

Non-Infringement Report of Eric L. Wang, Ph.D.

in Response to Slocum Infringement Report

Fox Factory, Inc. v. SRAM, LLC

(Case No. 1:23-cv-00313-RM-KAS)

I. Introduction

1. In the case of Fox Factory, Inc. v. SRAM, LLC, 1:23-cv-00313-RM-KAS, I have been retained by SRAM, LLC to give my opinions on Dr. Alexander Slocum's Infringement Report regarding U.S. Patent Nos. 9,739,331 (the '331 patent) and 8,550,223 (the '223 patent), which Infringement Report was served on March 28, 2024. As discussed in this Report, I disagree with many of Dr. Slocum's opinions. My opinions, methods, and reasons for opposing Dr. Slocum's opinions are given in this Report. I am available to testify to these opinions, in addition to providing any tutorial or demonstrative exhibits to illustrate my opinions. I may re-visit my opinions through a supplementation or amendment if new information is available after the date of this Rebuttal Report, but as of this time, this Rebuttal Report sets forth a complete statement of the opinions I expect to express regarding the lack of infringement of the '223 and '331 patents by the SRAM Accused Forks and Accused Shocks, including the basis and reasons for these opinions and the facts and data I considered in forming these opinions.

II. SRAM Accused Products

2. In Dr. Slocum's Infringement Report, Dr. Slocum alleges claims 1-8 of the '331 patent are infringed by the following SRAM products: "(1) RockShox 2023 and 2023+ Lyrik,

Lyrik Select, Lyrik Select+, Lyrik Ultimate, and Lyrik Ultimate Flight Attendant product lines; (2) RockShox 2023 and 2023+ Pike, Pike Select, Pike Select+, Pike Ultimate, and Pike Ultimate Flight Attendant product lines; (3) RockShox 2023 and 2023+ ZEB, ZEB Select, ZEB Select+, ZEB Ultimate, and ZEB Ultimate Flight Attendant product lines; (4) RockShox 2024+ BoXXer and 2024+ BoXXer Ultimate product lines; and (5) any other SRAM forks with pressure relief assembly or feature on a lower fork tube that is effectively the same as in the forks enumerated in (1)-(4).”¹ Slocum Infringement Report at ¶ 7.

3. For purposes of this Report, SRAM products listed in numbers 1-5 above are referred to as the “Accused Forks.”

4. In Dr. Slocum’s Infringement Report, Dr. Slocum alleges that claims 11-15 of the ‘223 are infringed by the following SRAM products: “(1) RockShox 2023 and 2023+ Super Deluxe Coil Ultimate, Super Deluxe Coil Ultimate DH, Super Deluxe Coil Select, Super Deluxe Coil Select+ product lines; (2) RockShox 2024+ Vivid Ultimate, Vivid Ultimate DH, Vivid Select+, Vivid Select, and Vivid product lines; and 3) any other SRAM shocks with adjustable hydraulic bottom out feature that is effectively the same as in the shocks enumerated in (1)-(2).”² Slocum Infringement Report at ¶ 8.

5. For purposes of this Report, SRAM products listed in numbers 1-3 above are referred to the “Accused Shocks.”

¹ Dr. Slocum testified that he was not aware of any accused SRAM forks in category (5). *See* Slocum Depo., p. 107, line 14 – p. 108, line 6.

² Dr. Slocum testified that he was not aware of any accused SRAM shocks in category (3). *See* Slocum Depo., p. 108, lines 7-14.

6. In his Infringement Report, Dr. Slocum provides an infringement discussion for only: (1) the 2023 Lyrik Ultimate; (2) 2023 Lyrik Select; and (3) the 2024+ BoXXer Ultimate. Slocum Infringement Report at ¶¶ 11, 13, 15.

7. I note that in paragraph 9 of Dr. Slocum's Infringement Report, Dr. Slocum states that a number of SRAM forks "have the same or effectively the same structures relevant to the asserted claims of the '331 patent as the 2023 ZEB Ultimate fork and/or the 2023 ZEB Select fork that I disassembled and examined." However, Dr. Slocum does not state what those relevant structures are. For example, the '331 patent requires an analysis of the bushings and wiper seals of the forks. Dr. Slocum makes no mention of the relative placement of these structures within each of the supposedly representative products. Without examining these, and other internal workings of the various accused products, it is my opinion that Dr. Slocum has not provided sufficient information and documentation to show that these products are actually representative of the forks Dr. Slocum claims are represented. At a minimum, Dr. Slocum has failed to provide in his Infringement Report the complete basis and reasons for his opinions.

8. Dr. Slocum continues to discuss purported representativeness in paragraph 10 of his Infringement Report. Here, he states that this specific group of forks each have "'pushbutton-style' air bleed assemblies or valves[.]" However, Dr. Slocum still appears to neglect the many elements of the claims not covered by an air bleed assembly. Without examining the internal workings of the various accused products, it is my opinion that Dr. Slocum has not provided sufficient information and documentation to show that these products are actually representative of the forks Dr. Slocum claims are represented. At a minimum, Dr. Slocum has failed to provide in his Infringement Report the complete basis and reasons for his opinions.

9. Similarly, I note that in paragraph 12 of his Infringement Report, Dr. Slocum states that this new, specific group of forks each have “screw-type air bleed assemblies or valves[.]” Again, Dr. Slocum appears to neglect the many elements of the claims not covered by an air bleed assembly. And again, without examining the internal workings of the various accused products, it is my opinion that Dr. Slocum has not provided sufficient information and documentation to show that these products are actually representative of the forks Dr. Slocum claims are represented. At a minimum, Dr. Slocum has failed to provide in his Infringement Report the complete basis and reasons for his opinions.

III. Summary of Opinions

10. In my opinion, it is not possible to infringe the ‘331 patent or its asserted claims at least because the ‘331 patent and its asserted claims are invalid, for the reasons previously set forth in my March 28, 2024 Invalidity Report.

11. It is my opinion that none of the Accused Forks infringe claims 1-8 of the ‘331 patent.

12. In my opinion, it is not possible to infringe the ‘223 patent or its asserted claims at least because the ‘223 patent and its asserted claims are invalid, for the reasons previously set forth in my March 28, 2024 Invalidity Report.

13. It is my opinion that none of the Accused Shocks infringe claims 11-15 of the ‘223 patent.

14. My opinions appear in the following Report as well as in my prior Invalidity Expert Report (March 28, 2024) and prior Declaration (September 21, 2023) in this case, the content of which I incorporate into this Report by this reference.

IV. Qualifications

15. My name is Eric Wang. I am a tenured Associate Professor of Mechanical Engineering at the University of Nevada, Reno. My curriculum vitae is attached as Exhibit 1.

16. I earned a B.S. degree in mechanical engineering from the University of California at Berkeley in 1989. I earned an M.S. degree in mechanical engineering from the Massachusetts Institute of Technology in 1991. Lastly, I earned a Ph.D. in mechanical engineering from the University of California at Davis in 1995. My Ph.D. dissertation was explicitly focused on bicycle suspension systems: “Quantification and Optimization of Off-Road Bicycle Suspension Performance.”

17. I have published over 20 publications on the science of cycling and/or shock absorbers. As part of my Ph.D. dissertation, I personally measured suspension fork stiffness and damping parameters using a servo-hydraulic test machine. For over 20 years, I have been researching the science of cycling. Research topics have included: energy efficiency of suspension systems, loading quantification, tire performance, thermal performance of bicycle helmets, computer simulation of off-road cycling, and ultra-efficient human powered vehicles. I have also conducted research in the design and development of semi-active shock absorbers for automotive and earthquake isolation systems. These devices include electro-rheological and magneto-rheological dampers.

18. I have owned a variety of mountain, road, touring, and tandem bicycles, as well as unicycles, adaptive tricycles, and handcycles. I have serviced all of the bicycles/tricycles/unicycles I’ve owned, including assembly/disassembly of suspension forks and rear shocks. I have hand-built 2 mountain and 3 road bicycle frames.

19. I have been an avid cyclist for over 40 years. I have ridden several long-distance bicycle tours (greater than 1000 miles). I have ridden over 200 miles in a single day more than 20 times. Similarly, I have ridden over 10,000 miles in a single calendar year multiple times. I am a former holder of a United States Cycling Federation (USCF) category 3 racing license.

20. I was the faculty advisor for the University of Nevada, Reno cycling team for over 20 years. I am a former member of the Board of Directors of the Reno Wheelmen. I am a lifetime Member of the Adventure Cycling Association.

21. Based on my education and experience, I am qualified to provide analysis on the subjects set forth in this Expert Report. Through my work, research, and recreational endeavors, I have become acquainted with many people in the vehicle suspension and shock absorber industries. I would consider one of ordinary skill in the art for the technology disclosed in the '223 and '331 patents a person with a degree in Mechanical Engineering and at least three-years' experience in vehicle suspension technology, or a Master's degree in Mechanical Engineering with a concentration in design of vehicle suspension technology and/or shock absorbers. I meet these qualifications. In particular, I held a Ph.D. in mechanical engineering at the time of the earliest asserted filing dates of both the '223 patent (that is, May 9, 2008) and the '331 patent (that is, May 9, 2012) and had worked designing and testing bicycle and other vehicle suspensions for more than two decades prior.

V. Compensation

22. I am being compensated at the rate of Four Hundred Dollars (\$400.00) per hour for my work in this matter, including any time spent at deposition and trial. I have not testified at trial or deposition during the previous four years outside of this matter. I gave testimony at a preliminary injunction hearing in this case on May 26, 2023.

VI. Information Considered in Forming my Opinions

23. The opinions reached in this Report are based upon my background, including my education, research, and experience, my review of the relevant patents and patent related materials at issue in this case, the Accused Forks and Accused Shocks (including examples, drawings, and materials regarding them), the prior art, and including the documents and photographs set forth in this Report and the exhibits to this Report. I have also considered the materials set forth in my Declarations dated August 10, 2023 (IPR2023-01301 and IPR2023-01302) and November 29, 2023 (IPR2024-00216). I incorporate fully those Declarations in this Report by this reference. I have also considered Dr. Slocum's Infringement Report, as well as all of the materials Dr. Slocum states that he reviewed in preparation of his Infringement Report. I additionally considered my Invalidity Report, which was served on March 28, 2024, and the materials considered and discussed therein and in association with my Invalidity Report.

VII. Relevant Legal Principles

24. In expressing my opinions and considering the subject matter of the asserted claims, I am relying upon certain basic legal principles that I am familiar with based upon my prior expert experience in patent matters and as confirmed to me by counsel for SRAM.

25. I have reviewed the asserted claims of the '331 and '223 patents regarding whether any of the accused products infringe any of the asserted claims. I understand that, in patent infringement matters, a patent owner bears the burden of proving infringement by clear and convincing evidence. To show infringement of a patent claim, a patent owner must prove that an accused device practices every element of the claim. Conversely, a device does not infringe a patent claim when that device is missing any single element of that claim. If an independent claim is not infringed, then no claim that is dependent on that independent claim is infringed. I also

understand that patent claims may be subject to a claim construction order, wherein a court construes some of the terms of the patent claims. I have applied the plain meaning, as well as SRAM's proposed claim constructions, in this Report unless stated otherwise.

26. In rendering the opinions set forth in this Report, I have considered the patent claims through the eyes of "one of ordinary skill in the art" at the time of the invention, which standard I explained above. I understand that I am to consider factors such as the educational level and years of experience of those working in the pertinent art; the types of problems encountered in the art; the teachings of the prior art; patents and publications of other persons or companies; and the sophistication of the technology. I understand that the person of ordinary skill in the art is not a specific, real individual, but rather is a hypothetical individual having the qualities reflected by the factors discussed above.

VIII. The '331 Patent

27. I understand that a product cannot infringe an indefinite or otherwise invalid patent claim. Accordingly, the Accused Forks do not infringe the '331 patent and its asserted claims at least because it is invalid for all of the reasons discussed in my Invalidity Report.

1. *Independent claim 1*

Claim element 1[pre]: A lower fork and air bleed assembly combination comprising:

28. As an initial matter, this claim is indefinite for the reasons discussed in my Invalidity Report. As a result, this claim cannot be properly analyzed for infringement.

29. For example, the Accused Forks include "lower fork tubes" but do not include the claimed "lower fork." As I discussed in my Invalidity Report, while the terms "lower fork leg" and "lower fork tube" appear many times in the specification, the term "lower fork" (without

leg/tube descriptors) does not and, for the reasons discussed in my Invalidity Report, is indefinite. A person of ordinary skill in the art (“POSITA”) could not reasonably expect or believe, based on the specification and claims, that the terms “lower fork tube” and “lower fork” are interchangeable.

