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UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE PATENT TRIAL AND APPEAL BOARD

- - - - -X  
SRAM, LLC, :  
Petitioner, :  
v. : Case IPR2024-00216  
FOX FACTORY, INC., : Patent No. 8,550,223  
Patent Owner. :  
- - - - -X

Friday, August 9, 2024

Remote Deposition of:  
KEVIN WESLING,  
called for oral examination by counsel for the Patent  
Owner, pursuant to notice, before before Christina S.  
Hotsko, RPR, CRR, CA CSR, of Veritext Legal  
Solutions, a Notary Public in and for the District of  
Columbia, beginning at11:05 a.m., when were present  
on behalf of the respective parties:

1 A P P E A R A N C E S (Via Zoom)

2 On behalf of Petitioner:

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C O N T E N T S

|                                                     |      |
|-----------------------------------------------------|------|
| EXAMINATION BY:                                     | PAGE |
| Counsel for Patent Owner                            | 04   |
|                                                     |      |
| PREVIOUSLY MARKED EXHIBITS: *                       | PAGE |
| Exhibit 1001 U.S. Patent, 8,550,223, Cox, et al.    | 23   |
| Exhibit 1003 Wesling Declaration                    | 29   |
| Exhibit 1005 U.S. Patent 6,558,430, Nakaya, et al.  | 47   |
| Exhibit 1009 U.S. Patent 6,604,751, Fox             | 28   |
| Exhibit 1010 U.S. Patent 8,162,112, Gartner, et al. | 79   |

\* (Exhibits attached to transcript.)

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P R O C E E D I N G S

Whereupon,

KEVIN WESLING,

being first duly sworn or affirmed to testify to the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

MS. BHATTACHARYYA: Good morning, everyone.

MR. WALSH: Good morning.

THE WITNESS: Good morning.

EXAMINATION BY COUNSEL FOR PATENT OWNER

BY MS. BHATTACHARYYA:

Q. Good morning, Mr. Wesling. My name is Arpita Bhattacharyya. I'm representing FOX Factory, Inc., in this IPR proceeding.

MS. BHATTACHARYYA: And Mr. Walsh, do you want to introduce yourself on the record?

MR. WALSH: Yes. Rick Walsh. I represent SRAM, LLC. Also with me is my partner, Michael Hickey, who is online.

BY MS. BHATTACHARYYA:

Q. Mr. Wesling, I know this is not your

1 first deposition. You have been deposed prior, in  
2 the parallel district court litigation that's been  
3 going on, so I know you are familiar with how a  
4 deposition is going to go today, so I'm not going  
5 to go over all the instructions unless you have  
6 any questions for me.

7 Do you have any questions before we  
8 proceed?

9 A. I don't.

10 Q. I just want to make sure that you  
11 understand you are under oath to answer my  
12 questions truthfully and completely.

13 A. I do.

14 Q. And I'm sure the answer is no, but before  
15 we get started, I just want to confirm that you  
16 are not under the influence of alcohol or any  
17 medication that may impair your ability to answer  
18 my questions truthfully and completely.

19 A. I am not.

20 Q. So this IPR is about the '223 patent.

21 You understand what I mean by that,  
22 right? Is it okay for me to just use the short

1 form '223 patent?

2 A. Yes.

3 Q. What have you done to prepare for the  
4 deposition today?

5 A. I've read through my declaration, the  
6 patent itself, some of the prior art, some other  
7 assorted documents but --

8 Q. Did -- sorry, I missed the last part.

9 A. Just general preparation.

10 Q. Okay. Did you meet with anyone to  
11 prepare for the deposition?

12 A. I did.

13 Q. Who did you meet with?

14 A. I met with Rick Walsh.

15 Q. And when was that?

16 A. Yesterday.

17 Q. For how long did you meet with Mr. Walsh?

18 A. Some time in the morning and some of the  
19 afternoon.

20 Q. And you are presently in Mr. Walsh's  
21 office, or are you in Chicago?

22 A. I'm located in the SRAM office in

1 Chicago.

2 Q. And Mr. Walsh is there with you in the  
3 same room, correct?

4 A. Yes.

5 Q. So did you meet with Mr. Walsh in person  
6 in your offices yesterday?

7 A. I did.

8 Q. Did you talk to anyone else at SRAM prior  
9 to your deposition today regarding this  
10 deposition?

11 A. Brian Gause, who is a lawyer at SRAM, was  
12 at some of the meetings. And Michael Hickey was  
13 here as well.

14 Q. Did you review any of the materials from  
15 the related district court litigation regarding  
16 the '223 patent in preparation for your deposition  
17 today?

18 A. I did.

19 Q. What materials did you review?

20 A. Well, there's the '223 patent. I  
21 reviewed that. I reviewed some portions of the  
22 previous deposition I had on the topics that are

1 similar to the topics today.

2 Q. Did you review the declaration of  
3 Dr. Wang that was provided in support of SRAM's  
4 IPR petition against the '223 patent?

5 A. I did not review that yesterday, but I've  
6 seen it before.

7 Q. When was the last time you saw it prior  
8 to yesterday?

9 A. I don't remember. Sometime after it was  
10 written and before today.

11 Q. Who prepared the first draft of your  
12 declaration?

13 A. I don't remember there being a first  
14 draft. I provided the input and worked with Rick  
15 Walsh and Michael Hickey to help draft the  
16 first -- help draft the declaration itself.

17 Q. Okay. So was the declaration prepared by  
18 Mr. Walsh and Mr. Hickey?

19 A. I did not type it in, but I was there  
20 providing the input necessary to make the  
21 deposition [sic]. So I did not type it. Just  
22 prepared it.

1 Q. Did you review your declaration before it  
2 was submitted?

3 A. Yes.

4 Q. And you stand by the opinions in your  
5 declaration?

6 A. I do.

7 Q. Approximately how much time did you spend  
8 in working with Mr. Walsh and Mr. Hickey in  
9 preparing your declaration?

10 A. I can't say for sure. It was certainly  
11 multiple hours.

12 Q. Approximately how many hours, would you  
13 say?

14 A. Four or five.

15 Q. You spent four to five hours preparing  
16 your declaration?

17 A. Sorry, could you say that again.

18 Q. You spent four to five hours preparing  
19 your declaration; is that what you said?

20 A. It depends on what you mean by preparing.  
21 If you're talking about finding and reviewing  
22 prior art, we've been doing that for a long period

1 of time. But the actual preparation of the IPR,  
2 including typing and everything else, I couldn't  
3 really give you an honest answer, but maybe --  
4 like I said, maybe five-plus hours.

5 Q. And you said that the finding of prior  
6 art, et cetera, in preparation for the IPR has  
7 been going on for a while.

8 Did you find the prior art, or was it  
9 Mr. Walsh law firm?

10 A. I found much of the prior art.

11 Q. Did you recall which prior art you found  
12 and which prior art was found by Mr. Walsh's  
13 office?

14 A. Well, some of them -- some of the prior  
15 art could have been found by both of us. So I  
16 know that I found many of the pieces of prior art,  
17 and they found a few as well. There's some  
18 overlap between the two.

19 Q. Okay. Do you recall any of the prior  
20 arts that you specifically found? And if doesn't  
21 matter if there is an overlap.

22 A. Oh. Nakaya, Chen. I know I found those.

1 And Gartner. I think I found that as well.

2 Q. Do you know if Dr. Wang provided any  
3 prior art searching?

4 A. I don't know.

5 Q. So you have been at SRAM for a long time,  
6 correct?

7 A. Yes.

8 Q. What is your current role at SRAM?

9 A. I'm the director of advanced development.

10 Q. Okay. And how long have you been in that  
11 role?

12 A. Maybe 12 years.

13 Q. Okay. And when did you start at SRAM?

14 A. 1996.

15 Q. So that's a long time. And would it be  
16 fair to say that you have not -- you have sort of  
17 gone through different roles and positions at SRAM  
18 since 1996?

19 A. A few.

20 Q. And you're currently the director of  
21 advanced development, correct?

22 A. Yes.

1           Q. Are you the inventor on any of SRAM's  
2 patents?

3           A. Yes.

4           Q. How many would you say?

5           A. I'm not sure. Over 25.

6           Q. Okay. And what is the general technology  
7 area of the patents in which you are named as an  
8 inventor?

9           A. All -- all bicycle-related areas.

10          Q. Can you be a little more specific as to  
11 what type of bicycle technology?

12          A. Suspension, transmission, seat post,  
13 electronic devices. Pretty much everything SRAM  
14 makes.

15          Q. Okay. What are your roles -- strike  
16 that.

17               What are your responsibilities as the  
18 director of advanced development at SRAM?

19          A. I manage several advanced development  
20 teams globally. Those are teams of engineers that  
21 develop new products for SRAM.

22          Q. What are the kind of activities that you

1 do as part of your managerial role?

2 A. Yeah, I mean, I manage the careers and, I  
3 would say, job performance of the people in my  
4 group. I review new concepts from that group. I  
5 help communicate those concepts to people within  
6 the company, like product managers and category  
7 managers.

8 I do review some IP as it comes up, and I  
9 help patent -- I help the engineers that work on  
10 my team develop a strategy for protecting the  
11 inventions they create.

12 Q. Do you perform any hands-on engineering  
13 work at SRAM?

14 A. Pardon?

15 Q. Perform any hands-on engineering work?

16 A. Sometimes, but not too much.

17 Q. When would you say was the last time you  
18 actually did hands-on engineering work?

19 A. A few weeks ago.

20 Q. What technology was that?

21 A. Transmission.

22 Q. And how often do you do the engineering

1 work in a lab, for instance?

2 A. In a lab? We don't have too many labs  
3 here, but -- so not very often.

4 Q. So let's say any work space. A machine  
5 shop, for instance.

6 How often do you do engineering/building  
7 type of work?

8 A. Yeah, it's sporadic. I mostly deal now  
9 with the personnel and the product concepts versus  
10 the actual engineering, but sometimes I do get  
11 into them.

12 Q. SRAM's shock products are part of the  
13 suspension development group, correct?

14 A. Yes.

15 Q. Who manages that group?

16 A. Who manages the entire group or -- that  
17 group is made up of multiple groups.

18 Q. Is there -- part of the suspension  
19 development group?

20 A. There's a value stream, which is the  
21 business group, for RockShox and some other  
22 products as well. That business leader, value

1 stream leader, is Sander Rigney.

