

25 Q. Okay. So I'm going to put

1 into the Exhibit Share Exhibit 54, which
2 is U.S. Patent 6,029,958 to Larsson, et
3 al.

4 Do you see that?

5 (Exhibit 54, U.S. Patent No.
6 6,029,958, marked for identification.)

7 A. Yes.

8 BY MR. HICKEY:

9 Q. And I'd like you to review
10 that document completely and see if that
11 refreshes your recollection as to whether
12 you've seen this document before.

13 A. It does -- it does not
14 refresh my recollection.

15 Q. So you have not seen this
16 Larsson reference before?

17 A. No, I'm not saying that.
18 I'm saying looking at it now does not
19 refresh my memory if I've seen it before
20 or not.

21 Q. Okay. And as you sit here
22 today, is there anything that you can say
23 about the -- the Larsson reference and --
24 and how -- how it relates to the
25 initially submitted claims of the '223

1 patent application?

2 A. No.

3 MR. MCCAULEY: I'd like the
4 record to reflect, he doesn't recall
5 whether he's even seen it and it's
6 been on the screen for about two
7 minutes. That's -- go ahead.

8 A. Yeah, I wouldn't -- I
9 wouldn't -- this is a complicated patent
10 obviously. I would need significant
11 amount of time to digest this and form an
12 opinion.

13 BY MR. HICKEY:

14 Q. How much time?

15 MR. MCCAULEY: Vague, calls for
16 speculation.

17 Go ahead.

18 A. Days.

19 BY MR. HICKEY:

20 Q. Days?

21 A. Days.

22 Q. Okay. I'm going to put into
23 Exhibit Share Exhibit 55 and ask you to
24 take a look at that document and see if
25 you recognize it.

1 (Exhibit 55, United States
2 Patent and Trademark Office,
3 Application No. 12/463,927, Interview
4 Summary, marked for identification.)

5 A. I do not recognize it.

6 BY MR. HICKEY:

7 Q. And do you see that this is
8 an office communication dated February 3,
9 2011 for the same application,
10 12/463,927?

11 A. Yes.

12 Q. Okay. And if you turn to
13 the second page of this document,
14 FOX_000087, do you see that there's an
15 interview summary listed?

16 A. Yes.

17 Q. And do you see there's a
18 discussion of Larsson figures 1, 2, 11
19 plus?

20 A. Yes.

21 Q. And do you see that with
22 respect to the substance of the
23 interview, there's an underlined portion
24 that, "The examiner explained his
25 interpretation of the Larsson reference

1 against the claims above. The examiner
2 maintained the rejection against the
3 claims. The examiner also suggested
4 examples of language that would more
5 narrowly define the claims."

6 Do you see that?

7 A. Yes.

8 Q. And have -- have you seen
9 this document before?

10 A. No.

11 Q. Okay. I'm going to put into
12 Exhibit Share Exhibit 56.

13 A. Okay.

14 (Exhibit 56, Response to Office
15 Action Dated October 8, 2010, marked
16 for identification.)

17 BY MR. HICKEY:

18 Q. Okay. Do you see the first
19 page of this document says Response to
20 Office Action Dated October 8, 2010; do
21 you see that?

22 A. Yes.

23 Q. And you see up near the top
24 of the page on the left, it says it's
25 for -- it's In re: Application of:

1 Christopher Paul Cox et al., Serial No.
2 12/463,927.

3 Do you see that?

4 A. Yes.

5 Q. And do you understand that
6 this is a response that was filed with
7 respect to the application that gave rise
8 to the '223 patent?

9 A. I do now, yes.

10 Q. And have you seen this
11 document before?

12 A. No.

13 Q. And I'm not asking for the
14 substance of any communications with
15 counsel, but do you recall having any
16 communications with counsel for Fox
17 regarding the office action dated
18 October 8, 2010? And to be clear, it's
19 just a yes or no answer.

20 A. No.

21 Q. Okay. I'm going to put into
22 the chat Exhibit 57.

23 (Exhibit 57, United States
24 Patent and Trademark Office,
25 Application No. 12/463,927, Office

1 Action Summary, marked for
2 identification.)

3 MR. MCCAULEY: You mean it's
4 Exhibit Share?

5 MR. HICKEY: I'm sorry. Put
6 into Exhibit Share.

7 A. I'm there.

8 BY MR. HICKEY:

9 Q. Okay. And this -- you see
10 from this document that it says that it's
11 an office communication dated May 26,
12 2011, for application number 12/463,927;
13 do you see that?

14 A. Yes, yes.

15 Q. And you understand that's an
16 office communication in the application
17 that gave rise to the '223 patent,
18 correct?

19 A. Yes.

20 Q. And I'd ask you to look at
21 that document in full and tell me whether
22 or not you have seen that document
23 before?

24 A. I have not seen this
25 document.

1 Q. Okay. And if you go to
2 page 2 of that document, which is
3 FOX_0000115 under the Disposition of
4 Claims, it says that claims 1 through 22
5 are pending in the application and are
6 rejected.