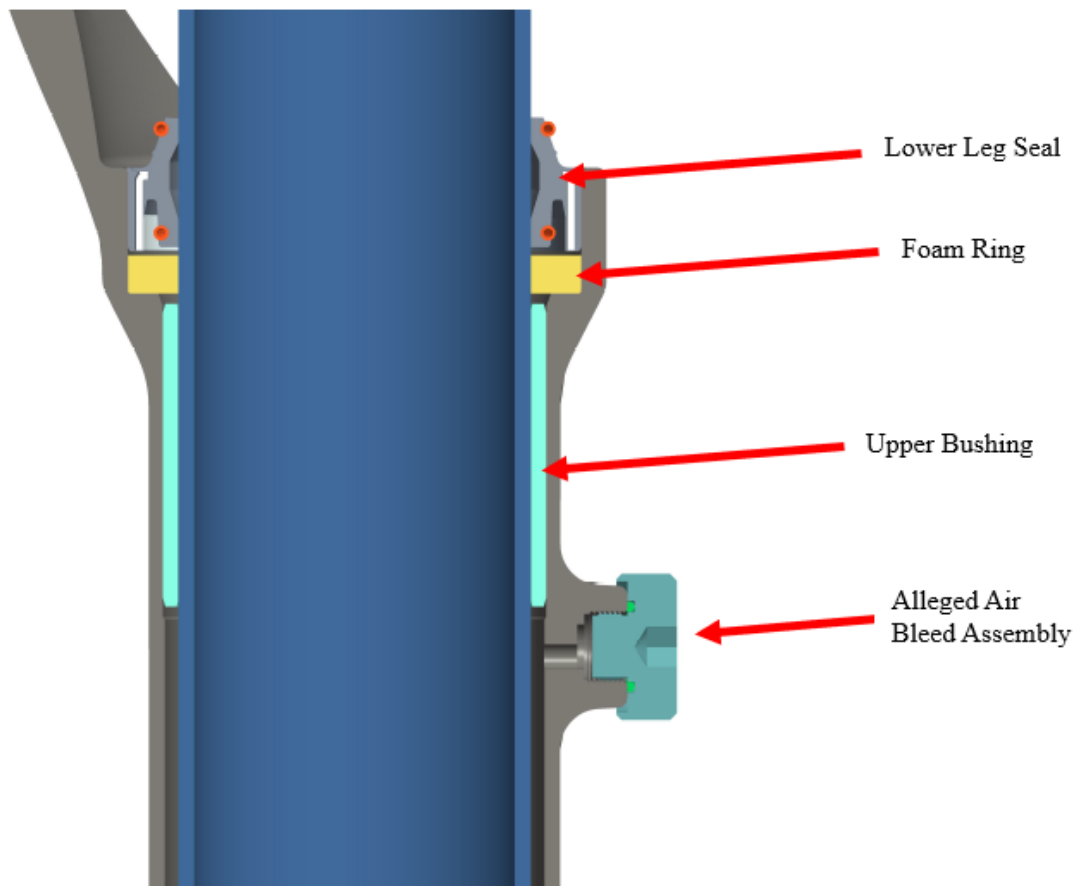
30. In his Infringement Report, Dr. Slocum states: “a POSITA would have understood ‘lower fork’ to mean the lower fork tubes of a suspension fork.” Slocum Infringement Report at ¶ 52. I disagree. The “lower fork” could include both lower tubes and the arching member connecting the lower tubes (i.e. the lower leg arch). Or “lower fork” could include both lower tubes but not the lower leg arch. In fact, in his Infringement Report, Dr. Slocum twice states: “the fork tubes of the upper fork slide in and out of the fork tubes of the lower fork.” Slocum Infringement Report at ¶ 53 and ¶ 95. The very fact that Dr. Slocum uses the term “fork tubes **of the** upper fork” implies that the “upper fork” is not the same as or synonymous with the “upper fork tubes.” Otherwise, Dr. Slocum would have just stated “the upper fork slides in and out of the lower fork” or “the upper fork tubes slide in and out of the lower fork tubes.”

31. Furthermore, in his deposition, Dr. Slocum states the lower fork tubes are not the same as the lower fork: “It is, because again, that arch with the – that holds the lower leg – excuse me, lower fork tubes in a position with respect to each other, so that the whole subassembly would be considered the lower fork”. Slocum Depo., p. 88, lines 21–25.

32. In my opinion, a POSITA would similarly not consider the terms “lower fork” and “the lower fork tubes” interchangeable.

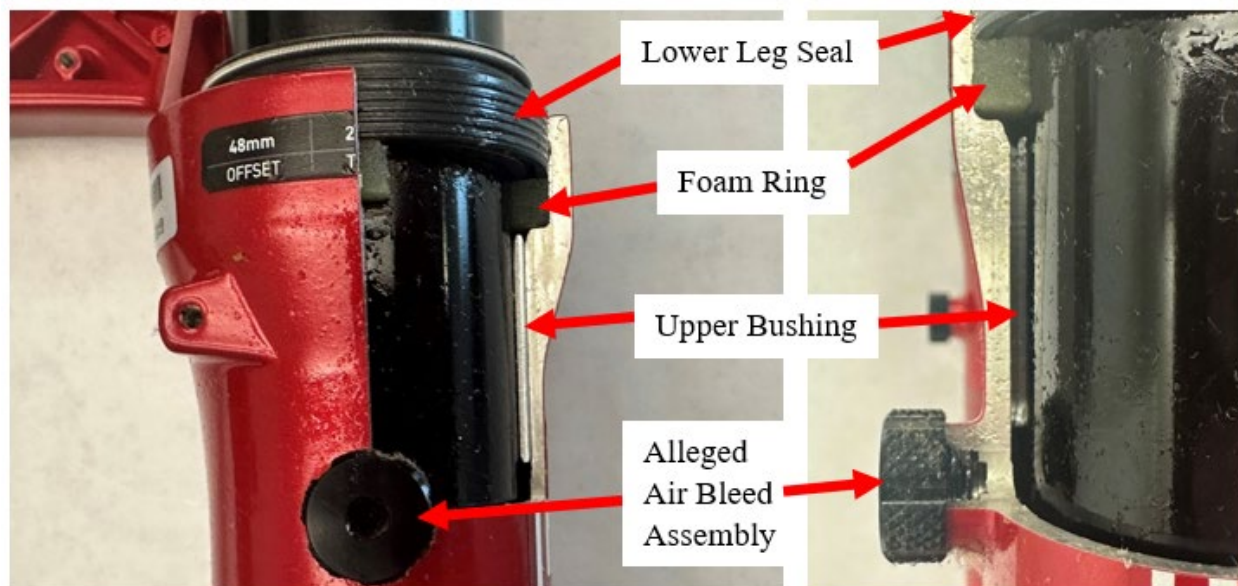
33. Further, to the extent that this claim is not indefinite (which it is), under SRAM’s proposed claim construction of “air bleed assembly disposed,” the Accused Forks do not include the required air bleed assembly, in that the air bleed assembly needs to be *located between the lower leg seal and the upper bushing*. This is how the term should be construed based on Fox’s

clear disclaimers made during the prosecution of the '331 patent, as discussed further below. The graphical image below depicts an accused Pike Ultimate fork with the alleged air bleed assembly located below the upper bushing, not between the lower leg seal and the upper bushing.

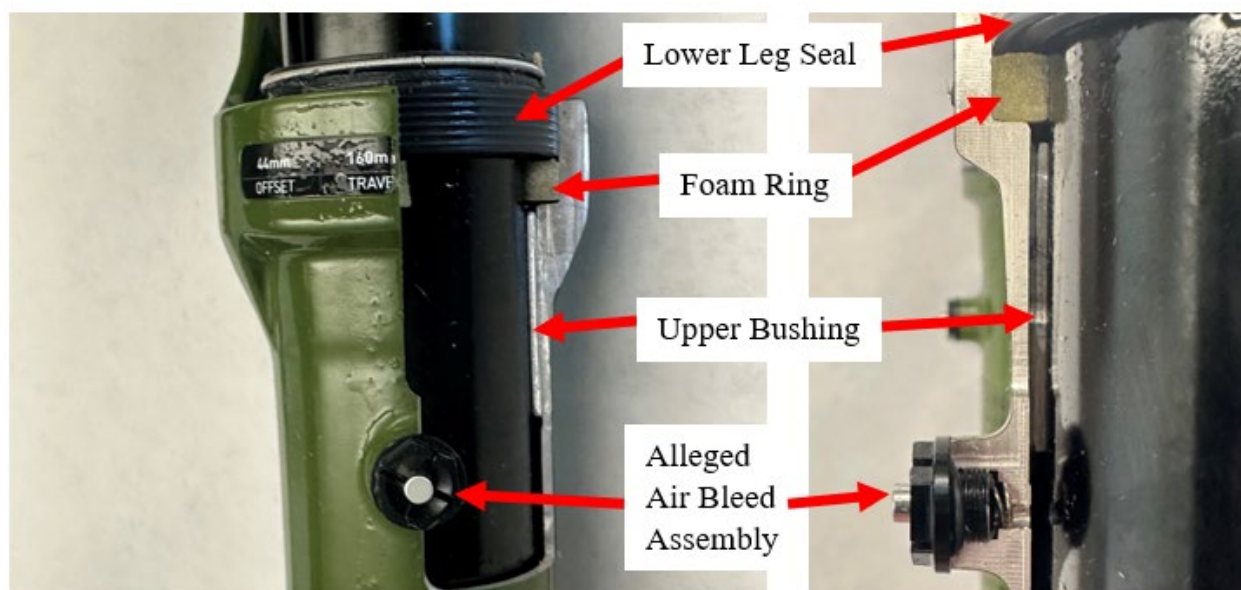


SRAM's Pike Fork Cross Section: SRAM_FOX_CO_003912

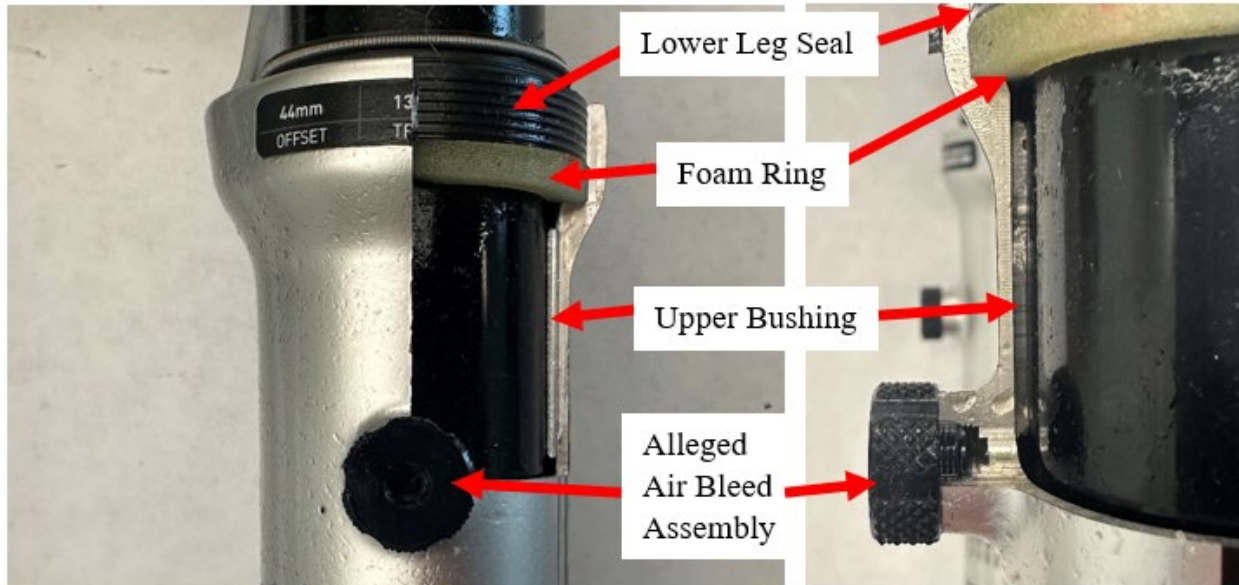
34. All of the Accused Forks (photographs of exemplar Accused Forks shown below) have the same location for the alleged air bleed assembly, namely below the upper bushing and, more specifically, not being located between the lower leg seal and the upper bushing. Accordingly, none of the Accused Forks infringe claim 1 for this reason.



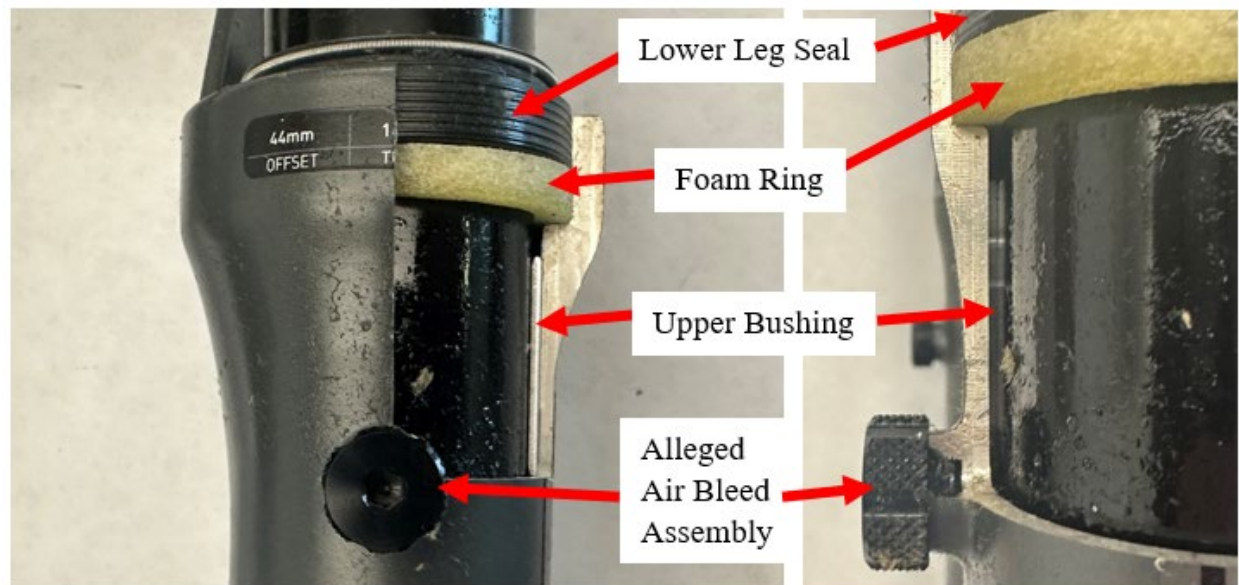
SRAM's BoXXer Ultimate Fork



SRAM's Lyrik Ultimate Fork



SRAM's Pike Ultimate Fork



SRAM's Zeb Ultimate Fork

Claim element 1[a]: a lower fork, said lower fork configured to have a first end coupled to a vehicle wheel, and a second end configured to be telescopically engaged with a first end of an upper fork, said lower fork further comprising:

35. As mentioned previously, the Accused Forks include “lower fork tubes” but do not include the claimed “lower fork.” Likewise, the Accused Forks include “upper fork tubes” but do not include the claimed “upper fork.” While the terms “upper fork leg” and “upper fork tube” appear many times in the specification, the term “upper fork” (without leg/tube descriptors) does not and, for the reasons discussed in my Invalidity Report, is indefinite. A POSITA could not reasonably expect or believe, based on the specification, that the terms “upper fork tube” and “upper fork” are interchangeable.