2 Q. And do you report to Mr. Rigney, or is  
3 that two completely different --

4 A. Two completely different --

5 Q. -- branches? Okay.

6 Who do you currently report to,  
7 Mr. Wesling?

8 A. I currently report to Jeff Winterkorn,  
9 who's the vice-president of engineering.

10 Q. So is the suspension development group  
11 under Mr. Rigney being managed within the  
12 framework of the traditional engineering side of  
13 the company?

14 A. Sander manages the business and the  
15 product managers and the marketing, but he doesn't  
16 manage marketing people. We have functional  
17 groups that report directly up to the -- for  
18 instance, the vice-president of engineering, which  
19 is separate than the vice-president of suspension,  
20 which is Sander Rigney.

21 Q. What I'm trying to understand is that the  
22 product development that happens within the

1 suspension group, that is done by people who are  
2 not directly under your management; is that right?

3 A. That's correct. Some of the development.  
4 Some of the development is done under mine as  
5 well.

6 Q. How would you differentiate the two? You  
7 said some development is done under your group and  
8 some is done under Mr. Rigney's group.

9 A. Yeah. My group is the advanced  
10 development group, which is on products that are  
11 not ready for market. It's more creating new  
12 products, new technologies, and it's several years  
13 away from market.

14 Q. And would you say that Mr. Rigney's group  
15 is dealing with more current products?

16 A. Mr. Rigney's group of product managers,  
17 yes. Those engineers that also report to Jeff  
18 Winterkorn through engineering managers in  
19 Colorado, they work on more current -- what we  
20 call model-year products.

21 Q. So you have studied the '223 patent in  
22 preparation for your deposition today, correct?

1           A. Yes. I'm familiar with it.

2           Q. Okay. Would you agree that the  
3       '223 patent is directed to bottom out technology?

4           A. By bottom out technology, you mean  
5       bottom out damping or bottom out --

6           Q. You get -- how about you describe it in  
7       your own words. How would you describe the  
8       technology of the '223 patent?

9           A. I would describe it as a generic shock  
10       absorber that could be applied to many devices.  
11       It's a shock absorber and it has a certain  
12       function that has a separate damping function  
13       towards the compressive stroke of the -- end of  
14       the compressive stroke of the shock.

15                 You could call that bottom out, but  
16       shocks would also be bottomed out in a different  
17       direction, so it's a little bit too specific.

18           Q. But you agree that the '223 patent  
19       discusses bottom out protection or bottom out  
20       resistance technology, correct?

21           A. Yes.

22           Q. Bottom out protection technology

1 described in the '223 patent includes a bottom out  
2 piston and a bottom out protection volume,  
3 referred to as a bottom out cup, correct?

4 A. It does refer to a bottom out cup in that  
5 patent. Yes.

6 I don't know -- your terminology -- what  
7 did you say?

8 Q. Let me break that down.

9 So the -- there are various components  
10 involved in the bottom out protection technology,  
11 but, at a minimum, the '223 patent describes a  
12 bottom out piston and a bottom out cup, correct?

13 A. Yeah, at some point in the patent it does  
14 mention both those. Yes.

15 Q. Within --

16 A. But not necessarily all the claims. But  
17 in the patent, it is mentioned. Yes.

18 Q. Okay. The bottom out cup is a chamber or  
19 a volume where some compression happens during a  
20 compression stroke in the shock absorber, correct?

21 A. At the end of the compression stroke, at  
22 some point when you're almost fully compressed,

1     that cup, yeah, is a chamber, like you say. Or a  
2     volume of oil.

3             Q. Did you say -- a volume of what, sorry?

4             A. I was repeating what you said.

5             Q. Yeah, I was referring to the bottom out  
6     cup as a compression volume or chamber.

7             Would you agree with that?

8             A. I mean, the cup itself is just a, you  
9     know, cup-shaped, you know, space. It's got oil  
10    in it. It's got a volume of oil in it. Yes.

11            Q. And near the end of a compression stroke,  
12    there will be some compression that happens in  
13    that bottom out cup, correct?

14            A. Yes. Some level.

15            Q. And would you agree that the bottom out  
16    cup is configured for providing dampening at the  
17    end portion of a compression stroke?

18            A. The cup itself, not necessarily. I mean,  
19    in the fluid flow from the cup, maybe. The cup  
20    itself is just a cup.

21            Q. Well, my question is the cup is  
22    configured -- the purpose of the cup -- let's talk

1 about the purpose of the cup. And I'm not asking  
2 about the structure of it.

3 The purpose of the cup is for providing  
4 dampening at the end portion of a compression  
5 stroke, correct?

6 A. I mean, the purpose of the shock is to do  
7 that. The whole purpose of the design of the  
8 shock absorber is to to that. The cup is one part  
9 of that.

10 Q. So the cup plays a role in providing  
11 dampening at the end portion of a compression  
12 stroke, correct?

13 A. I mean, the cup itself doesn't generate  
14 any damping. It's just a volume of space.

15 Q. But the cup is there for a reason. Would  
16 you agree?

17 A. Of course.

18 Q. And the reason for the cup being there is  
19 to help with providing dampening at the end  
20 portion of a compression stroke, correct?

21 A. Again, the cup doesn't -- you're -- I'm  
22 trying to understand your words very clearly.

1 You're saying the cup provides damping, and the  
2 cup doesn't provide damping. The cup just  
3 isolates some oil at the end of the stroke.  
4 Something else provides damping, but the cup  
5 itself doesn't provide any damping.

6 Q. What is the role of the cup, then?

7 A. I just answered that question.

8 Q. So the cup is there just for decoration?

9 A. No. The cup is there to hold the volume  
10 of fluid that is interacted with at the end of the  
11 stroke.

12 Q. And the cup is there holding a volume of  
13 fluid in order to provide dampening at the end  
14 portion of a compression stroke, correct?

15 A. I'm just saying that another device  
16 creates the damping.

17 Q. I --

18 A. Like you said damping, it produces  
19 damping. The cup itself -- itself is just holding  
20 the fluid. It's just a separate volume of fluid.

21 Q. Exactly. And the cup is holding the  
22 separate volume of fluid so that the shock

1 absorber is able to provide dampening at the end  
2 portion of a compression stroke, correct?

3 A. That's more correct. Yes.

4 Q. Okay. And you said the cup is there to  
5 hold a separate volume of fluid.

6 That separate volume of fluid is  
7 different from the volume of fluid that is in the  
8 primary compression chamber of the damper,  
9 correct?

10 A. Yeah. When you're defining fluid in one  
11 section, it's different than the fluid in the  
12 other section. Correct.

13 Q. Would it be fair to characterize the  
14 separate volume of fluid in the bottom out cup as  
15 a secondary volume of fluid?

16 A. I think it would be. At a certain time.

17 Q. At a point during a compression stroke  
18 when there is dampening happening in the secondary  
19 volume of fluid in the bottom out cup, would it be  
20 fair to refer to that compression as secondary  
21 compression?

22 A. I don't know if I'm comfortable with

1 that. That's a new term I haven't heard, so I --  
2 I have to think about that, but I'm not sure.

3 Q. The '223 patent discusses the term  
4 "secondary compression," correct?

5 A. I'm not sure. I didn't memorize that  
6 patent, but that's --

7 Q. Okay.

8 A. If you could show me where it is.

9 Q. You can pull up the '223 patent, which is  
10 in the exhibit folder. It was previously marked  
11 as Exhibit 1001.

12 (Previously marked Exhibit 1001  
13 introduced into the record and attached  
14 to the transcript.)

15 THE WITNESS: Okay. I have it.

16 BY MS. BHATTACHARYYA:

17 Q. Go to column 2, starting with line 22.  
18 You'll see the patent reads, "While the" --  
19 there's a typo there, but it says, "While the  
20 foregoing patents teach structures for increasing  
21 dampening in the final stages of a shock  
22 absorber's compression stroke, none provide a

1 complete and user-adjustable system through the  
2 use of a user-adjustable secondary dampening  
3 arrangement."

4 Do you see that?

5 A. I do see that.

6 Q. What is your understanding of a  
7 user-adjustable secondary dampening arrangement?

8 A. That would be a secondary dampening  
9 arrangement that's user adjustable. I -- in this  
10 context, it makes a little bit more sense, and  
11 it's clear that this patent is basically entirely  
12 about adjusting the secondary damping. That's it.

13 Q. And the secondary damping that this  
14 '223 patent is referring to is the bottom out  
15 dampening -- or the dampening that's happening in  
16 the bottom out cup, correct?

17 A. I mean, in the case of this patent, the  
18 damping is not occurring in the cup. The images  
19 show that clearly. So...

20 But I do understand what you're saying,  
21 what you're trying to say, but I just want to be  
22 specific: There's no damping occurring in the cup

1 in the '223 patent.

2 Q. But the cup is playing a role in the  
3 dampening -- or rather, let's say the cup plays a  
4 role in the secondary dampening as described in  
5 the '223 patent, correct?

6 A. Yes. Uh-huh.

7 Q. Some parts of the '223 patent also refer  
8 to the damper chamber as having a primary  
9 compression and a primary rebound chamber,  
10 correct?

11 A. Could you repeat that question?

12 Q. Some parts of the '223 patent refer to  
13 the main damper chamber as having a primary  
14 compression chamber and a primary rebound chamber,  
15 correct?

16 A. I believe so.

17 Q. So in that context, referring to the  
18 bottom out cup chamber or volume as a secondary  
19 chamber or secondary volume would make sense,  
20 correct?

21 A. I would agree with that.

22 Q. Just going back to the concept of

1 bottom out or bottoming out.

2 The bottom out necessarily happens near  
3 the end of a compression stroke when the shock  
4 absorber has no more ability to compress, correct?

5 A. Near the end. Yes.

6 Q. So earlier we talked about Dr. Wang's  
7 declaration, and you said that you had reviewed it  
8 at some point after it was submitted; is that  
9 correct?

10 A. I did say that. Yeah.

11 Q. And so -- do you recall there being any  
12 substantive differences between your declaration  
13 and Dr. Wang's declaration?