7 Do you see that?

8 A. Yes.

9 Q. And if you turn to page 5 of
10 this document, which is FOX_0000118, let
11 me know when you're there.

12 A. I'm there.

13 Q. Under paragraph 6, it says,
14 "Claims 1-4, 8, 12 are rejected under 35
15 U.S.C. 102(b) as anticipated by or, in
16 the alternative, under 35 U.S.C. 103(a)
17 as obvious over Larsson et al."

18 Do you see that?

19 A. Yes.

20 Q. And do you understand that
21 the examiner was rejecting those claims
22 again in view of the same Larsson
23 reference?

24 A. Yes.

25 Q. Okay. I'm going to put into

1 Exhibit Share Exhibit 58.

2 (Exhibit 58, Response to Final
3 Office Action Dated May 26, 2011,
4 marked for identification.)

5 BY MR. HICKEY:

6 Q. Let me know when you've
7 opened up that document.

8 A. I see it.

9 Q. Okay. Do you see that this
10 document is titled Response to Final
11 Office Action Dated May 26, 2011, and
12 it's for In Re: Application of:
13 Christopher Paul Cox, Serial No.
14 12/463,927?

15 Do you see that?

16 A. Yes.

17 Q. And have you seen this
18 document before?

19 A. No.

20 Q. And same question that I
21 asked you before, I don't want the
22 substance of any communications that you
23 had with counsel. It's simply a yes or
24 no question. Do you recall having any
25 discussions with counsel for Fox about

1 final office action dated May 26, 2011?

2 A. No.

3 Q. Okay. I'm putting into
4 Exhibit Share Exhibit 59.

5 (Exhibit 59, United States
6 Patent and Trademark Office,
7 Application No. 12/463,927, Advisory
8 Action, marked for identification.)

9 BY MR. HICKEY:

10 Q. Let me know when you have
11 that opened.

12 A. Okay.

13 Q. And this is an office
14 communication dated August 11, 2011, for
15 application number 12/463,927, first
16 named inventor Christopher Paul Cox.

17 Do you see that?

18 A. Yes.

19 Q. And do you understand that
20 is an office communication in the patent
21 application that gave rise to the '223
22 patent?

23 A. Yes.

24 Q. And if you turn to the
25 second page of this document,

1 FOX_0000138, and you go to the bottom
2 where there's a heading that says Request
3 for Reconsideration/Other.

4 Do you see that?

5 A. Yes.

6 Q. There's a box checked where
7 it says, "The request for reconsideration
8 has been considered but does NOT" -- all
9 caps -- "place the application in
10 condition for allowance because:
11 Applicant has made no amendment to the
12 claims to place the case into condition
13 for allowance. Please see the
14 explanation in the Final Rejection."

15 Do you see that?

16 A. Yes.

17 Q. And have you seen this
18 document before?

19 A. No.

20 Q. Again, yes or no question,
21 do you recall having any communications
22 with counsel for Fox about this office
23 communication dated August 11, 2011?

24 A. No.

25 Q. And I'm going to put another

1 exhibit into Exhibit Share, it's
2 Exhibit 60. If you could open that up.
3 (Exhibit 60, Second Response
4 to Final Office Action Dated May 26, 2011
5 and Response to Advisory Action Dated
6 August 11, 2011, marked for
7 identification.)

8 A. Okay.

9 BY MR. HICKEY:

10 Q. And take a look at the --
11 the whole document.

12 A. Okay.

13 Q. And this document is titled
14 Second Response to Final Office Action
15 Dated May 26, 2011 and Response to
16 Advisory Action Dated August 11, 2011.

17 Do you see that?

18 A. Yes.

19 Q. And that this is In re: --
20 this document is In re: Application of:
21 Christopher Paul Cox, et al., for Serial
22 No. 12/463,927.

23 Do you see that?

24 A. Yes.

25 Q. And you understand that this

1 is a response that's been filed by Fox's
2 counsel for the application that
3 ultimately gave rise to the '223 patent,
4 correct?

5 A. Yes.

6 Q. Have you seen Exhibit 60
7 before?

8 A. No.

9 Q. And I've put another exhibit
10 into Exhibit Share. It's Exhibit 61.

11 (Exhibit 61, Supplement to
12 Second Response to Final Office Action
13 Dated May 26, 2011 and Response to
14 Advisory Action Dated August 11, 2011,
15 marked for identification.)

16 BY MR. HICKEY:

17 Q. And if you can take a look
18 at that and tell me when you have that
19 open.

20 A. Okay.

21 Q. And I'd ask you to review
22 the whole document.

23 A. Okay.

24 Q. And this document is titled
25 Supplement to Second Response to Final

1 Office Action Dated May 26, 2011 and
2 Response to Advisory Action Dated August
3 11, 2011.

4 Do you see that?

5 A. Yes.

6 Q. And this document is also
7 In re: Application of: Christopher Paul
8 Cox, et al., Serial No. 12/463,927.

9 Do you see that?

10 A. Yes.

11 Q. And you understand that this
12 supplement to the second response was
13 filed by Fox's lawyers in the application
14 that gave rise to the '223 patent?