36. In his Infringement Report, Dr. Slocum twice states: “the fork tubes of the upper fork slide in and out of the fork tubes of the lower fork.” Slocum Infringement Report at ¶ 53 and ¶ 95. The very fact that Dr. Slocum uses the term “fork tubes **of the** upper fork” and “fork tubes **of the** lower fork” implies that the “upper fork” is not the same as the “upper fork tubes” and that “lower fork” is not the same as the “lower fork tubes”. Otherwise, Dr. Slocum would have just stated “the upper fork slides in and out of the lower fork” or “the upper fork tubes slide in and out of the lower fork tubes.”

37. Furthermore, in his deposition, Dr. Slocum states that, in his opinion, the upper fork includes both upper fork tubes, fork crown, and steerer tube. Slocum Depo. at p. 86, line 4 – p. 87, line 1. In my opinion, a POSITA would similarly not consider the terms “upper fork tube” and “upper fork” interchangeable.

Claim element 1[b]: a lower leg seal located at an outermost edge of said second end of said lower fork tube, said lower leg seal configured for sealing closed a gap disposed between said upper fork tube and said lower fork tube when said lower fork is telescopically engaged with said first end of said upper fork, thereby preventing an oil bath lubrication occupying an area within said lower fork tube at a first end of said lower fork tube from leaking from said lower fork; and

38. The terms “said lower fork tube” and “said upper fork tube” have no antecedent basis in claim 1 and are, for the reasons discussed in my Invalidity Report, indefinite.

39. The term “at an outermost edge” does not appear anywhere in the specification, figures, or relevant file history. Furthermore, it does not have any particular meaning in the art and, for the reasons discussed in my Invalidity Report, is indefinite.

40. The term “oil bath lubrication” is indefinite for the reasons discussed in my Invalidity Report.

41. In his Infringement Report, Dr. Slocum states: “The rubber lip and the foam ring collectively form a seal package and together they substantially minimize oil from leaking from the lower fork tubes.” Slocum Infringement Report at ¶ 55. However, the function of the foam ring is to pass and retain oil, thereby providing lubricating oil to various components. Whereas a seal is designed to prevent oil from passing, the foam ring is designed to allow oil to flow through and around it. Thus, to state that the foam ring is part of a “seal package” is incorrect. The lower leg seal and foam ring serve two distinctly different purposes.

42. Further, Dr. Slocum’s conclusion is flawed because the Accused Forks’ foam rings do not “seal[] closed a gap” between the lower and upper fork tubes, as required for the “lower leg seal”. As stated above, the foam rings actually encourage the movement of oil, especially by retaining oil around the area of the seal and bushings.

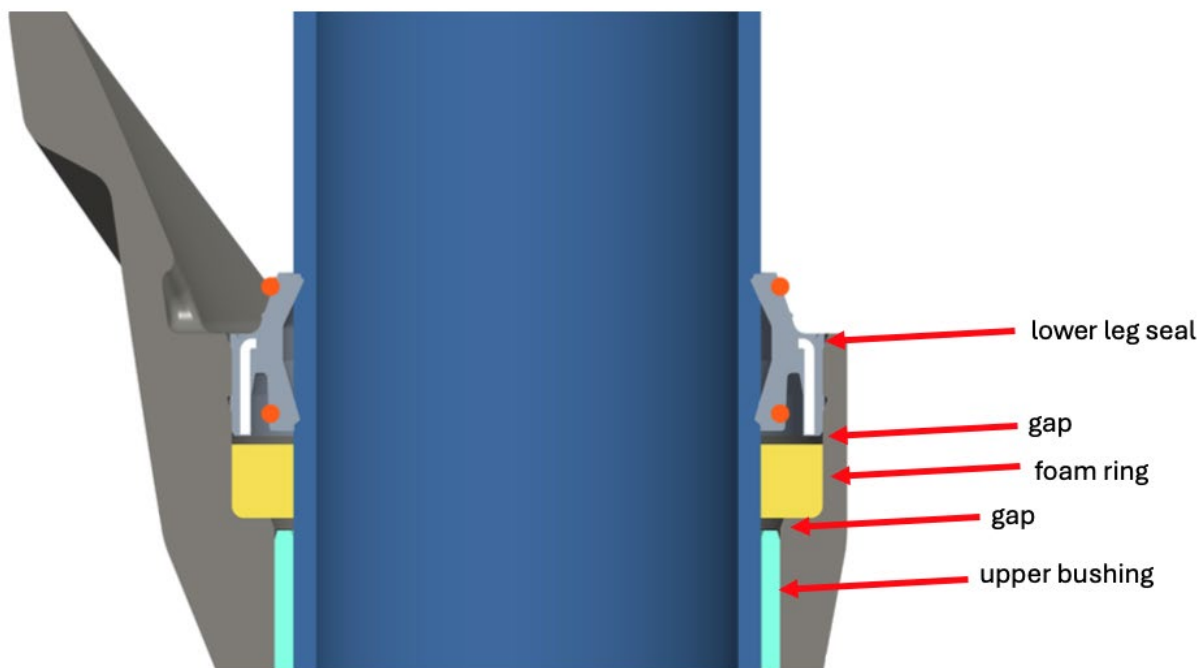
43. Dr. Slocum also states that “the rubber lip and foam ring are affixed to the lower fork tube.” Slocum Infringement Report at ¶ 55. Dr. Slocum does not explain his opinion or its

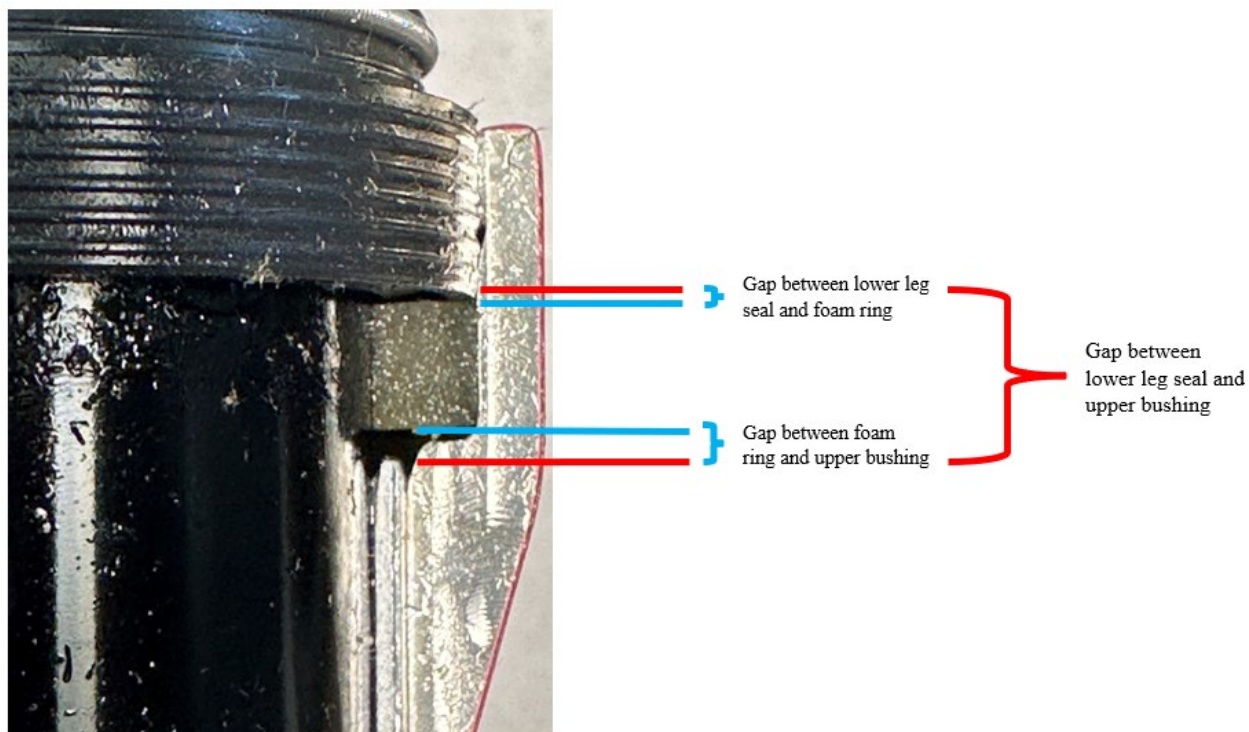
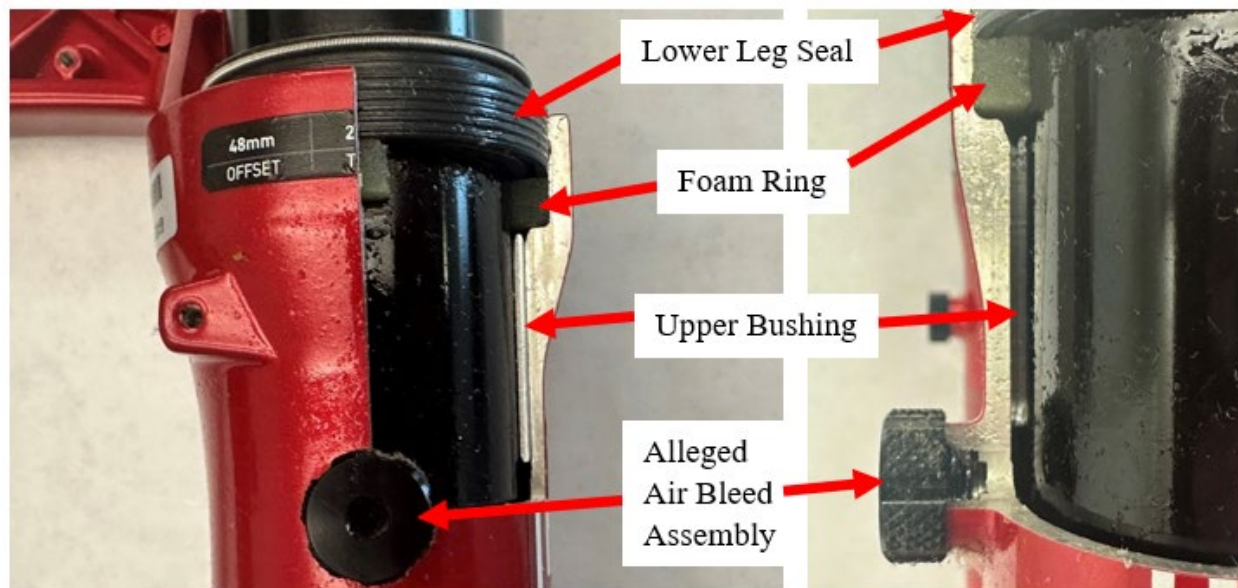
relevance to the asserted claim language, which does not discuss either of these elements being “affixed” to the lower fork tube. In any event, I disagree that the foam ring is affixed to any lower fork tube in the Accused Forks. I have reviewed the BoXXer Ultimate, ZEB Ultimate, Pike Ultimate, and Lyrik Ultimate forks with cutaways from SRAM (as well as other diagrams), and in each case, the foam rings are not “affixed” to anything. Instead, the foam rings may move vertically within a predefined space of the lower (outer) tube and are not affixed to the walls of the lower (outer) tube, but merely limited in terms of their lateral movement (as opposed to their free vertical movement). Indeed, Dr. Slocum admitted that the foam ring could float within the tube and is not constrained other than by the friction of the foam fit with the inner bore. *See* Slocum Depo., p. 132, line 14 – p. 133, line 3.

Claim element 1[c]: an upper bushing attached to and positioned adjacent to said lower leg seal; and