14 A. I don't remember.

15 Q. And do you remember anything jumping out  
16 at you as being -- his opinion being different  
17 from yours for any -- in any portion of the  
18 declaration?

19 A. I do not remember anything like that, no.

20 Q. Okay. Did you review Dr. Wang's  
21 declaration in preparation for your deposition  
22 today?

1           A.   No.

2           Q.   How does the technology described in the  
3   '223 patent provide bottom out protection or  
4   control?

5           A.   How does it?  From looking at the images  
6   and reading about it, it has a stage towards the  
7   end when the shock is nearly bottomed out where  
8   some object goes into a chamber, like the  
9   bottom out cup, and forces oil out of that.  It's  
10   just some feature at the end that does that.

11                Now, that's well, well known in the prior  
12   art:  Bottom out cups and flow path into and out  
13   of bottom out cups.  To me, the invention of this  
14   is entirely about the adjustable -- the  
15   adjustability of the fluid leaving the bottom out  
16   cup and going into the compression chamber.  Or,  
17   you know, the adjustability of that flow path in  
18   either direction.

19           Q.   You have reviewed the Fox 751 patent in  
20   preparation for your deposition today, correct?

21           A.   That was the patent on my -- my question  
22   is, is that the patent that we submitted, the Fox

1 patent?

2 Q. Exactly. And let me put the full patent  
3 number in the record. The patent number is  
4 6,604,771. The named inventor is Robert Fox. And  
5 it was previously marked as Exhibit 1009.

6 (Previously marked Exhibit 1009  
7 introduced into the record and attached  
8 to the transcript.)

9 THE WITNESS: Yes.

10 BY MS. BHATTACHARYYA:

11 Q. The Fox '751 patent does not have a  
12 bottom out cup technology, correct?

13 A. That is correct. This patent is just  
14 meant to represent the general, very, very common  
15 shape of a bicycle rear shock.

16 Q. The Fox '751 patent discusses a  
17 bottom out bumper to provide bottom out  
18 protection, correct?

19 A. You know, a bumper is well known in the  
20 art. I don't remember it specifically mentioning  
21 a bumper. I might have read right past that  
22 because it's such a common thing. So it may or

1 may not have. I can't recall.

2 Q. But a bottom out bumper also provides  
3 bottom out protection, much like bottom out cup  
4 technology, correct?

5 A. A bottom out bumper provides some impact  
6 so that two metal parts don't run into each other.  
7 And it provides some level of resistance and  
8 protection from that and from making noise. But I  
9 think it's fairly different than what's going on  
10 with a bottom out cup.

11 Q. Mr. Wesling, would you please open up  
12 your declaration that was submitted in this IPR?  
13 And it was marked as Exhibit 1003.

14 (Previously marked Exhibit 1003  
15 introduced into the record and attached  
16 to the transcript.)

17 THE WITNESS: Okay. I have it.

18 BY MS. BHATTACHARYYA:

19 Q. Okay. We'll stay with your declaration  
20 for a while so, you know, if you want to just  
21 leave it open, that would be great.

22 The function of a damper is to dissipate

1 energy from a shock absorbing system, correct?

2 A. That is something that a damper does,  
3 yes. I'm not sure it's the entire function of it,  
4 but -- a damper also takes a harsh impact and  
5 spreads it out over a longer time period, which  
6 makes that impact go from being harsh to being  
7 much softer.

8 Q. And when a damper, as you said, spreads  
9 out an impact, it dissipates energy while it does  
10 that, right?

11 A. Yeah. Sometimes it does, some part of it  
12 does. It's a combination of all those things.  
13 But yeah.

14 Q. And the dissipation of energy allows for  
15 a more controlled compression; is that correct?

16 A. Yes. The word "control" is a very strong  
17 word that definitely defines damping. Damping and  
18 control go hand in hand. Without the damping, a  
19 spring would just oscillate. And so some level of  
20 damping is required to control that.

21 So yeah, control is a great word for  
22 damping.

1 Q. And there are many different ways in  
2 which a damping system can provide that controlled  
3 compression and dissipation of energy, correct?

4 A. There is more than one way. Many ways.  
5 Sure.

6 Q. Paragraph 29 of your declaration. Let me  
7 know when you're there.

8 A. Okay. I'm here.

9 Q. The chamber 275 that is shown in pink at  
10 the bottom of paragraph 29, that is the bottom out  
11 cup in the context of the '223 patent, correct?

12 A. Can you repeat that? The first part cut  
13 out.

14 Q. Sorry. The chamber 275 that is shown at  
15 the bottom of paragraph 29 of your declaration is  
16 the bottom out cup in the context of the  
17 '223 patent, correct?

18 A. It is.

19 Q. And let's look at the figure that is  
20 on -- right before paragraph 30 in your  
21 declaration.

22 A. Okay.

1 Q. That's an annotated or colored version of  
2 figure 4 from the '223 patent, correct?

3 A. Yes.

4 Q. And there -- figure 4, that is -- shows  
5 the bottom out piston 250 that is plunged into the  
6 bottom out cup 275, correct?

7 A. I see that. Yeah.

8 Q. Portion 222 that is shown in red in  
9 figure 4 right above paragraph 30 is the primary  
10 compression portion of the damper chamber,  
11 correct?

12 A. Correct.

13 Q. And the portion 221, which is just shown  
14 in white -- it's not colored -- is the primary  
15 rebound portion of the damper chamber, correct?

16 A. Yes.

17 Q. As the bottom out piston 250 enters the  
18 bottom out cup 275, some compressive forces will  
19 act on the fluid in the cup and some of it will  
20 exit the cup through one of the two fluid flow  
21 paths --

22 A. Yeah, I --

1 Q. -- correct?

2 A. I'm sorry.

3 Q. Sorry, I was just saying that -- let me  
4 just repeat my question.

5 When the bottom out piston 250 enters the  
6 bottom out cup 275, some compressive forces will  
7 act on the fluid in the cup, and some of that  
8 fluid will exit the cup through one of the two  
9 flow paths, 301 and 302, correct?

10 A. Provided that that piston is completely  
11 sealed against the inside of the bottom out cup.  
12 If that is sealed, then the flow would go through  
13 the chamber -- the two that you just mentioned,  
14 the -- I can't see the numbers here, but -- yeah,  
15 the two flow paths that exit the bottom of the  
16 bottom out chamber. Assuming that the piston is  
17 sealed --

18 Q. Okay.

19 A. -- blow-by.

20 Q. Okay. Understood.

21 So the piston needs to be sealed with the  
22 circumference of the cup so that there isn't a lot

1 of fluid loss happening around the piston in --  
2 correct?

3 A. I mean, you asked the question whether or  
4 not the fluid goes through -- only through those  
5 two chambers.

6 Q. Uh-huh.

7 A. And I said yes, if the piston is sealed.  
8 If the piston is not sealed, then there's three  
9 paths out.

10 Q. Assuming that the outer surface of the  
11 piston is sealed or in tight contact with the  
12 circumference of the bottom out cup, most of the  
13 fluid will exit to the -- through two fluid paths,  
14 301 and 302, correct?

15 A. It depends what you mean by tight  
16 contact. If it was tight contact, it wouldn't be  
17 able to move. If there's going to be clearance --  
18 either it's sealed or there's clearance. And the  
19 clearance defines how much blow-by. And actually,  
20 from the look of this picture, it looks like  
21 there's a lot of clearance between the piston and  
22 the idea of the bottom out cup except for the

1 seal. The seal, in this case, seals it. And  
2 that's clearly a seal.

3 So if you remove the seal, you get a lot  
4 of blow-by.

5 Q. Even if you get some blow-by, there will  
6 be fluid flowing through the two flow paths,  
7 correct?

8 A. Probably. The one flow path has no  
9 resistance at all. If that -- the flow path  
10 that's the one in the patent itself, if that is a  
11 fixed orifice, then there's no resistance going  
12 through that orifice at all at a certain speed.  
13 So there's always going to be flow through that  
14 orifice, some -- with some resistance at a certain  
15 speed and some no resistance at a slower speed.

16 Q. The one that you said doesn't have  
17 resistance, are you referring to the blow-out  
18 valve?

19 A. The blow-off valve does have resistance.  
20 That's got a fixed blow-off, so it provides no  
21 flow up until a certain pressure, and then it  
22 provides flow.

1           The other version, the valve 355 provides  
2 no resistance, because it's an orifice, until the  
3 flow increases enough to generate some kind of  
4 resistive force through that valve, and then it  
5 provides resistance proportional to the speed of  
6 the fluid going through that valve. That's how  
7 that works.

8           Q. But --

9           A. And one could say the same thing about  
10 the blow-by. At very slow speed, fluid would go  
11 past the piston bottom out cup interface with very  
12 little resistance. But at a higher speed, it  
13 would choke and then provide resistance.

14          Q. If you adjust the valve 355 such that the  
15 orifice becomes smaller or larger, that would  
16 affect the resistance of fluid flowing through the  
17 flow path that has the 355 valve, correct?

18          A. Yes. That's the entirety of this patent.  
19 Like, without that, this patent has no feature  
20 whatsoever beyond anything in the prior art. So  
21 the entirety of this patent is that particular  
22 valve 355 and that adjustable orifice. Without

1       that, yeah, of course.

2           Q.   Turn to paragraph 32.

3           A.   Okay.

4           Q.   In paragraph 32 of your declaration, you  
5 discuss a path 465 between the bottom out cup and  
6 the rebound portion of the shock absorber,  
7 correct?

8           A.   Yes.

9           Q.   In figure 4 of the '223 patent, which is  
10 depicted right below your paragraph 32, the flow  
11 path 465 is shown as going from the primary  
12 rebound chamber 221 into the bottom out cup 275,  
13 correct?

14          A.   Yes.  It shows it exiting the piston and  
15 going between the space of the seal and the bottom  
16 of the bottom out cup.

17          Q.   So the flow is from the primary rebound  
18 chamber into the bottom out cup through this flow  
19 path 465, correct?

20          A.   It's into a part of the bottom out cup.  
21 I say that because, at this stage in this image,  
22 the other side of the seal, that fluid is now

1 completely connected and -- with the primary  
2 compression chamber. So it's not flowing into  
3 that area. It's flowing into the area that  
4 remains at the bottom out cup as the piston  
5 progresses into the bottom out cup.