15 A. Yes.

16 Q. And have you seen this
17 document before?

18 A. No.

19 Q. Okay. I have put into
20 Exhibit Share Exhibit 62.

21 (Exhibit 62, United States
22 Patent and Trademark Office,
23 Application No. 12/463,927, Office
24 Action Summary, marked for
25 identification.)

1 BY MR. HICKEY:

2 Q. Let me know when you have
3 that open.

4 A. Okay.

5 Q. And I'd ask you to review
6 the entire document.

7 A. Okay.

8 Q. And this document is an
9 office communication dated 12 -- dated
10 December 15, 2011, for application number
11 12/463,927 with the first named inventor
12 Christopher Paul Cox.

13 Do you see that?

14 A. Yes.

15 Q. And you understand that this
16 is an office communication in the
17 application that gave rise to the '223
18 patent?

19 A. Yes.

20 Q. And if you turn to the
21 second page, FOX_0000170, let me know
22 when you're there.

23 A. I'm there.

24 Q. And under Disposition of
25 Claims indicates that, "Claim(s) 23-41

1 are pending in the application and are
2 rejected."

3 Do you see that?

4 A. Yes.

5 Q. And if you go to page
6 FOX_0000173 -- actually, I'm sorry, go to
7 page FOX_0000172.

8 A. Okay.

9 Q. And has Claim Rejections --
10 35 USC Section 112.

11 Do you see that?

12 A. Yes.

13 Q. And under paragraph 4,
14 second paragraph, it says, "It remains
15 unclear what is meant by the newly add
16 limitation of '...a fluid flow path
17 between the bottom out cup and the
18 compression portion of the chamber..."

19 Do you see that?

20 A. Yes.

21 Q. And it indicates that, "The
22 fluid flow path, as defined in the
23 specification with reference to figure
24 3B, is indicated at 301,302."

25 Do you see that?

1 A. Yes.

2 Q. And that, "The compression
3 portion of the chamber is indicated at
4 222."

5 Do you see that?

6 A. Yes.

7 Q. And it further says, going
8 on to the next page that, "The fluid flow
9 path is arranged within the bottom out
10 cup 275 and is not 'between' the cup and
11 the compression chamber."

12 Do you see that?

13 A. Yes.

14 Q. And if we go back to
15 Exhibit 48, which is the '223 patent.

16 A. Okay.

17 Q. And if you could go to
18 figure 3B.

19 A. Okay.

20 Q. Do you see the indicators
21 for 301 and 302?

22 A. Yes.

23 Q. And if you go to column 3 of
24 the '223 patent, let me know when you're
25 there.

1 A. Okay.

2 Q. At line 62, there's a
3 paragraph that starts, "Fig. 3B is a
4 section view."

5 Do you see that?

6 A. Yes.

7 Q. And I'm just going to read
8 this into the record. "Fig. 3B is a
9 section view showing the bottom out cup
10 275 of Fig. 3A with the bottom out piston
11 250 fully engaged therein. As the piston
12 completely engages the cup 275, dampening
13 is increased because the shaft 215 can
14 only progress further as fluid (e.g.
15 substantially incompressible) is moved
16 from the bottom out cup through one of
17 two paths 301, 302 leading back into the
18 compression portion 222 of chamber 220
19 (and ultimately also into side reservoir
20 125 if one is used)."

21 Do you see that?

22 A. Yes.

23 Q. And do you agree going back
24 to Exhibit 62 that the fluid flow paths
25 defined in the specification with

1 reference to figure 3B are indicated as
2 301 and 302?

3 A. Those are two of the flow
4 paths that happen, but there's another
5 leak path around the piston as we
6 discussed earlier that would also
7 communicate between those.

8 Q. That fluid path between the
9 piston and the bottom out cup is not
10 adjustable; is it?

11 A. This is not adjustable.

12 Q. And do you agree that on
13 page Fox 172 of Exhibit 62 that the
14 compression portion of the chamber is
15 indicated as 222?

16 A. I'm -- I'm back on Exhibit
17 48. Let me --

18 Q. Oh, I'm sorry.

19 A. -- let me pull up 62 here.

20 Q. Yeah. And you may need
21 to -- you know, you may pull them side by
22 side if that's easier.

23 MR. MCCAULEY: Which -- which
24 page in Exhibit 62 are you referring
25 to now?

1 MR. HICKEY: FOX_0000172.

2 MR. MCCAULEY: And what's your
3 question?

4 MR. HICKEY: The question is, do
5 you agree that the compression portion
6 of the chamber is indicated at 222 in
7 figure 3B?