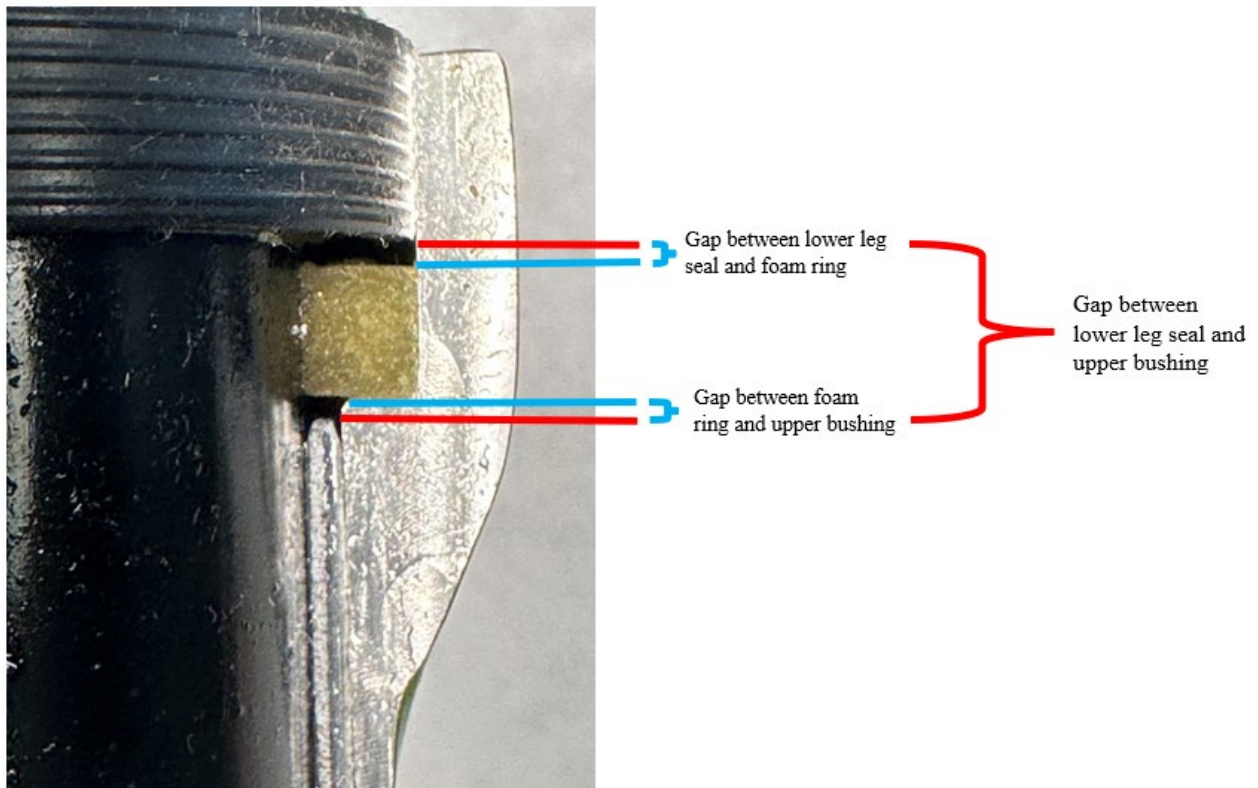
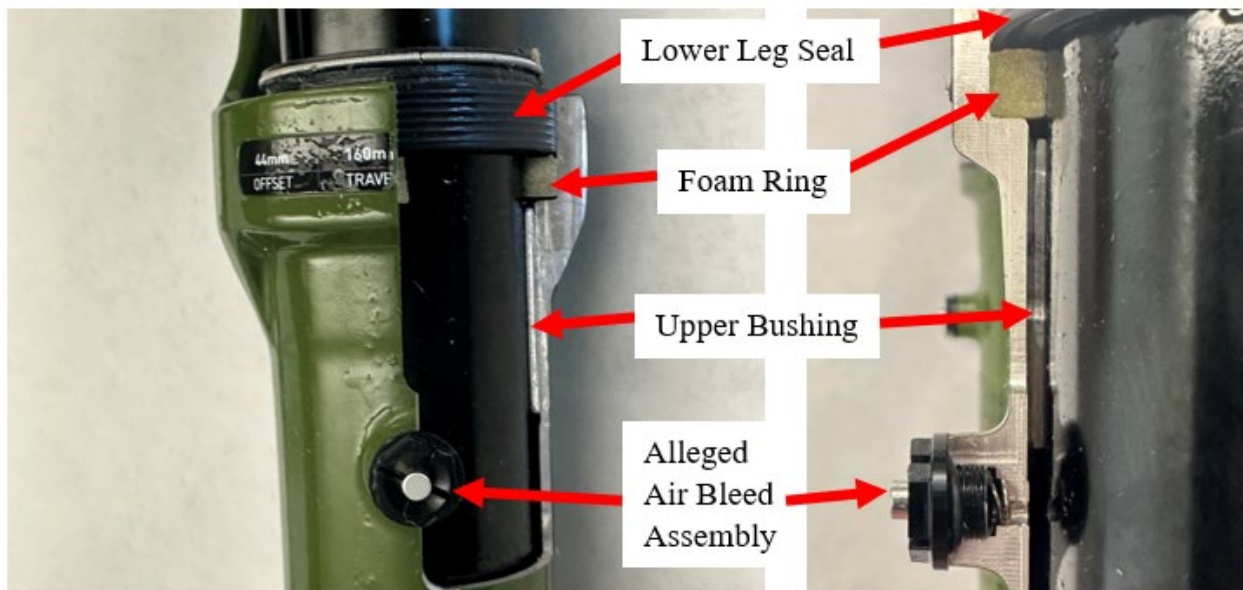
44. The Accused Forks include an upper bushing, but the upper bushing is neither positioned adjacent to nor attached to the lower leg seal, and therefore does not infringe claim 1.

45. Specifically, as shown in the graphical depiction of an accused BoXXer fork below and in photographs of cutaways of exemplar Accused Forks, the lower leg seal is not “positioned adjacent to” the upper bushing. Instead, the lower leg seal is separated from the upper bushing by the foam ring, which itself is separated from both the lower leg seal and the upper bushing with gaps on both sides of the foam ring. Accordingly, the upper bushing is not next to or “positioned adjacent to” the lower leg seal.

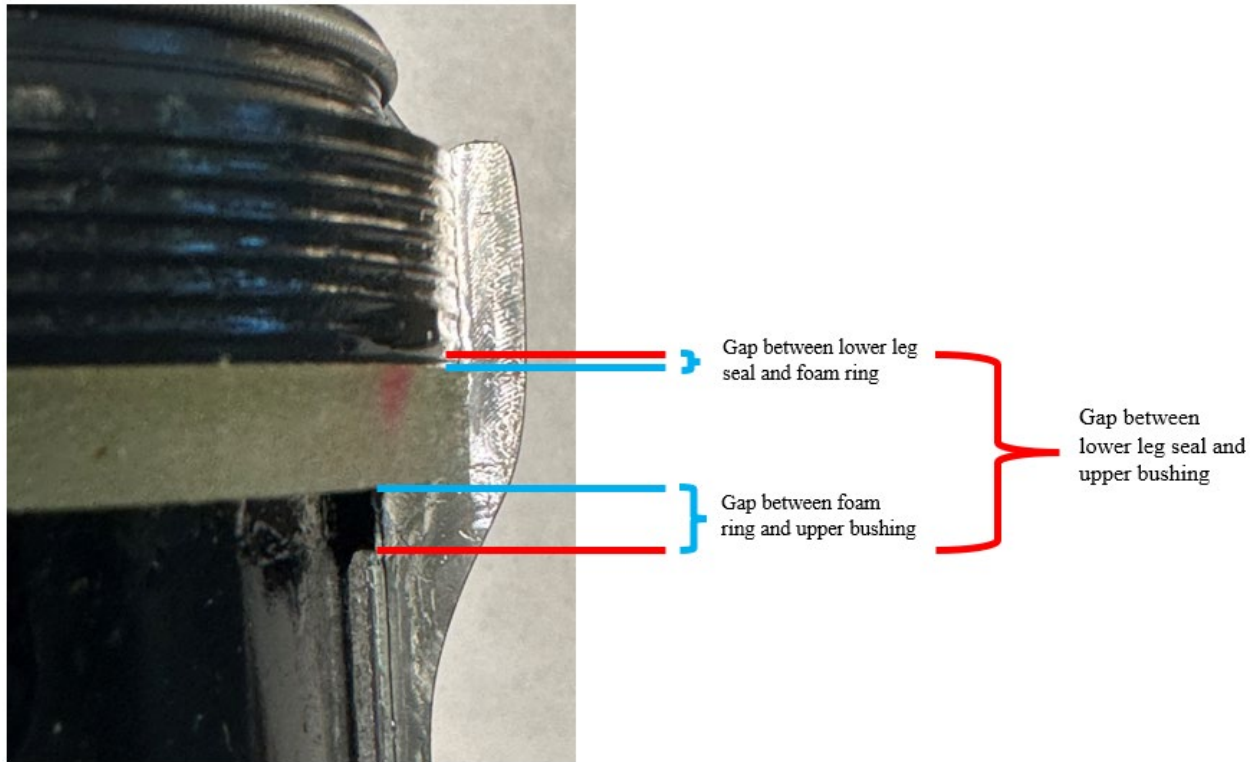
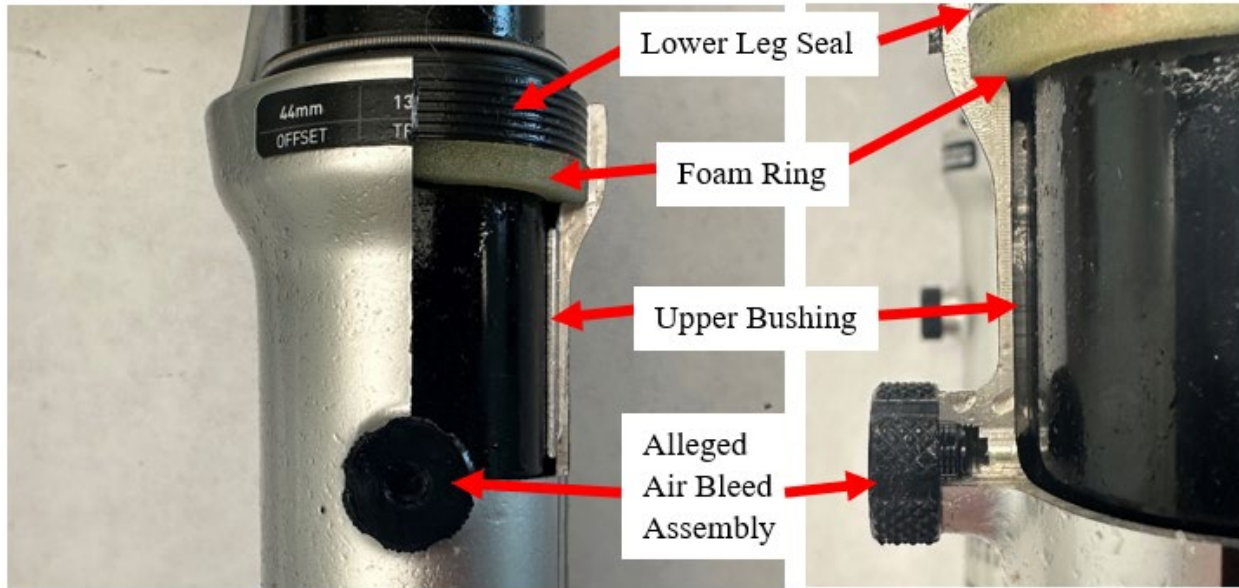




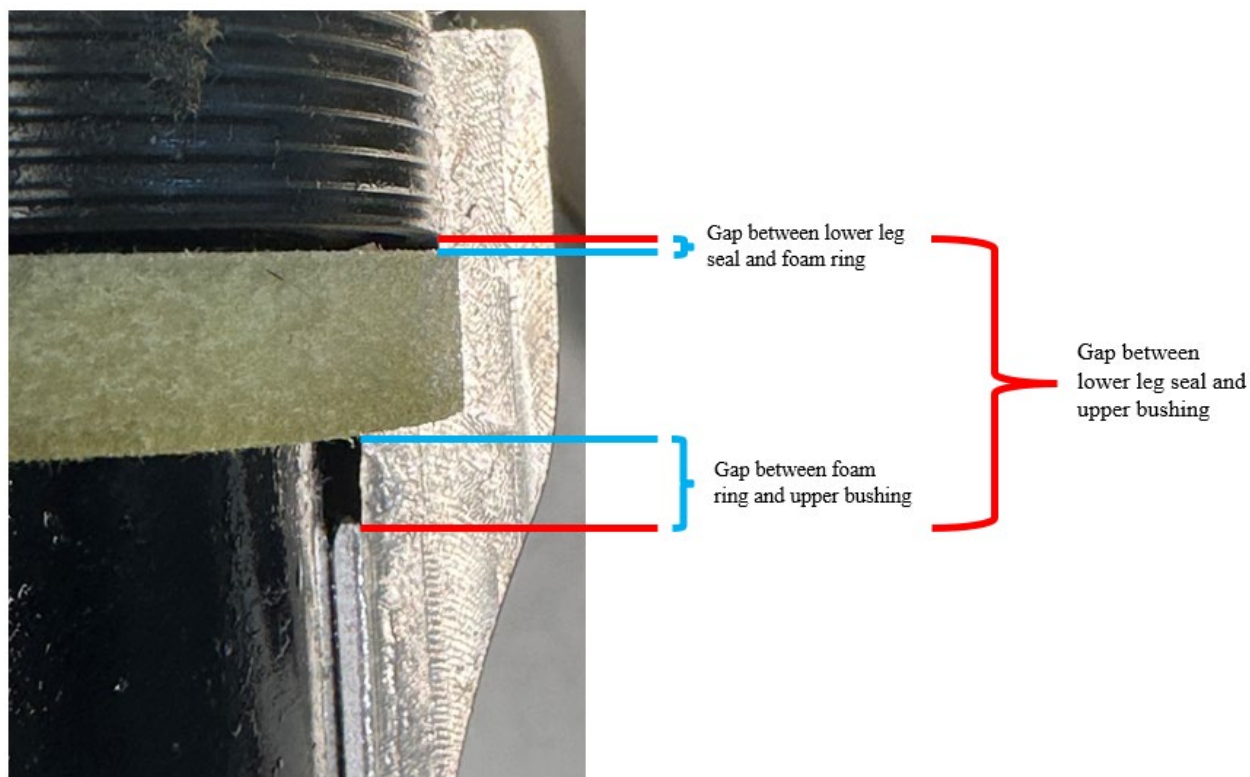
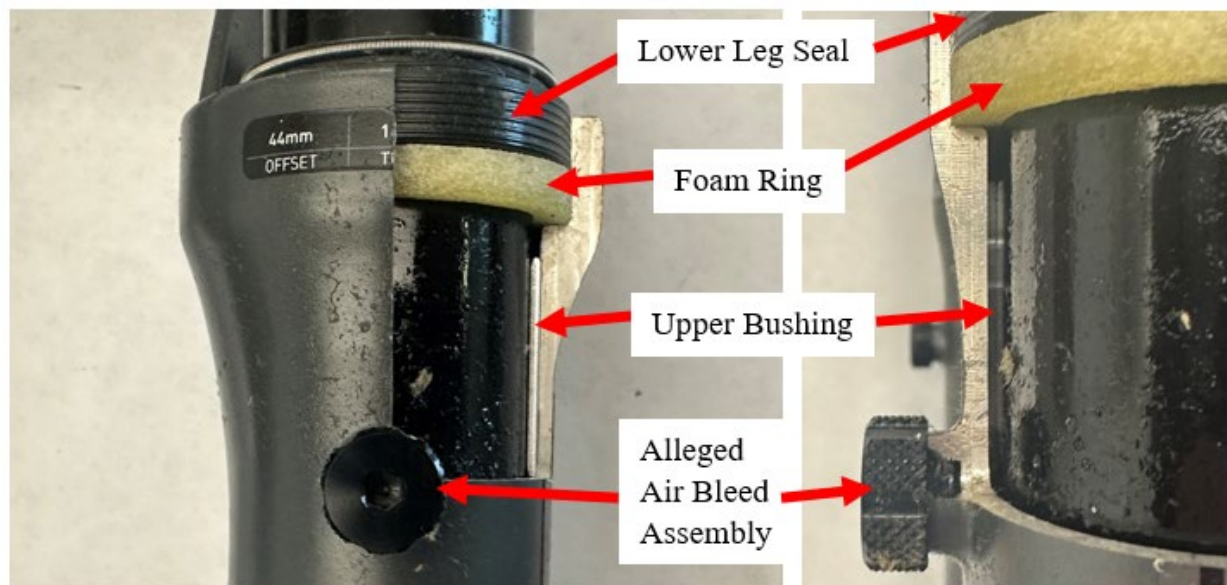
SRAM's BoXXer Ultimate Fork