6 So yeah, to the left of the piston it's  
7 flowing into that space.

8 Q. And the flow path 465 is also adjustable,  
9 correct?

10 A. It is.

11 Q. And how is the adjustment done for the  
12 flow path 465?

13 A. In the image here, I believe it's  
14 number 231, which is the rebound needle, which is  
15 a very common thing and used on almost every  
16 decent rear shock that's produced today.

17 So that rebound needle is adjusted -- the  
18 image from the left to right, or in and out, and  
19 that closes the flow -- the rebound flow path.  
20 It's an open -- a typical variable orifice damper.

21 So whenever you see a needle like this  
22 closing an orifice and something is flowing

1 through it, it's a damper. So yes.

2 Q. And what's the purpose of the flow  
3 path 465?

4 A. The purpose of that is -- the main  
5 purpose of the flow path is to regulate the flow  
6 of fluid from the rebound chamber to the -- to  
7 anything outside of the rebound chamber. So as  
8 the shock expands, goes to its fullest length,  
9 you're trying to regulate the flow and the  
10 extension so it doesn't happen immediately. So  
11 you're damping that oil.

12 And that orifice, which is 460, is -- you  
13 know, introduction of the oil from the rebound  
14 chamber. And then that needle 231 -- the needle  
15 valve, the throttle valve, whatever you want to  
16 call it -- is adjusting that flow out of the  
17 rebound chamber.

18 From there, that flow goes into the other  
19 parts of the shock.

20 Q. And that valve 231 is user adjustable,  
21 correct?

22 A. It is. Very common on almost all shocks

1 today.

2 Q. And it is adjustable by a user on the  
3 fly --

4 A. Yes.

5 Q. -- to --

6 A. Yes. It can be, and it can also be  
7 fixed. Most all flow on rear shocks have the  
8 option of being a fixed factory set or user  
9 adjustable. And this is an example that can be  
10 either one.

11 I'm not sure it's defined in this patent.

12 MS. BHATTACHARYYA: Mr. Wesling, we've  
13 been going for about an hour. Let's take a  
14 ten-minute break.

15 THE WITNESS: Okay.

16 (A recess was taken.)

17 BY MS. BHATTACHARYYA:

18 Q. Mr. Wesling, let's go to claim 1 of the  
19 '223 patent. The '223 patent is in the exhibit  
20 folder. It's marked as Exhibit 1001.

21 A. Okay. I'm there.

22 Q. Claim 1 of the '223 patent, starting at

1 around line 44 in column 7 reads, "A fluid flow  
2 path formed in the bottom out cup for providing  
3 fluid communication from the cup to the  
4 compression portion of the chamber during a  
5 compression stroke of the damper."

6 Do you see that?

7 A. I do.

8 Q. In your declaration you have said that  
9 claim 1 doesn't require a direction of flow  
10 between the compression portion of the chamber and  
11 the bottom out cup, correct?

12 A. Yes.

13 Q. And do you stand by that?

14 A. I do.

15 Q. Claim 1, however, recites that the fluid  
16 path formed in the bottom out cup provides  
17 communication from the cup to the compression  
18 portion of the chamber.

19 Do you see that?

20 A. I see those words. Yes.

21 Q. Does fluid communication from the cup to  
22 the compression portion of the chamber imply that

1 there is fluid communication in a specific  
2 direction from the cup to the compression portion  
3 of the chamber?

4 A. I don't believe it does.

5 Q. What does from the cup to the compression  
6 portion of the chamber mean to you?

7 A. It means that there exists a fluid  
8 communication channel, a flow path, that is --  
9 exists between two points. So it could be from --  
10 from -- doesn't matter. It's -- it exists --  
11 there exists a fluid communication path during a  
12 compression stroke. And that is true; there is a  
13 fluid communication path between those two during  
14 a compression stroke.

15 Q. Claim 1 does not recite that a flow path  
16 exists from the cup to the compression portion of  
17 the chamber. Instead, it recites there is fluid  
18 communication from the cup to the compression  
19 portion of the chamber, correct?

20 A. I'm not sure what your question was. The  
21 question -- if you read the claim, as we did  
22 before, I agreed with the words that are in the

1 claim. But as you phrased that, I'm not sure I  
2 agree with that.

3 Q. The words of the claims are there is  
4 "fluid communication from the cup to the  
5 compression portion of the chamber," correct?

6 A. Yeah. I agree that those words are  
7 there. It provides fluid communication from the  
8 cup to the compression portion of the chamber  
9 during a compression stroke. But it also provides  
10 fluid in the other direction as well. It's  
11 provided that by means of it being a communication  
12 channel.

13 Q. So even if fluid is flowing from the  
14 compression chamber to the cup, it is your  
15 interpretation that it is communication from the  
16 cup to the compression portion of the chamber?

17 A. I disagree. The channel -- the flow path  
18 itself is from the cup to the compression chamber.  
19 And there is fluid communication between the two.  
20 During a compression stroke, that channel exists.  
21 It's possible that during a compression stroke,  
22 that that channel wouldn't exist. But in this

1 case, it does.

2 Q. I agree. Let's focus on the words of the  
3 claims.

4 Does the claim say that there is a fluid  
5 path extending from the cup to the compression  
6 portion of the chamber?

7 A. It does not say that. It says it's  
8 formed in the bottom out cup for providing fluid  
9 communication from the cup to the compression  
10 portion, which I agree with. It does create a  
11 channel that goes from here to there. That  
12 channel also goes from the compression chamber to  
13 the bottom out cup. It can be both.

14 Q. What does it mean to you by the term  
15 "fluid communication"?

16 A. It means the fluid can communicate.

17 I'm not sure what your question is.  
18 Those words --

19 Q. What does the term "fluid communication"  
20 mean to you?

21 A. Pardon?

22 Q. My question is, what does the term "fluid

1 communication" mean to you?

2 A. Yeah. It means that fluid can  
3 communicate from one place to another.

4 Q. And how does fluid communicate from one  
5 place to another?

6 A. How does it?

7 Q. Yes.

8 A. Well, it can communicate entirely by  
9 just -- by its existence. It can be a channel  
10 with no flow. And as long as it can -- it can  
11 communicate as long as it can move within a space.  
12 And what we said before was there is a space that  
13 is the bottom out cup and a space that's a  
14 compression chamber. And the ability to  
15 communicate is just having a channel between the  
16 two of them.

17 So fluid communicates by having an open  
18 channel.

19 Q. So as long as there is an opening between  
20 part A and part B through which communication may  
21 happen, it is -- is it your opinion that part A  
22 and part B are in fluid communication?

1           A.   Yes.

2           Q.   Does communication have to happen between  
3 part A and part B -- strike that.

4                If there is an opening between part A and  
5 part B, would you consider part A and part B to be  
6 in fluid communication with each other even if  
7 there is no flow of fluid between them?

8           A.   I would. The claim is describing the  
9 fluid flow path. So that particular part of the  
10 claim is about a fluid flow path. So it makes  
11 sense to say that that fluid flow path provides  
12 communication between those two spaces.

13          Q.   But it is your opinion that part A and  
14 part B, if they have an opening between them, they  
15 are in fluid communication regardless of whether  
16 or not there is fluid flow happening between those  
17 two parts, correct?

18          A.   As long as there is fluid in there, yes.

19          Q.   As long as there's fluid in there. But  
20 there -- you -- there is no directionality of flow  
21 of that fluid required in order for part A and  
22 part B to be in fluid communication, correct?

1           A. You know, I'm really referring to this  
2 specific embodiment. So in this specific  
3 embodiment, where -- I would say that that's true.  
4 I can't speak for all fluid chambers. But looking  
5 at the Fox image that you showed before, I would  
6 say those two, yes. Especially since, in this  
7 case, the chamber -- in this case, in the Fox  
8 image, it's very, very clear that the only way  
9 that the fluid can communicate is between these  
10 two chambers. There's no other alternative for  
11 that. So yes, those two chambers communicate with  
12 each other.

13           Q. Let's go to the Nakaya reference, which  
14 is patent number 6,558,430, which was previously  
15 marked as Exhibit 1005.

16                   (Previously marked Exhibit 1005  
17 identified for the record and attached to  
18 the transcript.)

19           THE WITNESS: Okay. I'm there.

20 BY MS. BHATTACHARYYA:

21           Q. You're familiar with the Nakaya  
22 reference, correct?

1           A. I am.

2           Q. Let's talk about the directionality of  
3 flow in Nakaya.

4                 So in Nakaya, you are referring to the  
5 part 1125 and 1127 collectively as the bottom out  
6 cup, correct?

7           A. Can you tell me what figure you're on?

8           Q. I am looking at 7, 8.

9                 Do you recall what part of the Nakaya  
10 device did you refer to as the bottom out cup?

11          A. I'm sorry, which figure were you on  
12 again? You said 78. I don't know which --

13          Q. 7 and 8. Figures 7 and 8.

14          A. All right. So can we just refer to one  
15 figure at a time? I can only see one at a time,  
16 so...

17          Q. I'm just asking you about what part of  
18 the Nakaya device. It is the same device that is  
19 being shown in figures 7 and 8 of Nakaya. What  
20 part --

21          A. Because they have --

22          Q. -- of that device --

1           A. I'm sorry. They have different numbers  
2 that are represented on those two pictures. And  
3 if you're referring to a number, then I just want  
4 to know which figure you're referring to.

5           Q. I mean, it is your declaration you  
6 reference, Mr. Wesling. You tell me, what did you  
7 refer to as the bottom out cup in the Nakaya  
8 reference.

9           A. I mean, you started off the question with  
10 listing a bunch of numbers, like 1127, 1125, and  
11 so on, so --

12          Q. So -

13          A. -- you were referring to a different  
14 figure.

15          Q. I was repeating what's in your  
16 declaration, but you seem to be confused. So if  
17 you need a moment to refresh yourself as to what  
18 is the bottom out cup of Nakaya, then we can  
19 proceed.