8 MR. MCCAULEY: Objection, vague,
9 lacks foundation, calls for
10 speculation.

11 Would you be specific about any
12 text on page FOX_0000172 that you're
13 asking about?

14 MR. HICKEY: Okay.

15 BY MR. HICKEY:

16 Q. Are you able to answer the
17 question, Mr. Ericksen, as asked?

18 A. I -- when I look at figure
19 3B, I see 220 and 222. They appear to be
20 pointing to the same volume and I don't
21 know without studying it further what the
22 difference is so I don't know if that is
23 correct or not.

24 Q. Okay. If we go to column 3
25 of the '223 patent.

1 A. Okay.

2 Q. We're going to go back to a
3 sentence that we had talked about before
4 with respect to that piston bypass flow.
5 If you could look at column 3, line 58 --

6 A. Okay.

7 Q. -- to 61 and I'll read it.
8 "The piston by-pass flow of fluid through
9 the annular area and into a compression
10 portion 222 of chamber 220 is illustrated
11 by arrow 281."

12 Do you see that?

13 A. Yes, I do.

14 Q. Okay. And does that refresh
15 your recollection as to whether the
16 numeral designation 222 refers to the
17 compression portion of the chamber?

18 A. Yes.

19 MR. MCCAULEY: Objection, vague.

20 Let me get my objection out,

21 Mr. Ericksen.

22 Objection, vague.

23 Go ahead.

24 BY MR. HICKEY:

25 Q. Okay. And looking back at

1 Exhibit 62 at FOX_0000172 and going on to
2 FOX_0000173, let me know when you're
3 there.

4 A. I'm there.

5 Q. Do you agree with the
6 statement of the U.S. Patent and
7 Trademark Office that the, "The fluid
8 flow path is arranged within the bottom
9 out cup 275 and is not 'between' the cup
10 and the compression chamber"?

11 MR. MCCAULEY: Objection, vague.

12 A. The only thing I can confirm
13 is that that's what's written. I don't
14 know if that's a true statement by the
15 examiner or not without studying this
16 document that I've never seen before.

17 BY MR. HICKEY:

18 Q. Well, it's a statement about
19 the '223 patent on which you're a named
20 inventor, correct?

21 A. Yes.

22 Q. Okay. So -- and you've --
23 you've read the '223 patent before,
24 correct?

25 A. Yes.

1 Q. Okay. And we were just
2 reviewing figure 3B, correct?

3 A. Yes.

4 Q. Okay. So if you look at
5 figure 3B, do you understand what is
6 depicted in figure 3B of your patent, the
7 '223 patent?

8 A. Yes.

9 Q. Okay. So I'm going to ask
10 you if you agree with the statement that,
11 "The fluid flow path is arranged within
12 the bottom out cup 275 and is not
13 'between' the cup and the compression
14 chamber"?

15 MR. MCCAULEY: Objection, asked
16 and answered. He asked for an
17 opportunity to review the entire
18 document.

19 BY MR. HICKEY:

20 Q. You can answer the question.

21 A. I'm going to stick with my
22 original answer.

23 Q. Well, the document that you
24 referred to before was the office action,
25 correct?

1 A. Yes.

2 Q. Now I'm not asking you about
3 the office action.

4 MR. MCCAULEY: Yes, you are.

5 MR. HICKEY: I'm asking --

6 MR. MCCAULEY: You're asking him
7 to interpret the office action.

8 (Cross talk.)

9 MR. MCCAULEY: Let me finish.
10 You're asking him whether a statement
11 in the office action is correct or not
12 or whether he agrees with it or not
13 and just because you're also referring
14 to figure 3A or B in the patent
15 doesn't change that.

16 You're badgering the witness.
17 Ask him a clear question. If he needs
18 to review the document, let him do it.

19 MR. HICKEY: Mr. McCauley, your
20 objections are totally inappropriate.

21 MR. MCCAULEY: No, they're not,
22 Michael.

23 MR. HICKEY: They're
24 argumentative.

25 MR. MCCAULEY: Ask a fair

1 question.

2 MR. HICKEY: I'm asking a fair
3 question.

4 MR. MCCAULEY: This is --
5 (Cross talk.)

6 MR. MCCAULEY: This is a fact
7 witness.

8 MR. HICKEY: He is the named
9 inventor on the '223 patent.

10 MR. MCCAULEY: You're asking
11 him --

12 MR. HICKEY: Are you going to
13 dispute that, Rob?

14 MR. MCCAULEY: You're asking him
15 to interpret documents he's told you
16 he's never seen before. And when he
17 asks you for an opportunity to review
18 it, you won't let him.

19 MR. HICKEY: I'm now not asking
20 about Exhibit 62. I'm asking my own
21 separate question.

22 MR. MCCAULEY: Let's take a
23 break, Michael. Let's take a break.

24 MR. HICKEY: No, I have -- I
25 have a question that's pending that I

1 want an answer to.

2 MR. MCCAULEY: Well, he told you
3 he wants to review the whole document
4 before he answers it. Are you going
5 to let him do that or not?

6 MR. HICKEY: I'm not asking
7 about the document. I'm asking about
8 Exhibit 48, which is his patent. Let
9 me --

10 MR. MCCAULEY: Why don't you
11 start -- I disagree with pretty much
12 everything you're saying, but why
13 don't you start over and see if you
14 can ask a fair question of a fact
15 witness who's never seen this office
16 action before.