SRAM's Lyrik Ultimate Fork



SRAM's Pike Ultimate Fork



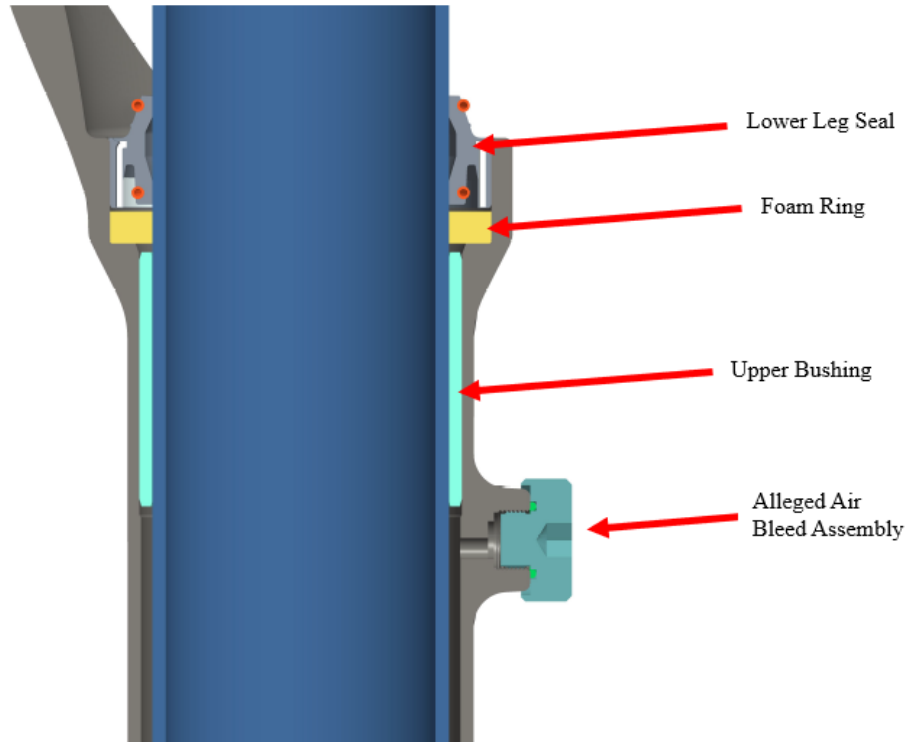
SRAM's Zeb Ultimate Fork

46. Moreover, the upper bushing is not attached to the lower leg seal under either party's construction of "attached to". Under SRAM's construction, the upper bushing is clearly

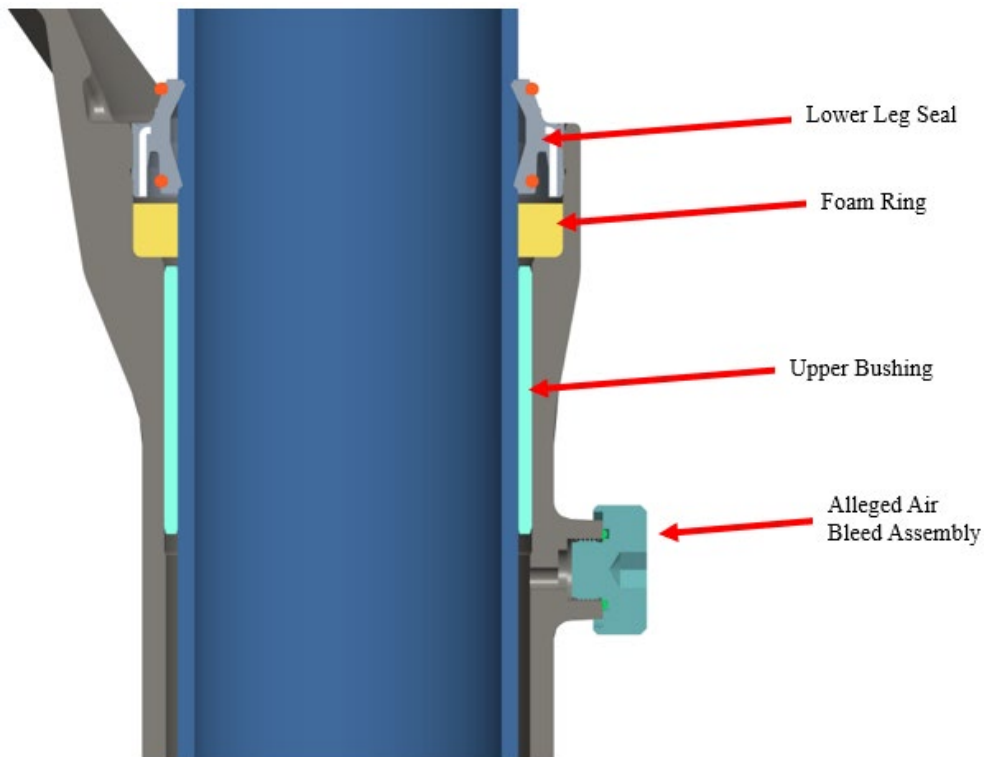
not “affixed” to the lower leg seal as the upper bushing and lower leg seal are clearly separated by two gaps as well as a foam ring and therefore cannot be affixed to each other. Alternatively, even under Fox’s construction, the upper bushing is not in “contact with” the lower leg seal itself, or with the foam ring, as there are not only two gaps and a foam ring between the upper bushing and the lower leg seal but there is also a gap between the foam ring and the upper bushing itself. This is true across all of SRAM’s Accused Forks.

47. Dr. Slocum claims that the foam ring is part of a “seal package”. Slocum Infringement Report at ¶ 55. I disagree as set forth above and note that “seal package” is not a term used in the ‘331 patent and the asserted claims use the term “lower leg seal” which is specifically identified in the ‘331 patent as element 135 and distinguished from the foam ring designated as 125. Indeed, Dr. Slocum himself now acknowledges that his reading of “lower leg seal” to include the “foam ring” may require another claim construction. *See* Slocum Depo., p. 122, lines 5-24.

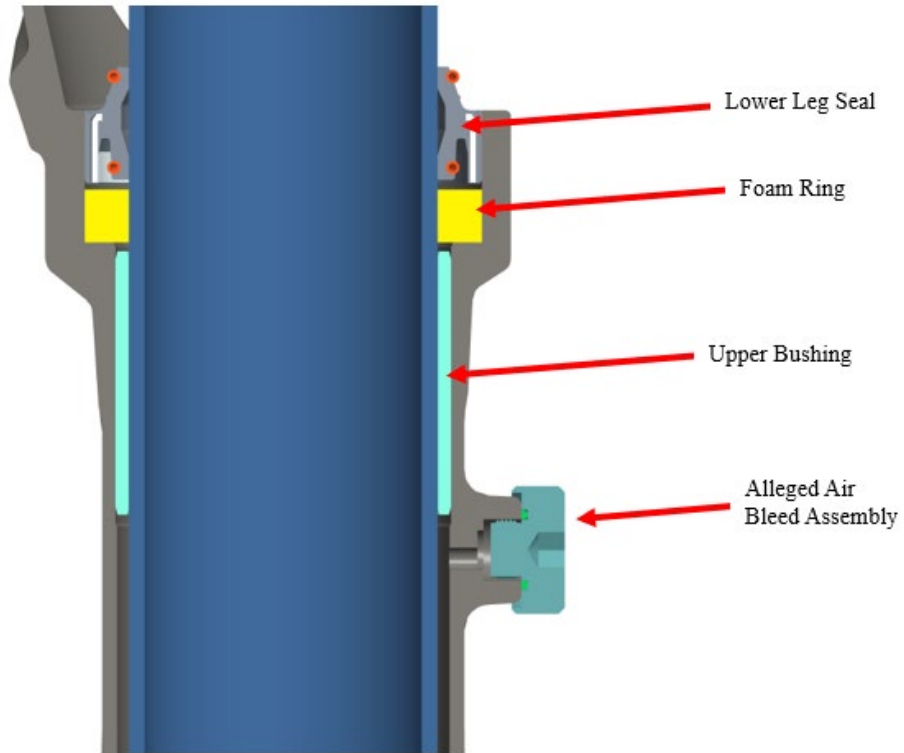
48. Even if this were the case that the term “lower leg seal” were construed in opposition to its plain meaning and to include the foam ring, there is still a gap between the foam ring and the upper bushing, as plainly evident when opening the fork assembly. Dr. Slocum states “Each of the 2023 Lyrik Select and 2024+ BoXXer Ultimate has upper bushings within the lower fork tubes that are attached to (i.e. **in contact with**) and adjacent (i.e. next to) to the foam rings of the lower leg seals.” Slocum Infringement Report at ¶ 55 (emphasis added). I disagree with Dr. Slocum. As shown in both the schematics and fork images below, the upper bushing is not in contact with the foam ring or lower leg seal and, therefore, even applying Fox’s proposed construction, the upper bushing is not “attached” to the lower leg seal, even if construed to include the foam ring.



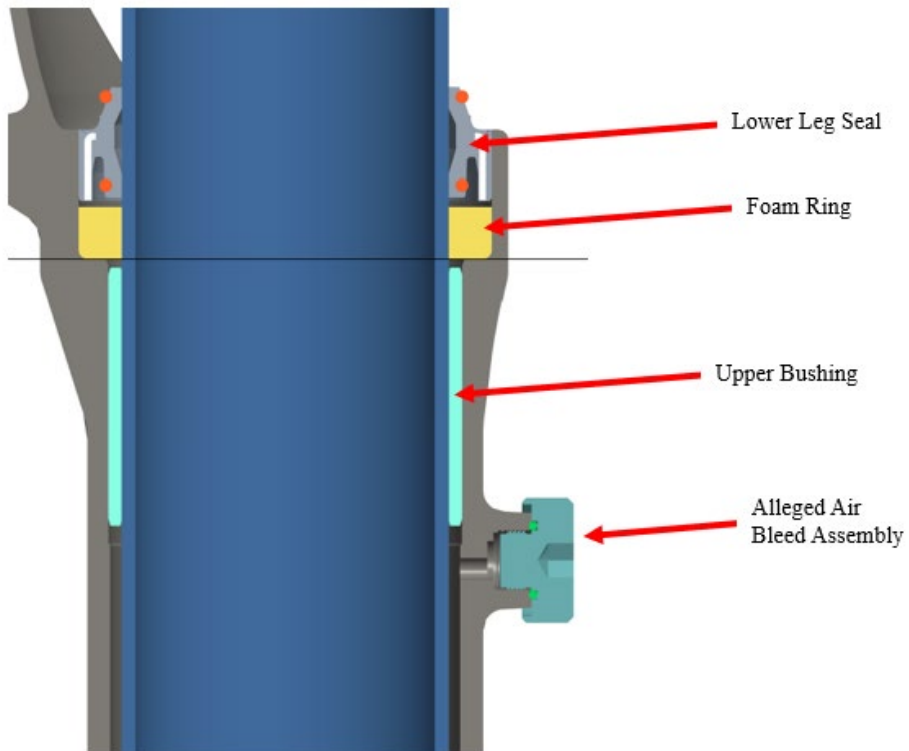
SRAM's Pike Fork Cross Section: SRAM_FOX_CO_003912