20          A. Okay. If you're reading from my  
21 declaration, I would prefer if you said I am  
22 reading from your declaration, and you said this

1 in your declaration, and not asking me if I said  
2 that in my declaration. Because I don't know if  
3 you're going to change a word or shorten  
4 something. So just say, I'm reading from your  
5 declaration; in your declaration it says this.  
6 And then I can agree to that very easily. So...

7 Q. You said you have reviewed Nakaya, you  
8 have reviewed your declaration, so I would assume  
9 you would at least remember what is the bottom out  
10 cup of Nakaya, but it doesn't seem so. So I will  
11 let you look at Nakaya to reorient yourself, and I  
12 will then ask you what is the bottom out cup of  
13 Nakaya.

14 A. Okay. You can ask me now.

15 Q. Okay. What part of the Nakaya device  
16 that is shown in figures 7 and 8 are you referring  
17 as the bottom out cup of Nakaya?

18 A. In my declaration -- actually, I'm only  
19 trying to be specific here -- is that -- I could  
20 have referred to the bottom out cup as 1125 and  
21 1127. But it also would more accurately be space  
22 of 1127 that's within the seal. And -- I'm just

1     trying to be specific.

2             But yeah, it is generally that space that  
3     would be on the -- if you look at the space from  
4     the seal to the bottom of that space 1127.

5             Q.   And what part of the Nakaya device that  
6     is shown in figures 7 and 8 of Nakaya are you  
7     referring to as the compression portion of the  
8     chamber or the compression chamber?

9             A.   It would generally be the space 1120.  
10    Generally.   Yes.   Or space 82, I suppose.   Nakaya  
11    has a lot of numbers pointing to the same spaces,  
12    so I'm trying to be specific.

13            Q.   In paragraph 56 of your declaration, you  
14    have said, "Nakaya allows for fluid (air) to flow  
15    through the bottom out cup 1125, 1127, to the  
16    compression portion 82 during a compression stroke  
17    of the damper."

18            Do you see that?

19            A.   Well, I don't have my declaration up, so  
20    I don't see that, but you're reading from my  
21    declaration, so I -- I understand.   Yes.

22            Q.   I mean, if there's a way for you to pull

1 up both Nakaya and your declaration, you are free  
2 to do that. I -- I'm not going to misrepresent  
3 anything to you as I'm reading from your  
4 declaration, but I also want you to be comfortable  
5 answering your questions -- my questions.

6 So if you're able to do that, you can do  
7 that, or you can go back and forth; it's up to  
8 you. But what I read to you is in paragraph 56 of  
9 your declaration.

10 MR. WALSH: Arpita, he has a clean copy,  
11 paper copy, of his deposition, and he has a clean  
12 copy of Nakaya. So he can -- he can have both of  
13 those in front of him if he wishes.

14 MS. BHATTACHARYYA: If you have clean  
15 copies and if you want to refer to your -- the  
16 hard copies, you are welcome to do that.

17 THE WITNESS: That would be great. Thank  
18 you.

19 Okay. Go ahead.

20 BY MS. BHATTACHARYYA:

21 Q. So in your declaration, as I read from  
22 paragraph 56, you're referring to the part 82 as

1 the compression portion of Nakaya.

2 Do you see that?

3 A. Yeah, I'm looking at -- you said  
4 paragraph 56?

5 Q. Uh-huh.

6 A. And what specific --

7 Q. The first sentence.

8 A. The what? The first sentence?

9 Q. Yes.

10 A. I see it.

11 Q. Okay. There are at least two different  
12 flow paths that comes in and out of the bottom out  
13 cup 1125, 1127, correct?

14 A. Yes. In this embodiment, there is.

15 Q. Okay.

16 A. In the Nakaya embodiments, there's  
17 multiple other ones. But in this one, yeah.

18 Q. Claim 1 of the '223 patent, as we read  
19 previously, recites, "A flow path formed in the  
20 bottom out cup for providing fluid communication  
21 from the cup to the compression portion of the  
22 chamber during a compression stroke of the

1 damper."

2 Do you recall that?

3 A. I'm sorry, could you, like, speak into  
4 your mic? Because when you turn into the  
5 computer, I can't hear as well.

6 Q. Okay. Is that any better?

7 A. Yes.

8 Q. So earlier, we discussed claim 1 of the  
9 '223 patent, and specifically the limitation "A  
10 flow path formed in the bottom out cup for  
11 providing fluid communication from the cup to the  
12 compression portion of the chamber during a  
13 compression stroke of the damper."

14 Do you recall that?

15 A. I recall that. Yes.

16 Q. Which flow path of Nakaya are you mapping  
17 to that limitation of claim 1 of the '223 patent?

18 A. The flow path of 823.

19 Q. And I know earlier you said you do not  
20 think claim 1 requires any directionality of flow.

21 But setting that aside, what is the  
22 direction of flow between the bottom out cup and

1 the compression portion 82 through that flow path  
2 823 during a compression stroke?

3 A. I mean, it could be in either direction,  
4 depending on the geometry of the shock.

5 Q. And what do you mean by the geometry of  
6 the shock?

7 A. The specific sizes and shapes of the  
8 parts in the shock.

9 Q. Where does Nakaya say that?

10 A. It's just shown in the image. Nakaya  
11 itself is not very clear on the direction of flow  
12 in that regard. So one has to infer from the  
13 image here of what the intent of this particular  
14 valve is.

15 What I see here is -- is an adjustable  
16 valve between the bottom out cup and the  
17 compression chamber, which is as clear as day.  
18 And that teaches communication between those two  
19 chambers directly.

20 So the direction of flow is unclear, but  
21 it depends on the geometry of the parts. It can  
22 go in both directions depending on that.

1           Q. Can fluid flow in both directions through  
2 a throttle valve?

3           A. I'm sorry, through a what?

4           Q. Throttle valve.

5           A. Of course.

6           Q. And 824 is a throttle valve that is  
7 disposed in the flow path 823, correct?

8           A. Yes.

9           Q. And earlier you said depending on the  
10 geometry of the Nakaya device, fluid can flow in  
11 either direction through flow path 823.

12                   Can you explain the circumstances in  
13 which fluid will flow from the bottom out cup to  
14 the compression portion 82 during a compression  
15 stroke?

16           A. When the pressure in the bottom out cup  
17 is larger than the pressure in the compression  
18 chamber.

19           Q. There is another flow path out of the  
20 bottom out cup that goes through the valve 140.

21                   Do you see that?

22           A. I do.

1 Q. So when the pressure is higher in the  
2 bottom out cup, Nakaya says that flow -- there  
3 will be fluid flow from the bottom out cup through  
4 that passage having the valve 140 to the rebound  
5 portion of the Nakaya device, correct?

6 A. I -- you have to show me where in Nakaya  
7 it says that. I know that 140 valve produces  
8 restriction. It can be adjusted to be closed or  
9 nearly closed as well.

10 I also know that valve -- that the  
11 pressure relief valve 92 could produce  
12 restriction. So if there's restrictions in either  
13 of those two valves, it would allow for the  
14 pressure in 822 to go up and it flow in the other  
15 direction. Depending on the geometry of the  
16 shock, it's possible.

17 Q. What is the primary direction of flow  
18 between the compression portion 82 and the  
19 bottom out cup in Nakaya during a compression  
20 stroke?

21 A. I don't think it's defined.

22 Q. What is your understanding of the primary

1 direction of flow between the compression portion  
2 82 and the bottom out cup in Nakaya during a  
3 compression stroke?

4 A. So Nakaya is a piece of prior art, and as  
5 a piece of prior art, I looked at Nakaya to see  
6 that it had the adjustable orifice or the  
7 adjustable flow path that's, you know, user  
8 adjustable and externally adjustable between the  
9 compression chamber and the bottom out cup, which  
10 it does.

11 Looking further in Nakaya, it's unclear  
12 in the written description exactly what direction  
13 that flow goes. And even if it was said one way  
14 or the other, which it isn't, the image shows, and  
15 anybody knowledgeable in the art, which I am,  
16 could tell you that that flow could go in either  
17 direction.

18 Q. But Nakaya doesn't say that there is  
19 fluid flow from the bottom out cup to the  
20 compression portion 82 through the flow path 823,  
21 correct?

22 A. Nakaya is unclear on the direction of

1 flow. It's obvious, though, that there is some  
2 flow, but it's unclear on the direction.

3 Q. In your declaration --

4 A. I'm sorry, you cut out there at the  
5 beginning. All I heard --

6 Q. Sorry. In ground I of your  
7 declaration -- and when I say ground, does that  
8 mean anything to you?

9 A. Not specifically.

10 Q. Okay. Let me -- it's legalese, so let me  
11 just be a little bit more specific.

12 So if you go to page 59 of your  
13 declaration -- and I'm referring to the page  
14 number that is -- the PDF page number that is at  
15 the bottom of the page.

16 A. Okay. I'm on page 59.

17 Q. Do you see in the middle of the page you  
18 say, "Ground I: Claims 1 through 9, 50 -- 11  
19 through 15, and 19 are anticipated by Nakaya or  
20 rendered obvious under 35 USC Section 103 by  
21 Nakaya or rendered obvious by Nakaya in view of  
22 Kodama"?

1           A. I see it.

2           Q. What was the purpose for including Kodama  
3 in this alleged obviousness combination of Nakaya  
4 and Kodama?

5           A. I'm a little confused by what you mean  
6 what the purpose is.

7           Q. What limitations of the '223 patent  
8 claims are you using Kodama for?

9           A. I would have to look back through this,  
10 what I wrote in my declaration. I don't -- I did  
11 not memorize that.

12                  Should I do that?

13           Q. Yeah. I mean, just to be -- as you do  
14 it, just keep in mind that, I mean, what I'm  
15 trying to understand, and it's not clear to me, is  
16 where Kodama comes in. What are you saying might  
17 be missing from Nakaya that Kodama provides?

18           A. I mean, we say that Nakaya anticipates  
19 the entire invention. So I think it's okay to  
20 have something that anticipates the entire  
21 invention and then throw something else in as well  
22 to substantiate. There's many, many patents that

1 could have been submitted that have the same  
2 features as Nakaya, like the bottom out cups and  
3 throttle valves, and so on and so forth, that  
4 would be additive to add that. But --

5 Q. But what I want to know is that -- why is  
6 it that you included Kodama? What part of Kodama  
7 are you relying on?