17 MR. HICKEY: He said he's seen
18 Exhibit 48.

19 BY MR. HICKEY:

20 Q. So I'm going to ask you a
21 question, Mr. Ericksen, about Exhibit 48.

22 Do you agree that 301 is a
23 fluid flow path?

24 A. Yes.

25 Q. Do you agree that 302 is a

1 fluid flow path?

2 A. Yes.

3 Q. Do you agree that 17 -- 275
4 designates the bottom out cup?

5 A. Yes.

6 Q. Do you agree that 222
7 designates the compression portion of
8 chamber 220?

9 A. Yes.

10 Q. Do you agree that fluid flow
11 paths 301 and 302 are arranged within the
12 bottom out cup 275?

13 MR. MCCAULEY: Objection, vague.

14 A. I'm not a patent attorney.
15 I'm not exactly sure what "within" means.
16 BY MR. HICKEY:

17 Q. Well, we looked at one of
18 your earlier patents, Mr. Ericksen, and
19 you said "within" meant inside, correct?

20 A. I don't recall that, but
21 okay.

22 Q. Well, do you have a
23 different understanding of what "within"
24 means --

25 (Cross talk.)

1 Q. -- other than inside?

2 MR. HICKEY: Let me -- let me
3 state that again.

4 BY MR. HICKEY:

5 Q. Do you have a different
6 understanding of what "within" means
7 other than inside?

8 A. I -- I don't think so, but I
9 don't -- I don't understand legalese in
10 many cases here, and I want to make sure
11 I don't answer incorrectly based on an
12 understanding that I have that is
13 different than the legal understanding.

14 Q. Do you believe that the word
15 "within" is -- is legalese?

16 A. I think it can be.

17 Q. So you're telling the jury
18 that you -- you can't define "within" to
19 mean inside?

20 MR. MCCAULEY: Objection,
21 mischaracterizes his testimony.

22 BY MR. HICKEY:

23 Q. You can answer.

24 A. If you're stipulating that
25 "within" in this case means inside, okay,

1 please continue with your question.

2 Q. Well, I'm -- I'm asking you,
3 you're -- you're an engineer with a
4 master's degree in engineering, and I'm
5 asking you, do you have an understanding
6 as an engineer that "within" means
7 inside?

8 A. Yes.

9 Q. Okay. So do you agree that
10 fluid flow paths 301 and 302 are arranged
11 within bottom out cup 275?

12 MR. MCCAULEY: Objection, vague.

13 Go ahead.

14 A. They -- they're arranged
15 inside bottom out cup 275. That's where
16 they originate, yes.

17 BY MR. HICKEY:

18 Q. All right. Thanks.

19 MR. HICKEY: We can -- we can
20 take a break.

21 MR. MCCAULEY: Thank you.

22 THE VIDEOGRAPHER: This ends
23 media 3. We're now going off the
24 record. The time is 1:30.

25 (Whereupon, a brief recess is

1 taken.)

2 THE VIDEOGRAPHER: This begins
3 media 4. We're now back on the
4 record. The time is 1:41.

5 BY MR. HICKEY:

6 Q. Mr. Ericksen, moving back to
7 Exhibit 62, if you go to FOX_0000173.

8 A. Okay.

9 Q. And at paragraph 7 it says,
10 "Claims 23-25, 29, 33-37, 41 are rejected
11 under 35 U.S.C. 103(a) as being an
12 unpatentable over Patriquin '304 in view
13 of Robertson '490."

14 Do you see that?

15 A. Yes.

16 Q. And are you familiar with
17 either of the Patriquin or Robertson
18 references?

19 A. No.

20 Q. And if you go to the last
21 page of this document, FOX_0000177, let
22 me know when you're there.

23 A. Okay.

24 Q. The second reference is
25 listed as U.S. 2,924,304, dated February

1 1960, to Patriquin, William G.

2 Do you see that?

3 A. Yes.

4 Q. And I'm assuming that the
5 number of this patent from 1960 doesn't
6 refresh your recollection as to your
7 familiarity with -- with it?

8 A. Correct.

9 Q. And I'm going to put
10 Exhibit 63 into Exhibit Share.

11 (Exhibit 63, U.S. Patent No.
12 2,924,304, marked for identification.)

13 A. Okay.

14 BY MR. HICKEY:

15 Q. I ask you -- do you have
16 that opened?

17 A. Yes.

18 Q. I'll give you the
19 opportunity to review the whole document.

20 A. Okay.

21 Q. And do you see that this
22 document is U.S. Patent No. 2,924,304,
23 dated February 9, 1960 to W.G. Patriquin;
24 do you see that?

25 A. Yes.

1 Q. And having looked at this
2 document? Have you seen this document
3 before?

4 A. I -- I don't think so.

5 Q. And I put into the Exhibit
6 Share Exhibit 64.

7 (Exhibit 64, Response to Office
8 Action Dated December 15, 2011, marked
9 for identification.)