SRAM's BoXXer Fork Cross Section: SRAM_FOX_CO_003893



SRAM's Lyrik Fork Cross Section: SRAM_FOX_CO_003904

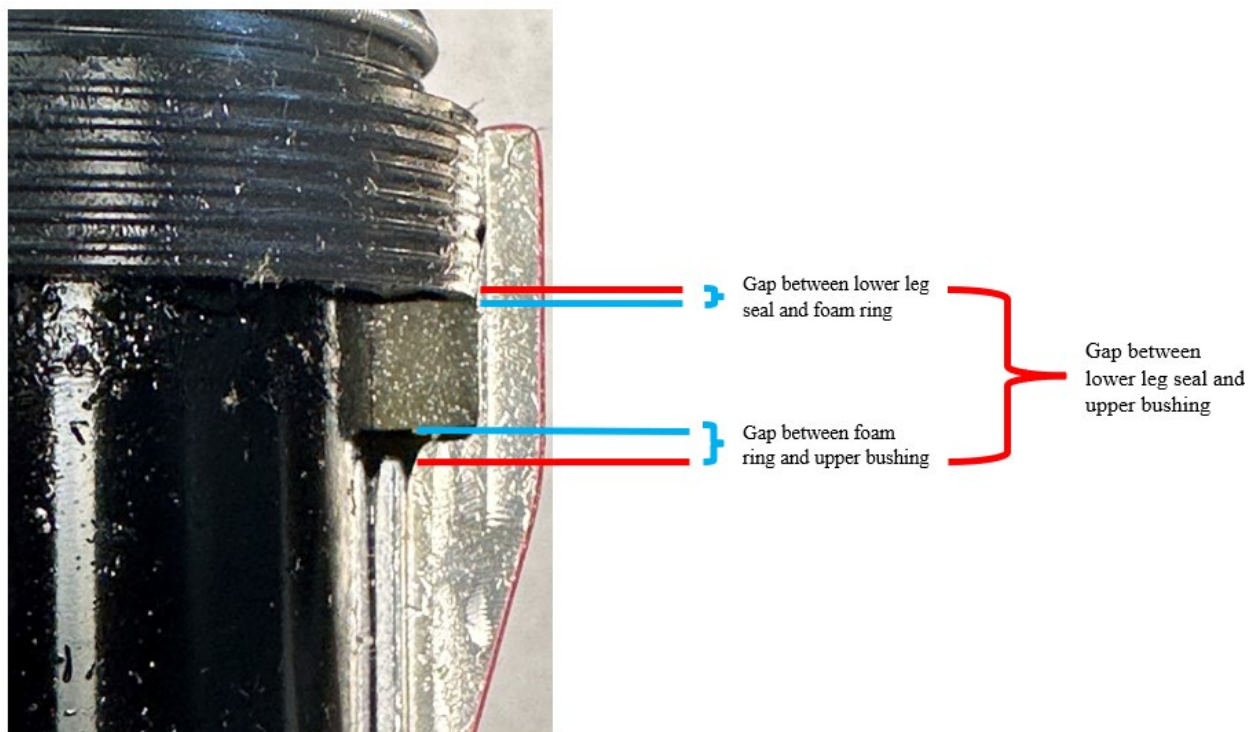
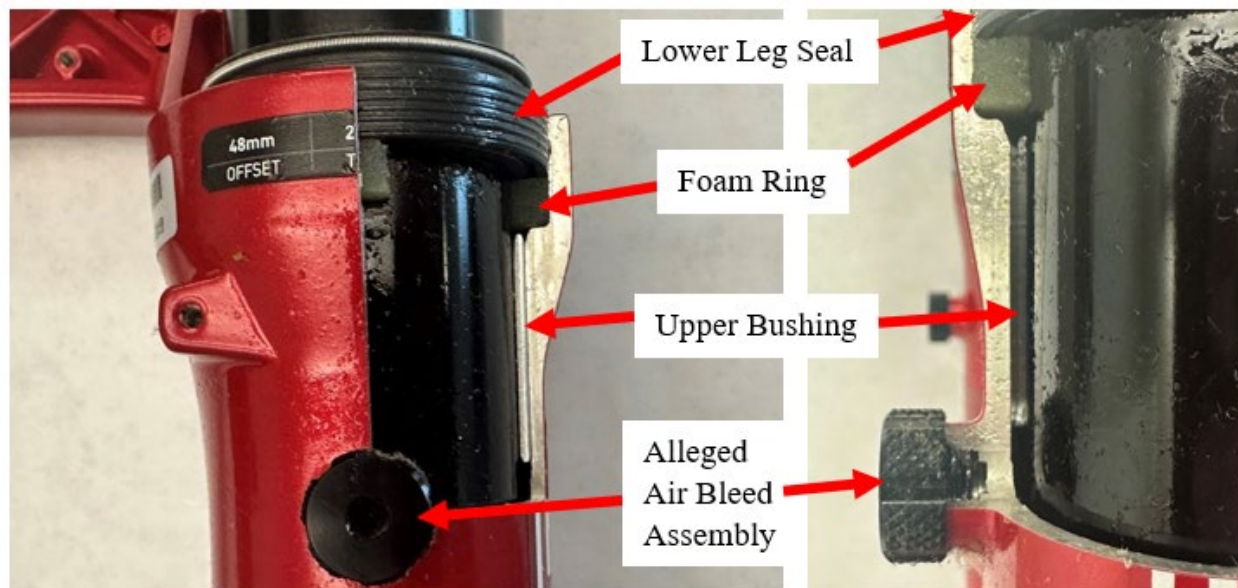


SRAM's ZEB Fork Cross Section: SRAM_FOX_CO_003951

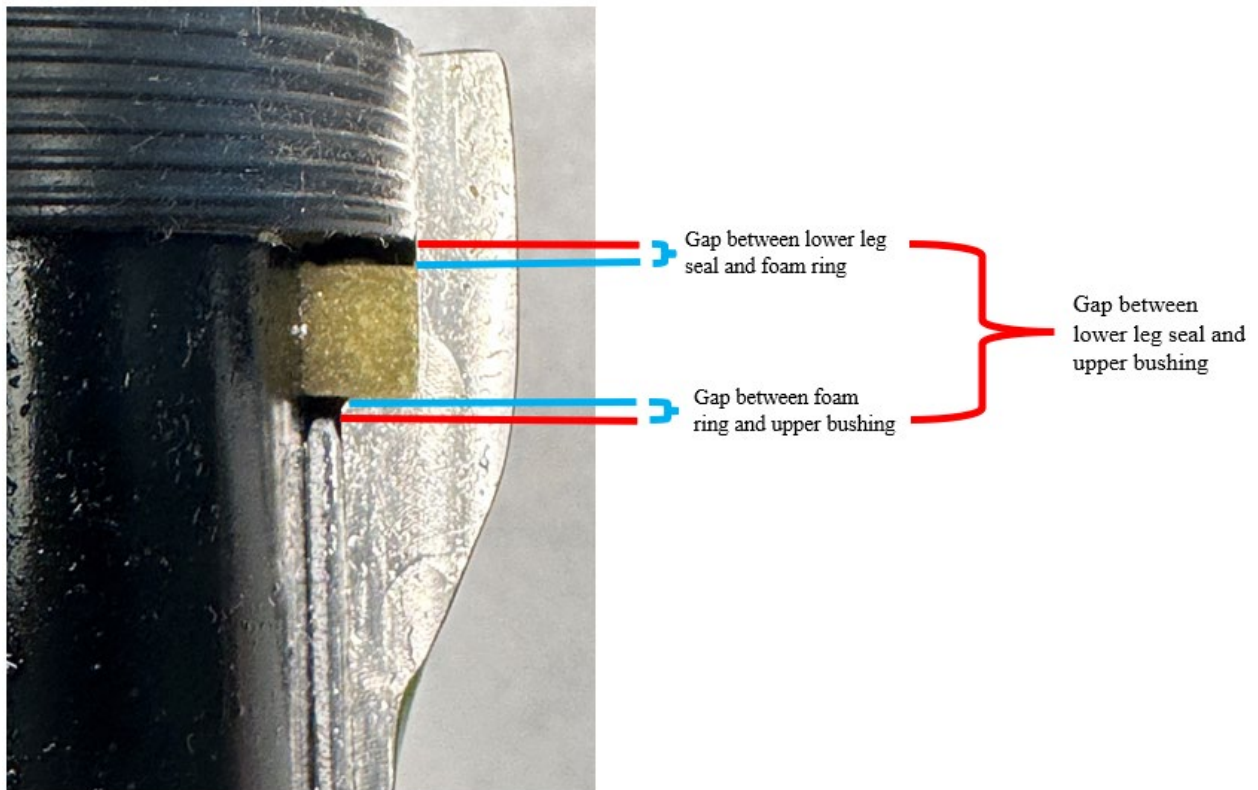
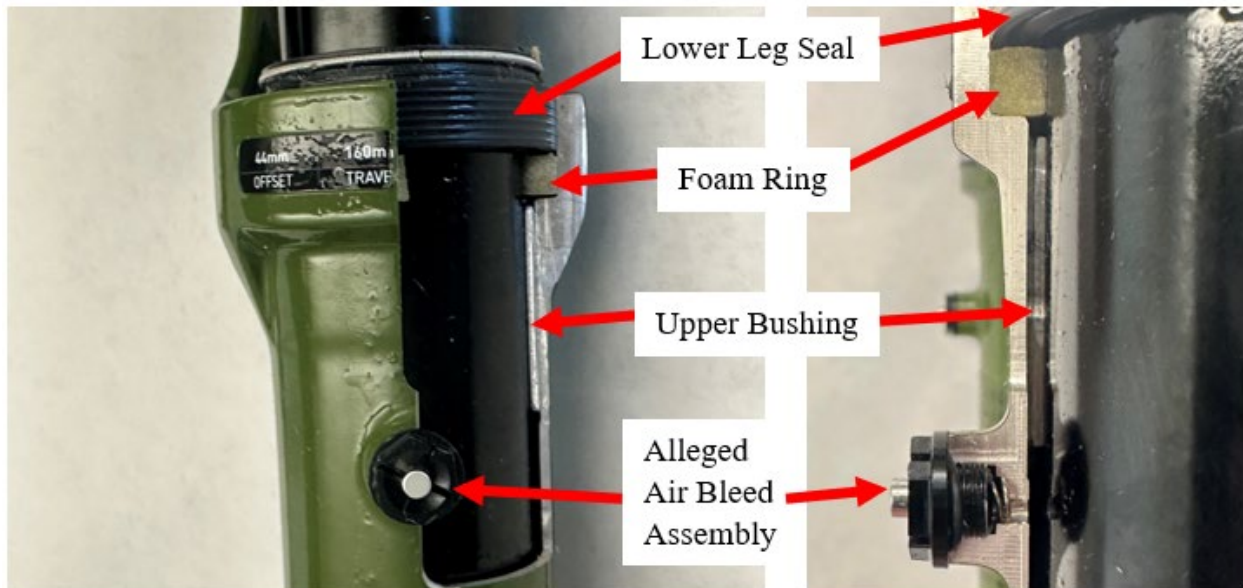
49. These gaps are also shown in SRAM_FOX_CO_001805:



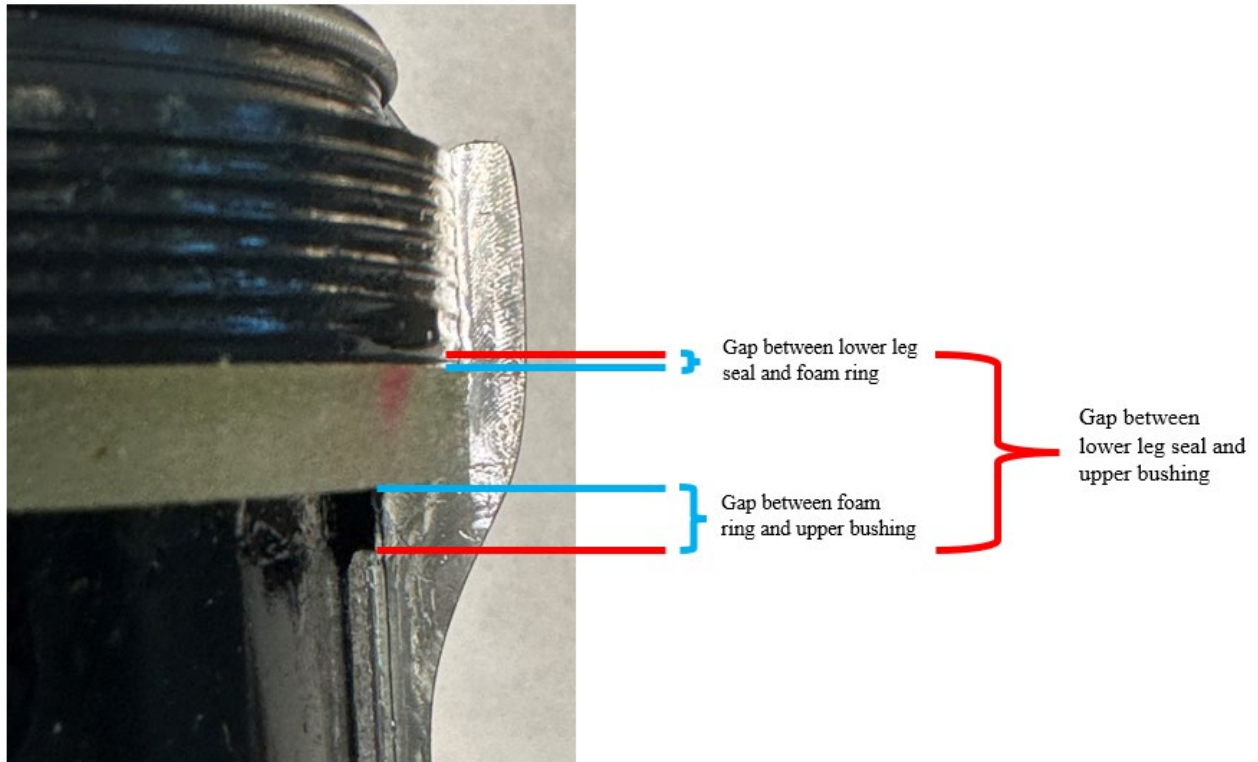
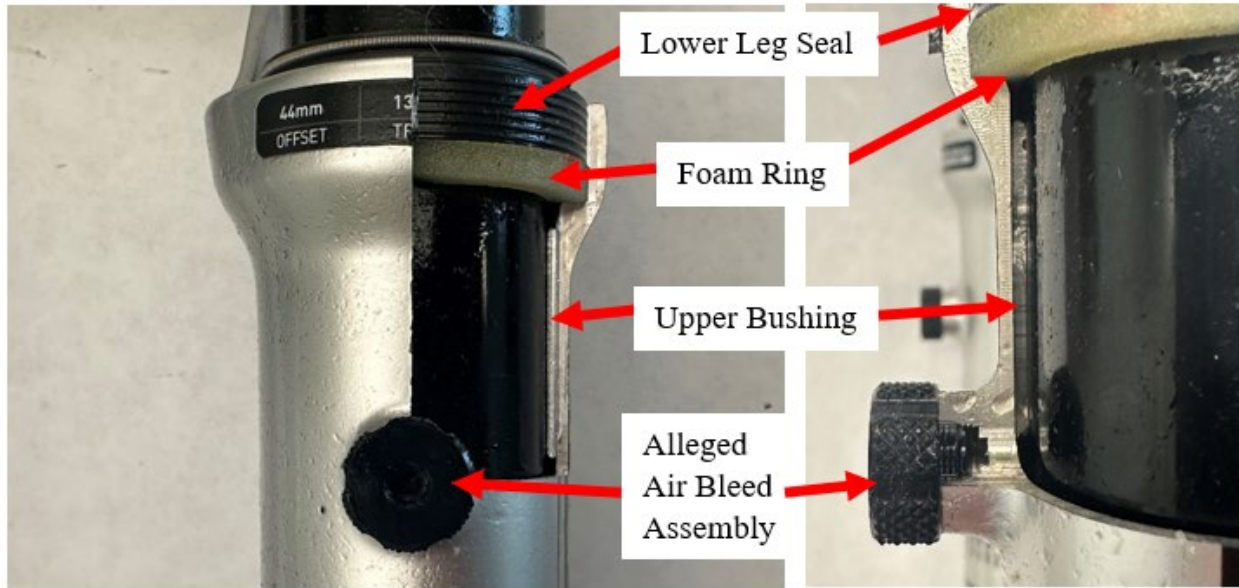
50. Further, my visual inspections of BoXXer Ultimate forks with cutaways (as well as the ZEB Ultimate, Pike Ultimate, and Lyrik Ultimate forks with cutaways, as shown below) confirms what is shown in the schematic – that there is a gap between the foam ring and the upper bushing and between the foam ring and lower leg seal. Further, the gap between the foam ring and the bushing is maintained by features of the lower fork tubes that prevent such a contact, including the ledge or step between the foam ring and the bushing.