8 A. In section 99 of my declaration, Kodama  
9 was there to more specifically include the  
10 adjustable flow path number 30 that's light blue  
11 in the image and the needle valve within the  
12 shaft.

13 Nakaya shows that adjustment, the  
14 adjustable rebound, with figure -- with 814; even  
15 though the flow path is through the shaft, Nakaya  
16 shows it outside the shaft with another throttle  
17 valve -- another damper. So I think -- that  
18 should be good enough. That does show what is  
19 required in the '223 claims. But the -- Kodama  
20 just places that adjustable rebound in the shaft.

21 Q. So if I'm understanding correctly, you  
22 are using Kodama in the Kodama and Nakaya

1 combination for Kodama's teaching of an adjustable  
2 valve through the shaft for adjusting flow between  
3 the rebound chamber and a compression chamber; is  
4 that correct?

5 A. You know, regarding what I just said,  
6 that sounds similar to what I just said.

7 Q. Kodama shows an adjustable flow path  
8 through a shaft between a rebound portion and a  
9 compression portion of the damper, correct?

10 A. Let me pull up Kodama. If we're going to  
11 talk about Kodama, I'd like to have the full  
12 patent up.

13 Q. Yes. Kodama is available to you. It was  
14 previously marked as Exhibit 1006.

15 (Previously marked Exhibit 1006  
16 introduced into the record and attached  
17 to the transcript.)

18 THE WITNESS: I have it.

19 BY MS. BHATTACHARYYA:

20 Q. And so -- do you want me to repeat my  
21 question?

22 A. Please.

1 Q. Kodama shows an adjustable flow path  
2 through a shaft between a rebound portion and a  
3 compression portion of the damper, correct?

4 A. That's correct.

5 Q. And you are referring to Kodama in the  
6 Nakaya and Kodama combination with respect to an  
7 adjustable flow path through the shaft between the  
8 rebound portion and the bottom out cup, as recited  
9 in the claims, correct?

10 A. Yeah, I mean, the adjustable flow path --  
11 the adjustable flow through that shaft is  
12 completely disclosed in Nakaya. The Kodama patent  
13 just shows it a different way.

14 Q. Are you relying on Kodama for anything  
15 else with respect to your Nakaya and Kodama  
16 obviousness combination assertion?

17 A. Specifically with regard to Kodama, using  
18 it as a reference with other references, we use it  
19 more than once. And I'd have to go through my  
20 whole declaration to be sure how often it's been  
21 used, not because it's a piece of supporting  
22 art -- I don't remember every place that it's

1 being used at.

2 Q. My question is currently only about the  
3 Nakaya and Kodama combination. And we can go back  
4 to Kodama again with respect to other grounds  
5 wherever it comes up.

6 So with respect to just the Nakaya and  
7 the Kodama combination, I just want to know if  
8 Kodama is used in any other way.

9 A. I'm just going through areas that  
10 mentioned Kodama in this particular ground --

11 Q. Yeah.

12 A. -- and I see that Kodama discloses a  
13 needle valve or a throttle valve 130 that includes  
14 a closed position.

15 I can go through all the pages. It's a  
16 hard copy, so I can't search for Kodama, but if  
17 you'd like me to mention all the times that Kodama  
18 is mentioned, I can do that.

19 Q. Let me ask you a different question.

20 Does Kodama disclose a bottom out cup?

21 A. No, it does not disclose a bottom out cup  
22 like the embodiment in the Fox patent.

1 Q. Going back to Nakaya, earlier we  
2 discussed fluid flow --

3 A. So we're back on Nakaya. Is there a  
4 specific spot I should be looking at?

5 Q. Yes. You can perhaps go to the  
6 discussion of claim 9, which is at paragraph 100.  
7 100.

8 A. Wait, '223 patent, claim 9, for Nakaya?

9 Q. No. Let's just go to your declaration  
10 for paragraph 100.

11 A. Sorry, I just closed out the Veritext by  
12 accident. One second.

13 Oh, there it is. Okay. What  
14 paragraph did you say? 100?

15 Q. Yes.

16 A. Okay.

17 Q. In paragraph 100 of your declaration, you  
18 are discussing a second fluid flow path 140 and  
19 102.

20 Do you see that?

21 A. I do.

22 Q. That second flow path is -- goes from the

1 bottom out cup -- strike that.

2 The second flow path in Nakaya goes from  
3 the alleged bottom out cup of Nakaya to the  
4 rebound portion of the Nakaya device, correct?

5 A. When that -- when the pressure -- this is  
6 a situation where it doesn't flow in both  
7 directions if there's a pre-loaded ball valve on  
8 it. So it's a one- -- this is a one-directional  
9 valve. And when the pressure in the bottom out  
10 cup is higher than the rebound pressure and you  
11 exceed the pressure release of the ball and the  
12 pressure restriction of the valve 140, then you  
13 would get flow in that direction.

14 Q. And when you say the flow in that  
15 direction, that direction is from the bottom out  
16 cup to the rebound portion of the Nakaya device,  
17 correct?

18 A. Again, in this particular case, this is  
19 an example of a flow that was -- is meant to be in  
20 one direction because of the ball check valve.

21 Q. And that one direction is from the  
22 bottom out cup to the rebound portion of the

1 chamber.

2 A. Correct.

3 Q. Let's go to paragraph 114 of your  
4 declaration.

5 A. Okay.

6 Q. So right before paragraph 114 of your  
7 declaration you say, "Ground II: Claims 1 to 5,  
8 9, 11 to 15, and 19 are anticipated by Chen,  
9 rendered obvious by Chen, or rendered obvious by  
10 Chen in view of Deferme."

11 Do you see that?

12 A. I do.

13 Q. Okay. I'll ask you about Deferme. And I  
14 don't know if I'm saying that last name correctly.  
15 For the help of the court reporter, it's  
16 D-e-f-e-r-m-e.

17 Deferme teaches a piston that has  
18 unidirectional flow paths going through the  
19 piston, correct?

20 A. I'm sorry, what kind of flow path did you  
21 say?

22 Q. Unidirectional flow paths through the

1 piston of Deferme.

2 A. Okay. Deferme generally shows -- it  
3 shows examples of unidirectional flow paths  
4 through the piston.

5 Q. And for what purpose are you using  
6 Deferme in your combination of Chen and Deferme?

7 A. Are you referring to a specific part of  
8 my declaration? If so, let me know where it is  
9 and I can read it back to you.

10 Q. I just want to know in general, what is  
11 your understanding of what role does Deferme plays  
12 in your ground II?

13 A. Okay. I'd rather not summarize it. I  
14 mean, it was listed in my declaration. So point  
15 out the spot in my declaration and we can discuss  
16 that specific thing.

17 Q. If it was clear to me, I would have asked  
18 you. That's why I'm asking you, because it's not  
19 clear to me what's the role of Deferme in your  
20 Chen and Deferme combination.

21 A. Are you saying that --

22 MR. WALSH: Wait, wait, wait. There's no

1 question pending. It's question/answer. If she  
2 just makes a statement, that's not -- you don't  
3 have to answer that.

4 BY MS. BHATTACHARYYA:

5 Q. So I will repeat my question,  
6 Mr. Wesling.

7 What is the role of Deferme in your Chen  
8 and Deferme obviousness combination?

9 A. Okay. I will defer to my declaration and  
10 what I wrote in my declaration.

11 If you want to specifically speak to  
12 something I wrote in my declaration, I'd be happy  
13 to speak with you about it.

14 Q. Mr. Wesling, you have your declaration in  
15 front of you. You have both a PDF copy, you have  
16 a hard copy of your declaration, you have the  
17 Deferme reference in front of you, and you said  
18 you have -- just yesterday you studied your  
19 declaration.

20 So sitting here, you cannot answer my  
21 question as to what is the role of Deferme in your  
22 Chen and Deferme combination?

1           A. I'm just trying to be consistent with  
2 your -- or trying to be respectful of your time.  
3 I can go through this, find where Deferme is  
4 mentioned, and get back to you. But if you have a  
5 question specific about the way Deferme was  
6 referenced regarding what was written in the  
7 declaration, I'd prefer if you just ask that  
8 question.

9           Q. Basically you're refusing to answer my  
10 question, or you don't know, sitting here today,  
11 what -- what's the purpose of Deferme; is that  
12 right?

13           MR. WALSH: Object to the question.  
14 Argumentative. Don't argue with the witness.  
15 Don't make statements before a question.

16           MS. BHATTACHARYYA: Mr. Walsh, I am just  
17 asking Mr. Wesling a question. He has all the  
18 resources in front of him to answer my question,  
19 and he is refusing to answer.

20 BY MS. BHATTACHARYYA:

21           Q. So Mr. Wesling, I mean, if you don't want  
22 to answer --

1 MR. WALSH: Wait, wait, wait -- wait a  
2 minute. Do not respond to something. Arpita, I'm  
3 tired of you putting these, you know, statements  
4 in front of a question. Ask a question and then  
5 you'll get an answer. Okay? If you don't like  
6 the answer, I'm sorry, but you can't keep putting  
7 statements like you have just done in front of  
8 these questions. Don't do it.

9 MS. BHATTACHARYYA: Are you done,  
10 Mr. Walsh? And please, do not make speaking  
11 objections. That's not allowed in a deposition  
12 for an IPR.

13 BY MS. BHATTACHARYYA:

14 Q. Mr. Wesling, what is the purpose of  
15 Deferme in your Chen and Deferme obviousness  
16 combination?

17 A. Okay. If you give me a few moments, I'm  
18 going to refresh myself on what was written in the  
19 IPR -- or, I'm sorry, in my declaration, and then  
20 I'll give you an answer. I want to be complete,  
21 and I just didn't want you to have watch me read  
22 this because it's a hard copy and I can't search

1 for the word "Deferme." So I'm just going to have  
2 to go page by page through it and then I can  
3 reference the specifics of that like I did before.  
4 I just was being respectful of your time. But if  
5 you're okay with that, then that's what we'll do.

6 Q. And you can do that. But before you do  
7 that, can you answer my question as to, sitting  
8 here today, without spending time looking through  
9 your declaration, do you recall what is the role  
10 of Deferme in your Chen and Deferme obviousness  
11 combination?