10 BY MR. HICKEY:

11 Q. Let me know when you have
12 that open.

13 A. Okay.

14 Q. I'll ask you to take a look
15 at that document and tell me when you're
16 finished reviewing it.

17 A. Okay.

18 Q. And this document is titled
19 Response to Office Action Dated
20 December 15, 2011.

21 Do you see that?

22 A. Yes.

23 Q. And that's In re:
24 Application of: Christopher Paul Cox,
25 Serial No.: 12/463,927.

1 Do you see that?

2 A. Yes.

3 Q. And this is the same yes or
4 no question that I asked before. I'm not
5 asking for the substance of any
6 communications, but do you recall having
7 any communications with the attorneys for
8 Fox regarding office action dated
9 December 15, 2011?

10 A. No.

11 Q. And you understand that this
12 Response to Office Action dated
13 December 15, 2011, it's in Serial No.
14 12/463,927 and that's the application
15 that gave rise to the '223 patent,
16 correct?

17 A. Yes.

18 Q. And I'm putting into the
19 Exhibit Share Exhibit 65.

20 (Exhibit 65, United States
21 Patent and Trademark Office,
22 Application No. 12/463,927, Office
23 Action Summary, marked for
24 identification.)

25 BY MR. HICKEY:

1 Q. Let me know when you have
2 that open.

3 A. Okay.

4 Q. And I ask you to take a look
5 at that whole document and let me know
6 when you've finished reviewing it.

7 A. Okay.

8 Q. And you see this is an
9 office communication dated May 17, 2012,
10 in application number 12/463,927, first
11 named inventor Christopher Paul Cox.

12 Do you see that?

13 A. Yes.

14 Q. And you understand that this
15 was an office communication in the
16 application that ultimately gave rise to
17 the '223 patent?

18 A. Yes.

19 Q. And if you turn to the
20 second page, which is FOX_0000196, let me
21 know when you're there.

22 A. I'm there.

23 Q. And under Disposition of
24 Claims, let me know when you're there.

25 A. Yes.

1 Q. Under Disposition of Claims,
2 there's a box that's checked, "Claims
3 23-41 are pending in the application,"
4 and a subsequent box is checked, "Claims
5 23-41 are rejected."

6 Do you see that?

7 A. Yes.

8 Q. And if you go to
9 FOX_0000198, which is the fourth page.
10 Let me know when you're there.

11 A. Okay.

12 Q. You can see that there are
13 Claim Rejections under 35 U.S.C. section
14 12 {sic}.

15 Do you see that?

16 MR. MCCAULEY: You said section
17 12. You meant 112?

18 MR. HICKEY: I'm sorry, section
19 112.

20 A. Are you on paragraph 3?

21 BY MR. HICKEY:

22 Q. Well, at -- at the top --

23 A. Oh, okay.

24 Q. -- of 198, it indicates
25 Claim Rejections -- 35 USC section 112.

1 Do you see that?

2 A. Yes, I do.

3 Q. And then in paragraph 3, it
4 indicates that, "Claims 23-32 are
5 rejected under 35 U.S.C. 112, first
6 paragraph."

7 Do you see that?

8 A. Yes.

9 Q. And then if you go to the
10 next page, which is FOX_0000199.

11 A. Okay.

12 Q. In paragraph 6, it indicates
13 claims -- let me know when you get to
14 paragraph 6.

15 A. I'm there.

16 Q. Paragraph 6 it indicates,
17 "Claims 23-25, 29, 33-37 [and] 41 are
18 rejected under 35 U.S.C. 103(a) as being
19 unpatentable over Patriquin '304 in view
20 of Robertson '490."

21 Do you see that?

22 A. Yes.

23 Q. And putting into the Exhibit
24 Share Exhibit 65 -- sorry -- Exhibit 66.

25 (Exhibit 66, Response to Final

1 Office Action Dated May 17, 2012 and
2 Notice of Appeal Filed August 17,
3 2012, marked for identification.)

4 A. Okay.

5 BY MR. HICKEY:

6 Q. And I'd ask you to review
7 this document and let me know when you're
8 done.

9 A. Okay.

10 Q. And you see that this
11 document is titled Response to Final
12 Office Action Dated May 17, 2012 and
13 Notice of Appeal Filed August 17, 2012.

14 Do you see that?

15 A. Yes.

16 Q. And this is In re:
17 Application of: Christopher Paul Cox,
18 Serial No. 12/463,927.

19 Do you see that?

20 A. Yes.

21 Q. And you understand that this
22 is an application -- this -- this is a
23 response to a final office action and
24 notice of appeal that is in the
25 application that gave rise to the '223

1 patent, correct?

2 A. Yes.

3 Q. And do you recall having any
4 communications with Fox's attorney
5 regarding the final office action dated
6 May 17, 2012?

7 A. No.

8 Q. Do you recall having any
9 communications with the attorneys for Fox
10 regarding a notice of appeal being filed
11 August 17, 2012, for the application that
12 gave rise to the '223 patent?

13 A. No.

14 Q. I've put into the Exhibit
15 Share Exhibit 67.

16 (Exhibit 67, United States
17 Patent and Trademark Office,
18 Application No. 12/463,927, Office
19 Action Summary, marked for
20 identification.)

21 BY MR. HICKEY:

22 Q. Let me know when you have
23 that open.

24 A. Okay.

25 Q. And I'm not sure, I can't

1 remember if I asked this question before,
2 but with respect to Exhibit 66, that
3 response that we were just looking at,
4 just want to confirm that you've never
5 seen that document, correct?

6 A. I have not seen the
7 document.

8 Q. Okay. All right. So
9 Exhibit 67, if you could take a look at
10 this document and let me know when you're
11 done reviewing it.

12 A. Okay.

13 Q. And Exhibit 67 is an office
14 communication dated January 22, 2013 in
15 application number 12/463,927, with the
16 first named inventor Christopher Paul
17 Cox.

18 Do you see that?

19 A. Yes.

20 Q. And you understand that this
21 was an office communication in the
22 application that gave rise to the '223
23 patent, correct?

24 A. Yes.

25 Q. And if you turn to the

1 second page of this document,
2 FOX_0000235, let me know when you're
3 there.

4 A. I'm there.

5 Q. If we go to the heading that
6 says Disposition of Claims.

7 Do you see that?

8 A. Yes.

9 Q. There's a box checked that
10 says claims 42 through 60 are pending in
11 the application and another box that is
12 checked, claims 42 through 60 are
13 rejected.

14 Do you see that?

15 A. Yes.

16 Q. And if you go to the next
17 page, FOX_0000236, let me know when
18 you're there.

19 A. I'm there.

20 Q. Do you see that there are
21 claim rejections under 35 U.S.C. 112; do
22 you see that?

23 A. Yes.

24 Q. And in paragraph 3, you see
25 that, "Claims 42-51 are rejected under 35

1 U.S.C. 112, first paragraph, as failing
2 to comply with the written description
3 requirement."

4 Do you see that?

5 A. Yes.

6 Q. And then if you turn to the
7 next page, FOX_0000237, do you see that?

8 A. Yes.

9 Q. It has claim rejections
10 under 35 USC Section 103.

11 Do you see that?

12 A. Yes.

13 Q. And if you go to
14 FOX_0000238, the next page, go to
15 paragraph 6. Let me know when you're
16 there.

17 A. Okay.

18 Q. This indicates, "Claims
19 /42-44, 48, 52-56, [and] 60 are rejected
20 under 35 U.S.C. 103(a) as being
21 unpatentable over Patriquin '304 in view
22 of Robertson '490."

23 Do you see that?

24 A. Yes.

25 Q. And have you seen this

1 document before?

2 A. No.

3 Q. And did you have any
4 communications with Fox's lawyers
5 regarding this office communication dated
6 January 22, 2013?

7 A. No.

8 Q. And do you understand that
9 this was the seventh time that the United
10 States Patent and Trademark Office had
11 rejected the proposed claims for the '223
12 patent application?

13 MR. MCCAULEY: Objection, lacks
14 foundation.

15 Go ahead.

16 A. I haven't been keeping
17 track. If you're saying that, I believe
18 you.

19 BY MR. HICKEY:

20 Q. And I put into the Exhibit
21 Share Exhibit 68.

22 (Exhibit 68, Response to Office
23 Action Dated January 22, 2013, marked
24 for identification.)

25 BY MR. HICKEY:

1 Q. And ask you to take a look
2 at that.

3 A. Okay.

4 Q. And I'd ask you to review
5 that document in full and let me know
6 when you're done.

7 A. Okay.

8 Q. And this is a document
9 entitled Response to Office Action Dated
10 January 22, 2013.

11 Do you see that?

12 A. Yes.

13 Q. And it's In re: the
14 Application of: Christopher Paul Cox,
15 Serial No. 12/463,927.

16 Do you see that?

17 A. Yes.

18 Q. And you understand that this
19 is a response to office action that was
20 submitted in the application that
21 ultimately gave rise to the '223 patent?

22 A. Yes.

23 Q. And did you have any
24 communications with counsel for Fox
25 regarding the office action dated

1 January 22, 2013 or the response to
2 office action dated January 22, 2013?

3 A. No.

4 Q. And have you seen this
5 document before?

6 A. No.

7 MR. HICKEY: Can we take a quick
8 break of about five minutes? I think
9 I might be able to wrap this up.

10 MR. MCCAULEY: Sure. Thanks.

11 THE VIDEOGRAPHER: This ends
12 media 4. We're now going off the
13 record. The time is 1:59.

14 (Whereupon, a brief recess is
15 taken.)