12 A. I mean, I want to be complete. So there  
13 could be multiple reasons. I don't want to just  
14 pick one and then not have the chance to represent  
15 the other. There may be multiple reasons, and I  
16 just don't want to be incomplete in my answer.  
17 So...

18 Q. Okay. You are free to look through  
19 Deferme, and you have a PDF copy, too, where you  
20 can do searches. But I am only asking you about  
21 the Chen and Deferme combination right now.

22 A. All right. In section 118 of my

1 declaration I say, Alternatively, it would have  
2 been obvious to a position [sic] of one skilled in  
3 the art to substitute Chen's simple piston with  
4 Deferme's adjustable piston in order to provide  
5 additional means of adjustment to the damping  
6 characteristics of Chen's damper."

7 Q. So you're saying that by replacing Chen's  
8 piston with Deferme's piston, you have additional  
9 means of adjustment; is that right?

10 A. And it would have been obvious to one  
11 skilled in the art to substitute Chen's simple  
12 piston with Deferme's adjustable piston to provide  
13 additional means of adjustment to the damping  
14 characteristics of Chen's damper.

15 Q. And what are the additional means of  
16 adjustment that Deferme provides?

17 A. Looking at Deferme, Deferme is a type of  
18 piston that has shim stacks on either side,  
19 spring-loaded check valves on either side. So  
20 it's possible to adjust the damping  
21 characteristics of that piston with shims and  
22 springs.

1 Q. And why would a person skilled in the art  
2 want to replace Chen's piston 81 with Deferme's  
3 piston?

4 A. I never said a person skilled in the art  
5 would want to do that, but a person could do that.  
6 It depends on their characteristics.

7 Q. Is there any reason for a person skilled  
8 in the art to want to replace Chen's piston 81  
9 with Deferme's piston?

10 A. Only to get a different damping  
11 characteristic.

12 Q. And is that different damping  
13 characteristic required in Chen?

14 A. Chen is a reference that -- we're using a  
15 piece of prior art in the Chen reference. I'm not  
16 sure if any of this is required in Chen. Chen is  
17 its own invention.

18 Q. I'm just trying to understand why would a  
19 person skilled in the art be motivated to replace  
20 Chen's piston 81 with Deferme's piston.

21 A. Chen is a patent of a specific damper  
22 embodiment or damper mechanism. Chen is not a

1 complete shock absorber. It's a damper. It's a  
2 subset of a shock absorber.

3 So one could look at Chen and not  
4 understand that Chen could be represented easily  
5 in another more standard full-size shock absorber.

6 So Deferme bridges the gap between the  
7 mechanism of Chen and a full shock absorber  
8 device.

9 Q. Is there any -- strike that.

10 I just want to -- you said that Deferme  
11 would allow Chen to be used with some other shock  
12 absorber; is that correct?

13 A. I did not say that.

14 Q. So could you explain that? I want to  
15 understand what -- going back to why would a  
16 person skilled in the art combine Chen and  
17 Deferme?

18 A. I guess I defer to my previous answer.  
19 You asked me that question earlier, and I thought  
20 I answered it completely.

21 Q. Could you repeat your answer?

22 A. Chen is a specific damper mechanism that

1 could be applied to any shock. So it -- Chen  
2 itself is not enabling as an entire shock  
3 absorber. It's just a mechanism for damping. It  
4 shows a communication path between the bottom out  
5 cup and the compression chamber. It is  
6 adjustable.

7 Deferme is a complete shock absorber with  
8 some extra damping adjustment in the main piston,  
9 which is represented -- or I would say more common  
10 in some shocks.

11 So this is just another way to represent  
12 the simplicity of the main piston of Chen, which  
13 wasn't part of the invention, and bridge the gap  
14 between Chen and a shock absorber. It is more  
15 commonly used in the market today.

16 Q. With respect to the invention of the  
17 '223 patent, which is the bottom out cup  
18 technology, does Deferme provide any improvement  
19 to the alleged technology described in Chen?

20 A. Chen is a subsystem and not a complete  
21 shock absorber. So Deferme is a complete shock  
22 absorber.

1           So Chen itself is non-enabling, like Chen  
2 by itself doesn't represent all that it would need  
3 to represent. So Deferme, in addition to Chen,  
4 bridges the gap between the complete shock  
5 absorber and -- and Chen.

6           That is just one example of that. That's  
7 the first one that I found. Doesn't -- I'm not  
8 saying it's the only reason Deferme adds value,  
9 but it's just the first one when we were talking  
10 about the compression piston and the flow paths  
11 between them.

12          Q. I understand what you're saying, but my  
13 question is slightly different. So I will ask my  
14 question again.

15           You are relying on Chen as allegedly  
16 disclosing a bottom out cup technology, correct?

17          A. Yeah. Chen definitely disclosed the  
18 bottom out technology, but more importantly,  
19 discloses the external adjustment between a  
20 bottom out cup and a compression chamber, since  
21 the bottom out -- the invention is not a  
22 bottom out cup. Those are old hat in the prior

1 art. But go ahead.

2 Q. Are you relying on Deferme at all with  
3 respect to that bottom out cup technology?

4 A. Is there a specific claim you're  
5 referring to?

6 Q. All the claims of the '223 patent talk  
7 about a bottom out cup technology, correct?

8 A. I'd have to look at the claims. But  
9 generally speaking.

10 Q. Generally speaking, yes, right?

11 A. You know, a bottom out cup is included in  
12 the claims, but the patent is about the  
13 adjustability of the bottom out cup with --  
14 between the bottom out cup and the compression  
15 chamber. So that's the patent.

16 The patent also includes a compression --  
17 every claim, I believe, of the '223 patent also  
18 includes a compression piston.

19 Q. But are you relying on Deferme with  
20 respect to the adjustable bottom out cup  
21 technology of the '223 patent?

22 A. Deferme does not show an adjustable fluid

1 path between the bottom out cup and the  
2 compression chamber the way Chen does.

3 Q. Let's switch gears to the Gartner  
4 reference, which is Exhibit 1010.

5 (Previously marked Exhibit 1010  
6 introduced into the record and attached  
7 to the transcript.)

8 BY MS. BHATTACHARYYA:

9 Q. And in your declaration, you start  
10 discussion of ground V, which is based on Gartner,  
11 at page 143.

12 MR. WALSH: Arpita, it's coming up on  
13 12:30 where we're located. It's coming up on 1:30  
14 where Christina is.

15 In terms of a -- you know, a quick lunch,  
16 can you think of a good time that we could break  
17 and grab a quick lunch?

18 MS. BHATTACHARYYA: Yeah, I mean -- and  
19 we can take this off the record.

20 (Discussion off the record.)

21 BY MS. BHATTACHARYYA:

22 Q. So Mr. Wesling, I'm just going to ask you

1 some very specific questions about Gartner. You  
2 can either refer to your declaration or you can  
3 look at the Gartner reference. It's up to you.

4 A. Just reference where you're -- you know,  
5 if it's specific about something I wrote in my  
6 declaration, just point it out where it is and  
7 I'll be happy to answer any questions.

8 Q. I'm going to ask you some questions which  
9 I don't think is mentioned in your declaration, so  
10 I'm just going to ask you about Gartner, so if you  
11 want to just familiarize yourself with Gartner,  
12 that might be better.

13 A. Okay.

14 Q. Okay. So let's go to figure 12A of  
15 Gartner.

16 A. Okay. I'm there.

17 Q. So figure 12A of Gartner shows a smaller  
18 shock absorber 400 that is within the larger shock  
19 absorber 420, correct?

20 A. I would disagree with that. I would say  
21 it shows a bottom out cup.

22 Q. What exactly are you referring as the

1 bottom out cup?

2 A. The cup-shaped device that's at the end  
3 of the main chamber.

4 Q. Can you define the boundaries of that  
5 so-called cup-shaped device?

6 A. I would say there's a fluid area 460.4,  
7 and the cup-shaped device is the device that  
8 houses that amount of fluid, like we discussed  
9 earlier today, when we're defining what a  
10 cup-shaped -- what a bottom out cup was.

11 Q. Let's go to Gartner, column 9, and  
12 specifically line 25 in column 9.

13 Let me know when you're there.

14 A. Okay. I'm there.

15 Q. Gartner recites in column 9, starting at  
16 line 25, that "Shock absorber 420 includes one or  
17 more features for externally adjusting the damping  
18 characteristics of second internal shock  
19 absorber 400."

20 Do you see that?

21 A. I do see that. Yes.

22 Q. And you are referring to the space or

1 volume within the second internal shock  
2 absorber 400 as the alleged bottom out cup of  
3 Gartner, correct?

4 A. Can you repeat the question?

5 Q. You are referring to the space or volume  
6 within the second internal shock absorber 400 as  
7 the alleged bottom out cup of Gartner, correct?

8 A. 400 is pointing to an entire assembly of  
9 parts. I was referring to section area 460.4 as  
10 the interior of the bottom out cup.

11 Q. The portion 460.4 is within the internal  
12 shock absorber 400, correct?

13 A. I don't know that that's true. I'm just  
14 referring to the space of the bottom out cup. And  
15 you asked what the bottom out cup extents were,  
16 and that space is the volume referred to as 460.4.

17 Q. Gartner doesn't use the words "bottom out  
18 cup," correct?

19 A. I don't know. I did not look for that in  
20 Gartner, but Gartner certainly represents and  
21 shows a bottom out cup, as we defined it earlier  
22 today.

1 Q. The volume 460.4 is included within shock  
2 absorber 400, correct?

3 A. I need to understand the extents of shock  
4 absorber 400. Shock absorber 400 is a big arrow  
5 pointing to an entire mechanism. I'm not sure  
6 that -- 460.4 -- I'm just not sure, but I do know  
7 that 460.4 is what I was referring to as the fluid  
8 within the bottom out cup.

9 Q. In paragraph 174 of your declaration, you  
10 say, "Gartner shows a bottom out cup 260, 460  
11 (pink) formed at the end of the compression  
12 portion 26.4 (light red)."

13 Do you see that?

14 A. Yes, I do see that in my declaration.

15 Q. You were -- you are referring to the  
16 entire portion 460 shown in pink as the bottom out  
17 cup in your declaration, correct? Not...