16 THE VIDEOGRAPHER: This begins
17 media 5. We're now back on the
18 record. The time is 2:05.

19 MR. HICKEY: I have no further
20 questions at this time.

21 MR. MCCAULEY: Thank you. I
22 have a few.

23 EXAMINATION

24 BY MR. MCCAULEY:

25 Q. Mr. Ericksen, your claims

1 use the term "bottom out cup" in various
2 places.

3 Do you see that?

4 A. Yes.

5 Q. And your disclosure
6 discloses a bottom out cup working in
7 conjunction with what's called a
8 secondary piston or a bottom out piston,
9 right?

10 A. Correct.

11 Q. So if a claim refers to a
12 bottom out cup, would you -- would you as
13 an engineer reading those claims, as
14 somebody who had read the entire patent,
15 understand whether or not a bottom out
16 piston or a secondary piston would be
17 used with that bottom out cup?

18 A. Yes, that would be included.

19 Q. Why is that?

20 A. Because without the piston
21 going into the cup, the cup's not doing
22 anything.

23 Q. It's like one hand trying to
24 clap, right?

25 A. Right.

1 MR. MCCAULEY: Thank you.

2 I have nothing further. We'd
3 like an opportunity -- Michael, you
4 may have something, but we -- we'd
5 like an opportunity to review and
6 sign, and I'd like to designate the
7 entirety of this transcript as
8 confidential, which will allow SRAM to
9 see it with the exception of that one
10 portion that Michael and I talked
11 about earlier today. I'll take
12 another look at that and think about
13 that.

14 Do you have any questions,
15 Michael?

16 MR. HICKEY: Yes. Hold on.

17 EXAMINATION

18 BY MR. HICKEY:

19 Q. Mr. Ericksen, to be clear,
20 claims -- claim 11 of the '223 patent
21 refers to a piston and a bottom out
22 piston, correct?

23 A. Yes.

24 Q. Claim 17 refers to a first
25 and a second piston, correct?

1 A. Yes.

2 Q. Claim 19 does not expressly
3 recite a piston, but you said you believe
4 the valve that's recited there is a
5 piston, correct?

6 MR. MCCAULEY: Objection, may
7 mischaracterize prior testimony.

8 A. I believe that's what I
9 said, yes.

10 BY MR. HICKEY:

11 Q. And claim 1 refers to a
12 piston, correct?

13 A. Yes.

14 Q. And there's no express
15 recitation of a bottom out piston or a
16 second piston in claim 1, correct?

17 A. Correct.

18 MR. HICKEY: That's all I have.

19 MR. MCCAULEY: I don't have
20 anything. Thank you.

21 THE VIDEOGRAPHER: We are off
22 the record at 2:09 p.m. and this
23 concludes today's testimony given by
24 Everet Ericksen. The total number of
25 media used was 5 and will be retained

1 by Veritext Legal Solutions.

2 THE COURT REPORTER:

3 Mr. McCauley, same transcript order?

4 MR. MCCAULEY: Yes, please, and
5 we'll take a video with sync as well.

6 (Time noted: 2:09 p.m.)
7

8 -----
9 EVERET ERICKSEN
10

11 -----
12 Subscribed and sworn to
13 before me this -----
day of ----- 2024.

Notary Public
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25

CERTIFICATION

I, BELLE VIVIENNE, a Nationally
Certified Realtime Reporter, do hereby
certify:

That the witness whose testimony
as herein set forth, was duly sworn by
me; and that the within transcript is a
true record of the testimony given by
said witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I
am in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 19th day of
February 2024.

Belle Vivienne

BELLE VIVIENNE, CRR, CCR, RPR

* * *

Veritext Legal Solutions
1100 Superior Ave
Suite 1820
Cleveland, Ohio 44114
Phone: 216-523-1313

February 19, 2024

To: ROBERT F. MCCAULEY III

Case Name: Fox Factory, Inc. v. SRAM, LLC

Veritext Reference Number: 6462726

Witness: Everet Ericksen Deposition Date: 2/15/2024

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown above, or email to production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,
Production Department

NO NOTARY REQUIRED IN CA

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 6462726

CASE NAME: Fox Factory, Inc. v. SRAM, LLC

DATE OF DEPOSITION: 2/15/2024

WITNESS' NAME: Everet Ericksen

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have made no changes to the testimony as transcribed by the court reporter.

Date

Everet Ericksen

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;

They signed the foregoing Sworn Statement; and

Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal
this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 6462726

CASE NAME: Fox Factory, Inc. v. SRAM, LLC

DATE OF DEPOSITION: 2/15/2024

WITNESS' NAME: Everet Ericksen

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).

I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

Date

Everet Ericksen

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;

They have listed all of their corrections in the appended Errata Sheet;

They signed the foregoing Sworn Statement; and

Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

ERRATA SHEET
VERITEXT LEGAL SOLUTIONS MIDWEST
ASSIGNMENT NO: 6462726

PAGE/LINE(S)	CHANGE	/REASON
1/1	1	1

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Date _____ Everet Ericksen
SUBSCRIBED AND SWORN TO BEFORE ME THIS _____
DAY OF _____, 20____.

Notary Public

Commission Expiration Date

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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