18 A. The image figure 12A shows the main  
19 piston already passing through -- it's halfway  
20 through the bottom out cup. So I would have said  
21 460.4 does include that space as well. It just so  
22 happens that the image shows a partially actuated

1 version. In view of a non-actuated version, that  
2 space would be the extents of the bottom out cup.

3 Q. When does the second shock absorber 400  
4 get activated in the overall Gartner shock 420?

5 A. First of all, I want to be clear that a  
6 shock absorber is a device. And figure 12A  
7 represents a shock absorber. Calling it a second  
8 shock absorber, recognizing that this patent might  
9 refer to it as that, is -- every bottom out cup in  
10 every piece of prior art could be considered a  
11 second shock absorber in the same way. There's  
12 nothing unique or special about this as a shock  
13 absorber. I just want to recognize that. The  
14 terminology now is new, and clearly it's not novel  
15 in any way.

16 So can you repeat your question, please?

17 Q. So I'm going to use the terminology that  
18 is described in Gartner, and Gartner refers to 400  
19 as a second internal shock absorber within the  
20 shock absorber 420. Is that okay with you?

21 So I want to know at what point during a  
22 compression stroke does that second shock absorber

1 get activated.

2 A. Towards the end of the compression  
3 stroke, as any -- like the same way any bottom out  
4 cup works.

5 Q. Does Gartner say that?

6 A. It shows it right here. It shows it in  
7 multiple figures. It's clear to anyone skilled in  
8 the art that this is a bottom out technology using  
9 the bottom out cup.

10 Q. But the shock absorber 420 -- strike  
11 that.

12 So in Gartner, what is the alleged  
13 bottom out piston?

14 A. In this image, the alleged bottom out  
15 piston does not have a number, but it would be the  
16 part of the main shaft that extends beyond the  
17 primary piston, and it -- that part of the shaft  
18 that goes into the bottom out cup would be the  
19 piston, the bottom out piston.

20 Q. So the portion of the primary piston,  
21 which you are referring as the bottom out piston,  
22 is always situated within the second shock

1 absorber 400, correct?

2 A. No, that's incorrect.

3 Q. So are you saying that the main piston  
4 goes in and out of the second shock absorber 400  
5 during a compression stroke?

6 A. Yes. It's the part -- the secondary  
7 piston or the bottom out piston is the part that's  
8 attached to the main shaft and follows along with  
9 the main shaft.

10 Q. So you agree that the secondary piston  
11 always moves along with the main piston, correct?

12 A. In this particular embodiment, it does do  
13 that. The one we're talking about in figure 12A.

14 Q. So if it is always moving along with the  
15 bottom out piston, and at least in figure 12A it  
16 shows that that secondary piston is always within  
17 the shock absorber 400, how is it getting  
18 activated only at the last portion of the  
19 compression stroke?

20 A. Can you ask your question again?

21 Q. I'll just read my question. Okay?

22 If the secondary piston is always moving

1 along with the primary piston, how does it get  
2 activated only at the last portion of the  
3 compression stroke?

4 A. How does what get activated?

5 Q. The second shock absorber 400.

6 A. When the secondary piston enters the  
7 bottom out cup, it generates the bottom out  
8 resistance based on that.

9 Q. And --

10 A. Before it enters the cup, it doesn't  
11 provide any resistance whatsoever. And after it  
12 enters the cup and it forces fluid out of the cup  
13 through the externally adjustable valve, exactly  
14 like in claim 1 of the patent, it activates the --  
15 yeah, the secondary damping or -- secondary  
16 damping of the bottom out cup. It's very clear.

17 Q. You're referring to the compression  
18 volume 460 of second shock absorber 400 as the  
19 bottom out cup, correct?

20 A. No, I'm referring to that as the fluid  
21 within the bottom out cup.

22 Q. Clarify for me again. What are you

1 referring to as the bottom out cup of Gartner?

2 A. The bottom out cup is the -- is  
3 everything that supports and surrounds the fluid  
4 volume that is referred to as 460.4.

5 Q. So you're saying 460.4 is just the fluid  
6 volume?

7 A. 460.4 -- as I'm looking at this  
8 image 12A, 460.4 is pointing to the space within  
9 the bottom out cup.

10 Q. Would it be fair to refer to 460.4 as a  
11 compression volume?

12 A. As a compression volume?

13 Q. Yeah.

14 A. I mean, when it's compressed, I think one  
15 could refer to it as compression volume.

16 Q. And you're referring to the structure  
17 around the compression volume 460.4 as the  
18 bottom out cup, correct?

19 A. I would generally refer to the structure  
20 that holds that fluid in -- the fluid that is  
21 going to eventually get pushed through the  
22 externally adjustable valve, that fluid -- and the

1 structure that surrounds that fluid, is the  
2 bottom out cup.

3 In this case, it's a multipart bottom out  
4 cup because the -- just more than one part. It's  
5 still the bottom out cup.

6 Q. There is a piston inside the shock  
7 absorber 400 that applies the compressive forces  
8 on the volume 460.4, correct?

9 A. There's a part in there that, you know,  
10 reacts to the pressure that's applied by the  
11 shaft, the main piston that travels along with the  
12 main -- I would say the secondary piston that  
13 moves with that.

14 That part has the seal on it, and that  
15 part imparts as well some pressure or compression  
16 on the fluid.

17 Q. So the piston that is within the shock  
18 absorber 400, that piston doesn't go in and out of  
19 the shock absorber 400, correct?

20 A. That part is basically a seal. And when  
21 the main shaft or secondary piston is outside of  
22 the bottom out cup, that's not a piston; that's

1 just part of the bottom out cup.

2 Q. When you said that is not part -- when  
3 you said that the secondary piston is outside the  
4 bottom out cup, that is not a piston, it's just  
5 the bottom out cup -- but the secondary piston  
6 does not leave the bottom out cup, does it?

7 A. That's not the secondary piston. When  
8 the secondary piston is outside the bottom out  
9 cup, the part that holds the seal that you're  
10 referring to as the secondary piston is as a free  
11 and -- free communication between the bottom out  
12 cup and the compression chamber. Therefore, it's  
13 not doing anything. It's just -- it's not a  
14 piston. At that point, it's not doing anything.

15 Q. At what point does it turn into a piston?

16 A. It itself gets pushed along by the  
17 secondary piston that rides along with the main  
18 shaft. It's basically a structure that houses the  
19 seal and allows the seal to be a moving seal  
20 versus a stationary seal on the secondary piston.

21 It's clear that there's no -- you know,  
22 if a piston were in there it would provide some

1 kind of, you know, difference between some -- it  
2 would not provide a clear communication between  
3 the bottom out cup and the compression volume.  
4 And it does.

5 Q. On page 143 of your declaration, at the  
6 very top you say, "Claims 1 to 5, 9, and 19 are  
7 anticipated by Gartner or rendered obvious by  
8 Gartner in view of Nakaya."

9 Do you see that?

10 A. I do.

11 Q. When I look at the discussion of that  
12 ground V, I do not see why [sic] Nakaya was  
13 included.

14 Was that an error, or did you intend to  
15 include Nakaya as part of your Gartner ground?

16 A. Certainly Nakaya is not required because  
17 Gartner states everything already.

18 Q. You can take a moment to look at your  
19 declaration. I was baffled by the use of the word  
20 "Nakaya" in the description of your ground because  
21 I don't see the Nakaya referenced at all in  
22 relation to round V.

1           A.   Okay.  I can't explain that.

2           Q.   You think there was an error?

3           A.   I just can't explain it.

4                   MS. BHATTACHARYYA:  Nothing further for  
5 Mr. Wesling.

6                   MR. WALSH:  Okay.  I have no questions.

7                   MS. BHATTACHARYYA:  Thank you,  
8 Mr. Wesling.

9                   THE WITNESS:  Thank you.

10                   (Whereupon, at 1:47 p.m., the remote  
11 deposition of KEVIN WESLING was  
12 concluded.)

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CERTIFICATE OF NOTARY PUBLIC

I, CHRISTINA S. HOTSKO, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me in stenotypy and thereafter reduced to typewriting under my direction; that said statement is a true record of the proceedings; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this statement was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



CHRISTINA S. HOTSKO

Notary Public in and for the  
District of Columbia

My commission expires:  
1 January 2027

1 ARPITA BHATTACHARYYA, Ph.D., ESQUIRE

2 arpita.bhattacharyya@finnegan.com

3 AUGUST 13, 2024

4 RE: Fox Factory, Inc. v. SRAM, LLC

5 8/9/2024, Kevin Wesling, (#6857229).

6 The above-referenced transcript has been

7 completed by Veritext Legal Solutions and

8 review of the transcript is being handled as follows:

9 \_\_\_ Per CA State Code (CCP 2025.520 (a)-(e)) - Contact Veritext  
10 to schedule a time to review the original transcript at  
11 a Veritext office.

12 \_\_\_ Per CA State Code (CCP 2025.520 (a)-(e)) - Locked .PDF  
13 Transcript - The witness should review the transcript and  
14 make any necessary corrections on the errata pages included  
15 below, notating the page and line number of the corrections.  
16 The witness should then sign and date the errata and penalty  
17 of perjury pages and return the completed pages to all  
18 appearing counsel within the period of time determined at  
19 the deposition or provided by the Code of Civil Procedure.  
20 Contact Veritext when the sealed original is required.

21 \_\_\_ Waiving the CA Code of Civil Procedure per Stipulation of  
22 Counsel - Original transcript to be released for signature  
as determined at the deposition.

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1     \_\_\_ Federal R&S Requested (FRCP 30(e)(1)(B)) - Locked .PDF  
2     Transcript - The witness should review the transcript and  
3     make any necessary corrections on the errata pages included  
4     below, notating the page and line number of the corrections.  
5     The witness should then sign and date the errata and penalty  
6     of perjury pages and return the completed pages to all  
7     appearing counsel within the period of time determined at  
8     the deposition or provided by the Federal Rules.  
9     \_x\_ Federal R&S Not Requested - Reading & Signature was not  
10    requested before the completion of the deposition.

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[chen's - compression]

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[compression - cup]

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[cup - device]

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[focus - happening]

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[happens - kind]

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**[portion - quick]**

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[spending - tell]

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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.

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