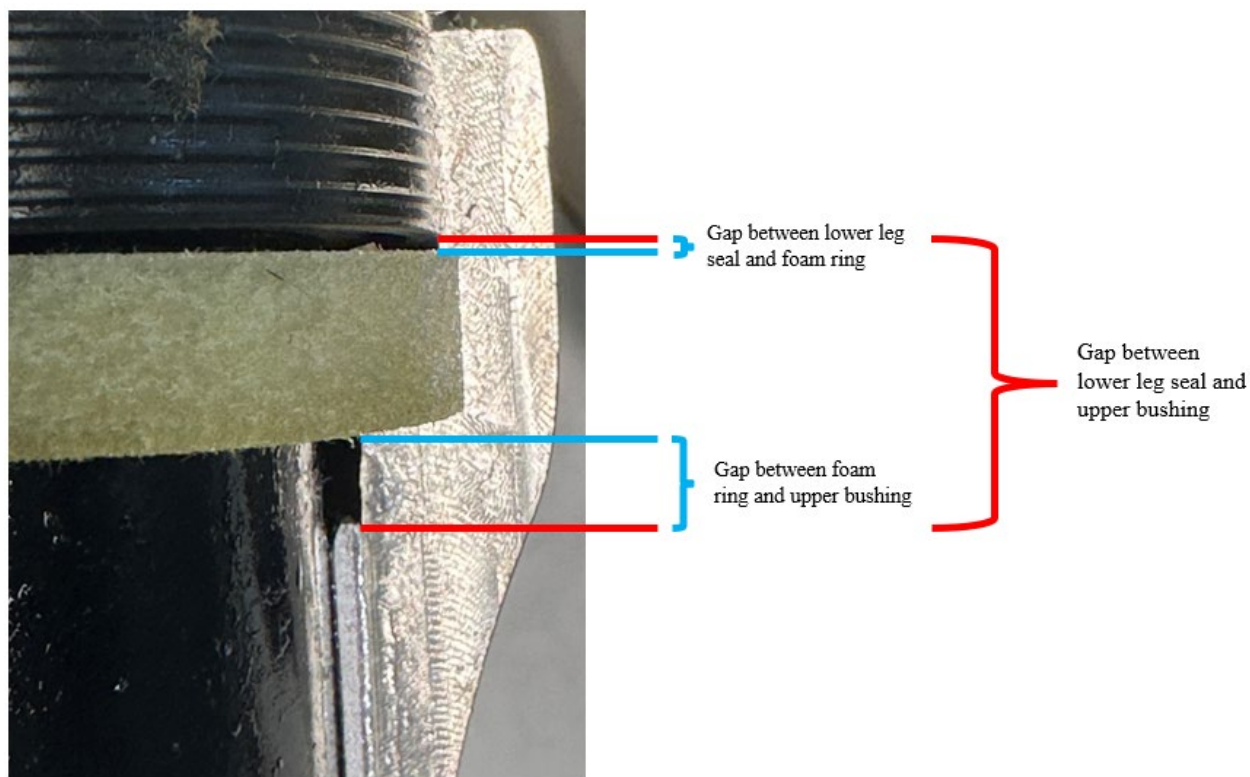
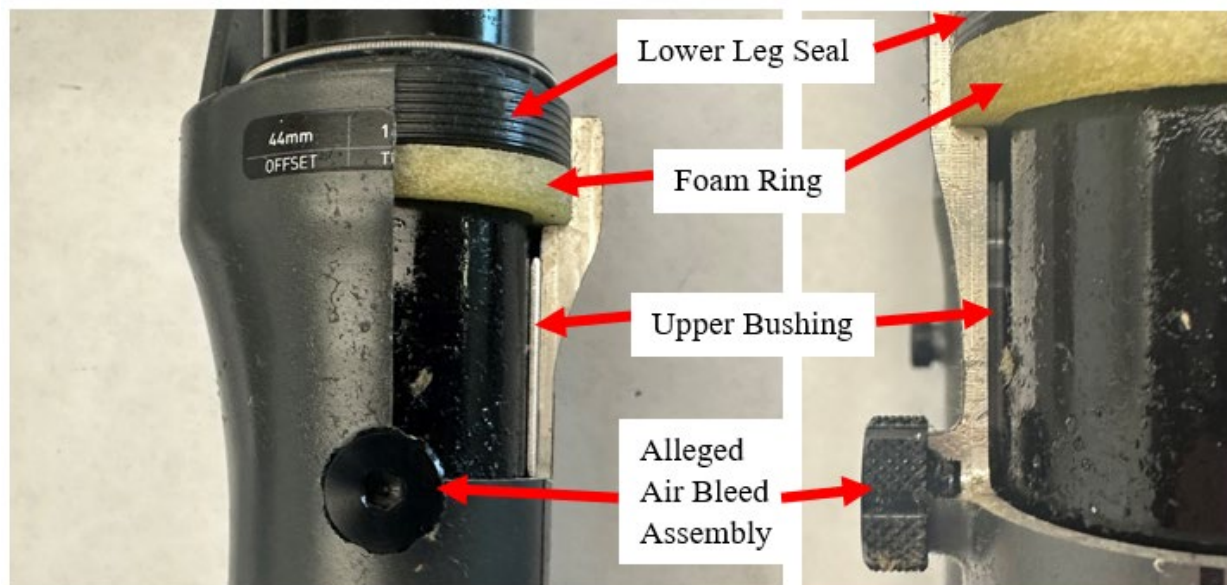
SRAM's BoXXer Ultimate Fork



SRAM's Lyrik Ultimate Fork



SRAM's Pike Ultimate Fork



SRAM's Zeb Ultimate Fork

51. Dr. Slocum's further statements about the relationship between the Accused Forks' foam ring and upper bushing are also inaccurate. For example, Dr. Slocum wrongly states that

“[t]he foam ring is supported and held in place by the upper bushing and prevented from being displaced during telescoping movement between the upper and the lower fork tubes, and thereby the upper bushing maintains the coaxial alignment and symmetry of the foam ring during operation.” Slocum Report, pp. 32-33. Fox’s counsel previously argued the same about the need for “attached” to mean “support”. See Claim Construction Transcript, p. 13, line 25 – p. 14, line 4 (“So Fox’s position *in contact with* means that the seal is touching the upper bushing. It is supported by the upper bushing, and they are touching each other, so that bushing is supporting the seal and that’s what the patent shows.”). Here, the upper bushings of SRAM’s Accused Forks provide no such support to the foam ring or the lower leg seal, as they are not in contact with each other. Rather, the foam ring is supported by a counterbore built into the interior of the inner tube itself.

52. Thus, under either SRAM’s or Fox’s proposed claim constructions of “an upper bushing attached to and positioned adjacent to said lower leg seal,” the Accused Forks do not have an upper bushing attached to the lower leg seal.

Claim element 1[d]: an air bleed assembly disposed on said lower fork tube, said air bleed assembly configured for equalizing ambient pressure within said lower fork, said air bleed assembly comprising:

53. The term “said lower fork tube” has no antecedent basis in claim 1 and, for the reasons discussed in my Invalidity Report, is indefinite.

54. Under SRAM’s proposed claim construction of “air bleed assembly disposed,” the Accused Forks do not include an air bleed assembly ***located between the lower leg seal and the upper bushing***. This is how the term should be construed based on Fox’s clear disclaimers made during the prosecution of the ‘331 patent.

55. In my opinion, Fox was granted the ‘331 patent only because it made a specific, clear, and unmistakable prosecution disclaimer and definition regarding the location of the air bleed assembly, which now precludes Fox from trying to recapture a broader scope. During prosecution, Fox narrowed claim 1 to argue around prior art, after Fox was rejected by the Examiner six times based on the *Galasso* reference (U.S. Patent Application Publication No. 2012/0080279), which showed that an air bleed system in a suspension fork had clearly existed well before 2012.

56. The prosecution history of the ‘331 patent shows this clear definition and disclaimer of claim scope. As I noted, the Examiner repeatedly rejected Fox’s claims for an air bleed system associated with a vehicle fork or suspension system, citing the *Galasso* reference either alone or in combination with other prior art. See FOX_0000320-324; FOX_0000363-377; FOX_0000405-416; FOX_0000432-433; FOX_0000456-471; FOX_0000504-505. Fox repeatedly argued against the Examiner’s continual reliance on *Galasso*, but was not able to convince the Examiner about patentability until Fox made an express disclaimer of scope. See FOX_0000335-349; FOX_0000385-396; FOX_0000437-451.

57. In a December 2016 final rejection, the Examiner rejected prosecution claims 1, 3-6, 8-15, and 18-22 under 35 U.S.C. § 103(a) as being unpatentable over *Galasso* et al. in view of U.S. Patent No. 6,311,961 B1 to *Julia*. FOX_0000459-467. The Examiner thoroughly analyzed how this prior art rendered Fox’s asserted invention obvious, including that the disclosure of the prior art that a manually operable air bleed valve could be located in the lower fork “without compromising the oil bath in the lower fork.” FOX_0000469.

58. In response to this sixth rejection of its air bleed claims, Fox amended claim 1 to add further structure but also specifically called out the difference between the prior art and the

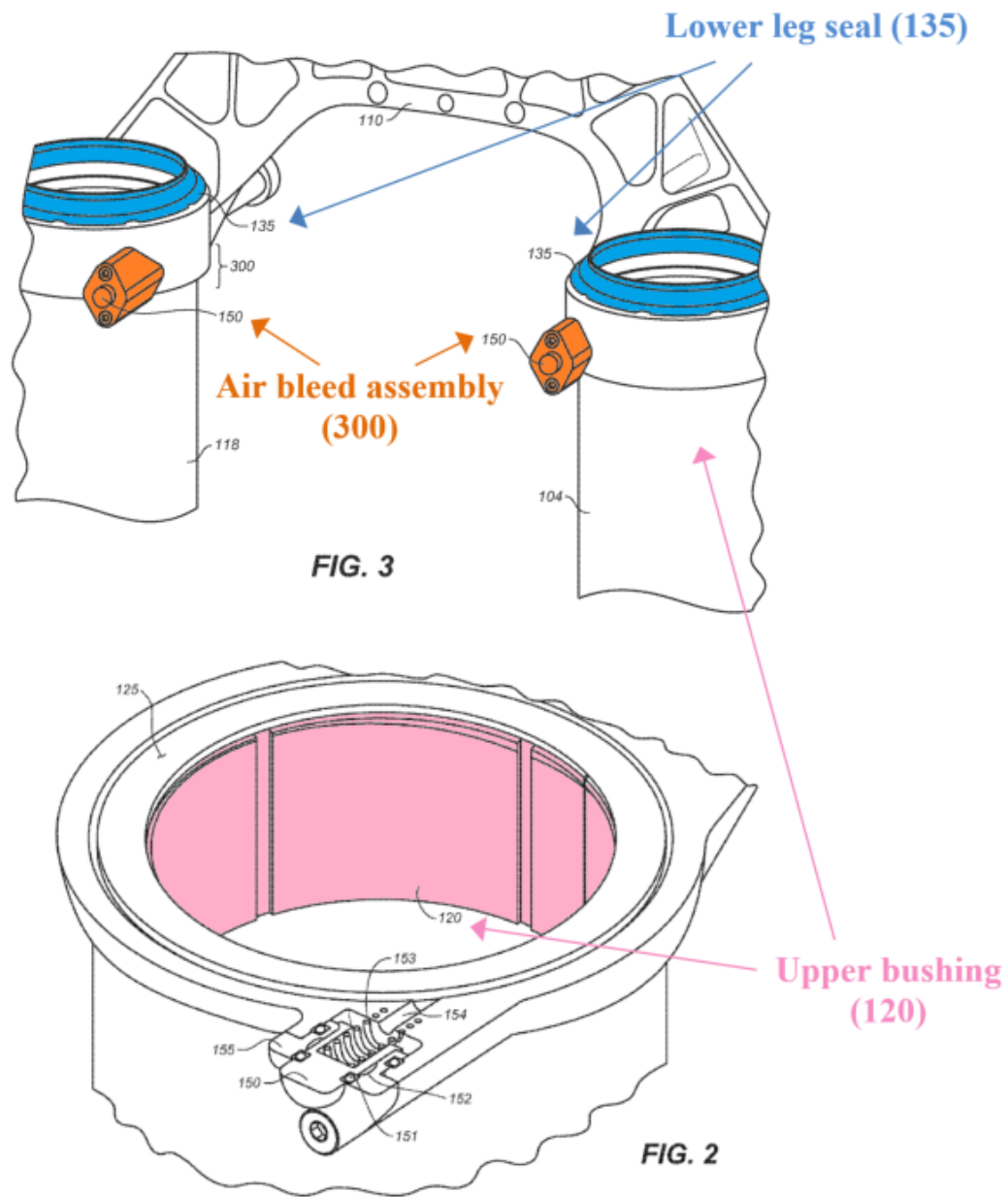
claimed invention and defined the location of its claimed air bleed assembly: “In contrast to Galasso, Applicant’s features, as recited in newly amended Claim 1, located its air bleed system in a lower fork, wherein the vent hole is **located between the lower leg seal and the bushing that is attached thereto.**” *Id.*, FOX_0000494 (underlining in original, bold emphasis added). Fox’s statement of disclaimer is set forth below:

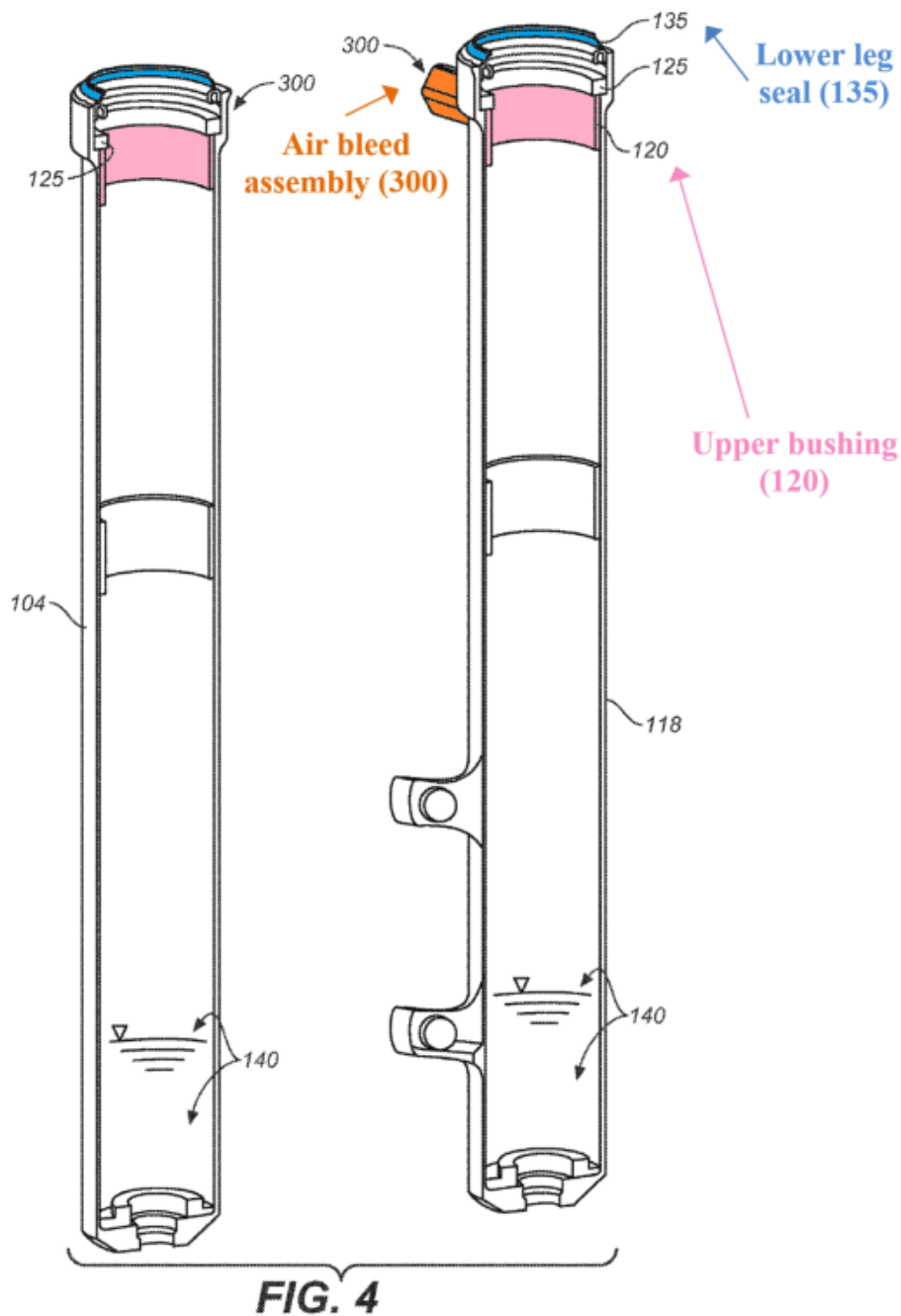
In contrast to Galasso, Applicant’s features, as recited in newly amended Claim 1, locate its air bleed system in a lower fork, wherein the vent hole is located between the lower leg seal and the bushing that is attached thereto. The manually operable valve is also positioned between the lower leg seal and the first end of said lower fork (first end is configured to be coupled to a vehicle wheel). Thus, the air bleed system, including the manually operable valve, is located below the lower leg seal that is attached to the outmost edge of a second end of the lower fork tube, wherein the second end of the lower fork is configured to receive an upper fork telescopically therein. Of note, an oil bath lubrication is located within and at the first end of the lower fork tube, the oil lubrication remaining in such a position, via gravity. Applicant’s specification describes the necessity of such a positioning (Applicant’s specification, paragraph [0021]):

59. Fox not only used this defined location of the air bleed assembly to distinguish the prior art but also to trumpet the design’s purported advantages, stating that “**due to the positioning of Applicant’s air bleed system being located directly below the lower leg seal**, ... Applicant’s features enable[s] the release of excessive air pressure from the lower fork tube . . . while enabling the oil bath lubrication to remain fairly leveled at the bottom of the lower fork tube, without spraying/leaking out through the open vent hole.” *Id.*, FOX_0000495. Again, the full statement of Fox’s clear disclaimer regarding the location of its claimed air bleed assembly is recited below:

This pressure and load added to the lower oil control lip of the seal, sealing the gap between the lower fork tube and a telescopically positioned upper fork tube, serves to compromise the seal, and possibly enable the oil lubrication within the lower fork tube to leak/spray out of the damper assembly. However, due to the positioning of Applicant's air bleed system being located directly below the lower leg seal, within the lower fork tube, wherein the lower fork tube is positioned further away from the frame of the vehicle than the upper fork tube, Applicant's features enable the release of excessive air pressure from the lower fork tube, thereby reducing the pressure and load being applied to the lower oil control lip of the lower leg seal, while enabling the oil bath lubrication to remain fairly leveled at the bottom of the lower fork tube, without spraying/leaking out through the open vent hole. Applicant's features allow for the pressure in the lower leg

60. Fox's statements are consistent with the only embodiment of the "air bleed assembly" shown in the '331 patent, as shown in figures 2-4, wherein the air bleed assembly **300** (highlighted in orange) is located between the lower leg seal **135** (highlighted in blue) and the upper bushing **120** (highlighted in pink):





‘331 patent at FIGS. 2-4.

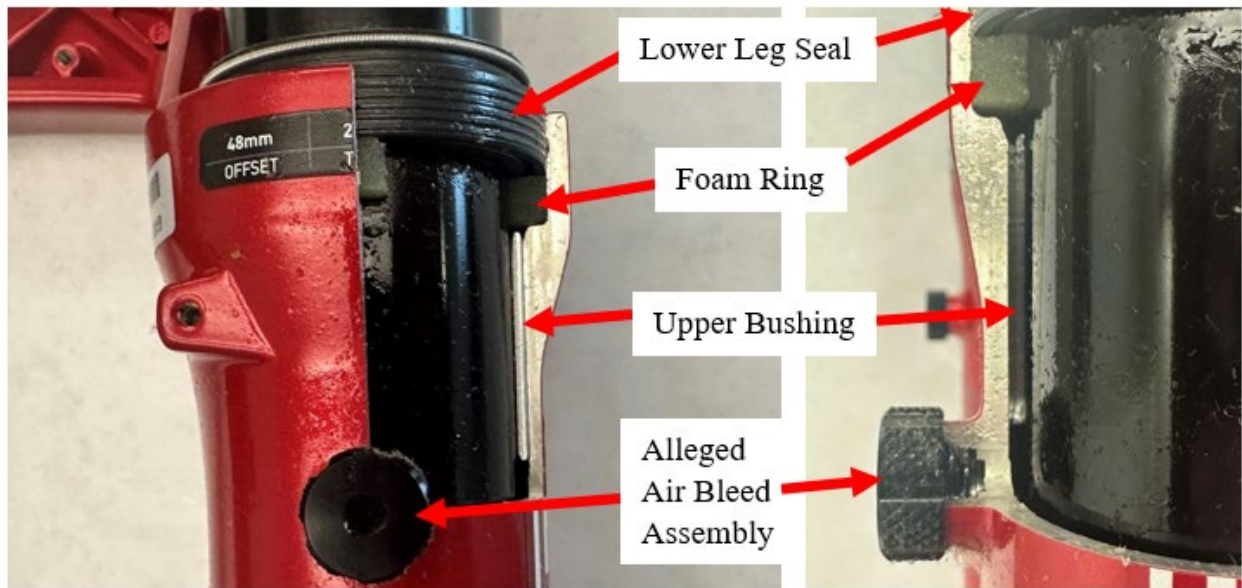
61. Through these prosecution history statements, Fox defined that its claimed air bleed assembly be located in a particular region directly below the lower leg seal and above the upper bushing. *See* FOX_0000494-495. Fox further made clear, public, and binding disclaimers that

claim 1 of the '331 patent was distinguished from and had advantages over the prior art by placing the air bleed assembly between the fork's lower leg seal and upper bushing.

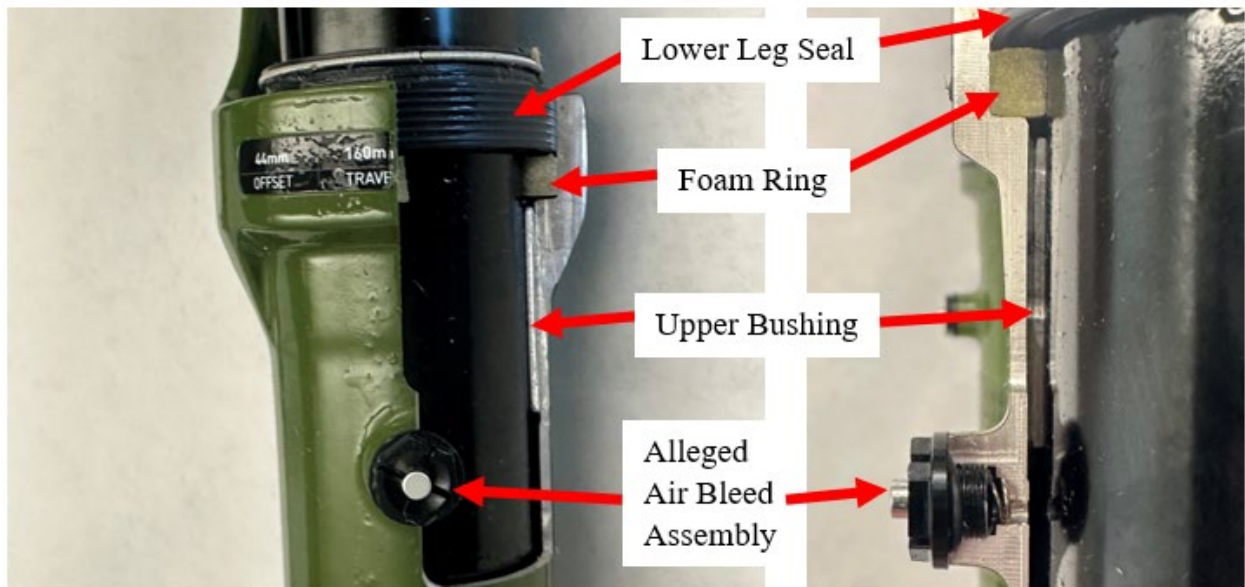
62. For at least these reasons, I agree with SRAM's proposed construction of the limitation "air bleed assembly disposed" defined by Fox and combined with clear and unmistakable disclaimers of scope during prosecution of the '331 patent, to mean "air bleed assembly located between the lower leg seal and the upper bushing".

63. Moreover, I disagree with Fox's proposed construction of "air bleed assembly disposed" as "air bleed assembly is disposed anywhere on the lower fork between the lower leg seal and a resting level of the oil bath in the lower fork." First, Fox's proposed construction entirely ignores the definition and disclaimers adopted by Fox during prosecution of the '331 patent to obtain the patent. Second, Fox's proposed construction is duplicative of language already contained within claim 1 and renders it superfluous, again highlighting the fact that Fox's disclaimer defining a more specific location for the air bleed assembly (i.e., between the lower leg seal and the upper bushing) should be included as part of a proper claim construction of the phrase. Finally, Fox's construction makes no sense and is confusing when inserted into the claim language, because it repeatedly uses the phrases "lower fork/lower fork tube" such that the air bleed assembly element would read as follows using Fox's proposed construction: *"an air bleed assembly is disposed anywhere on the lower fork between the lower leg seal and a resting level of the oil bath in the lower fork on said lower fork tube"*.

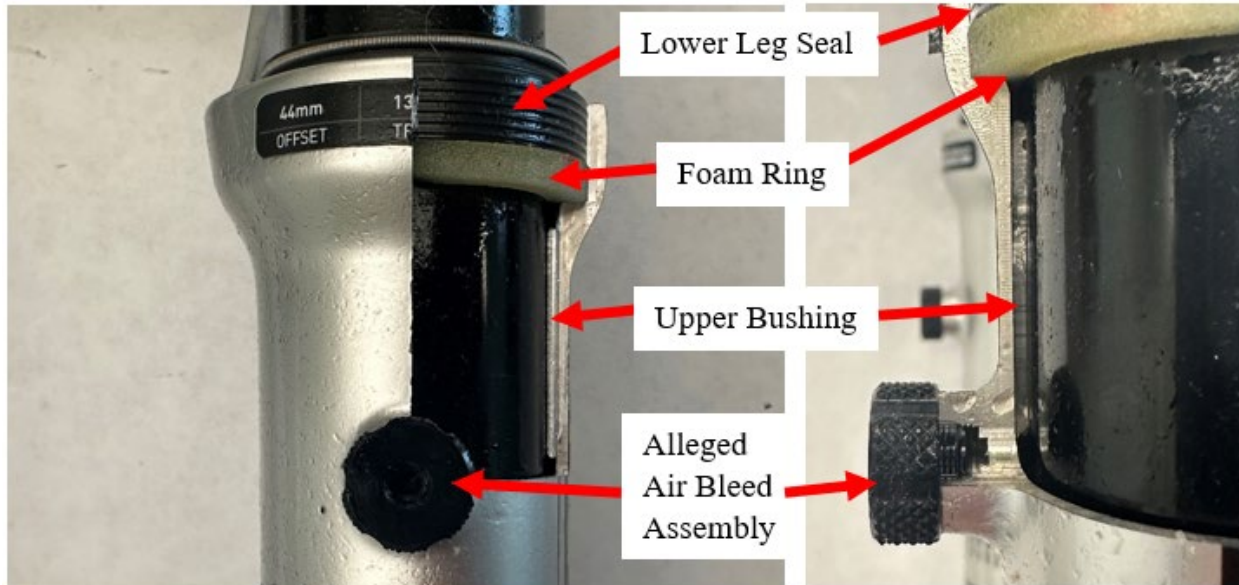
64. As shown below, the Accused Forks each locate the alleged air bleed assembly below the upper bushing and not between the lower leg seal and the upper bushing.



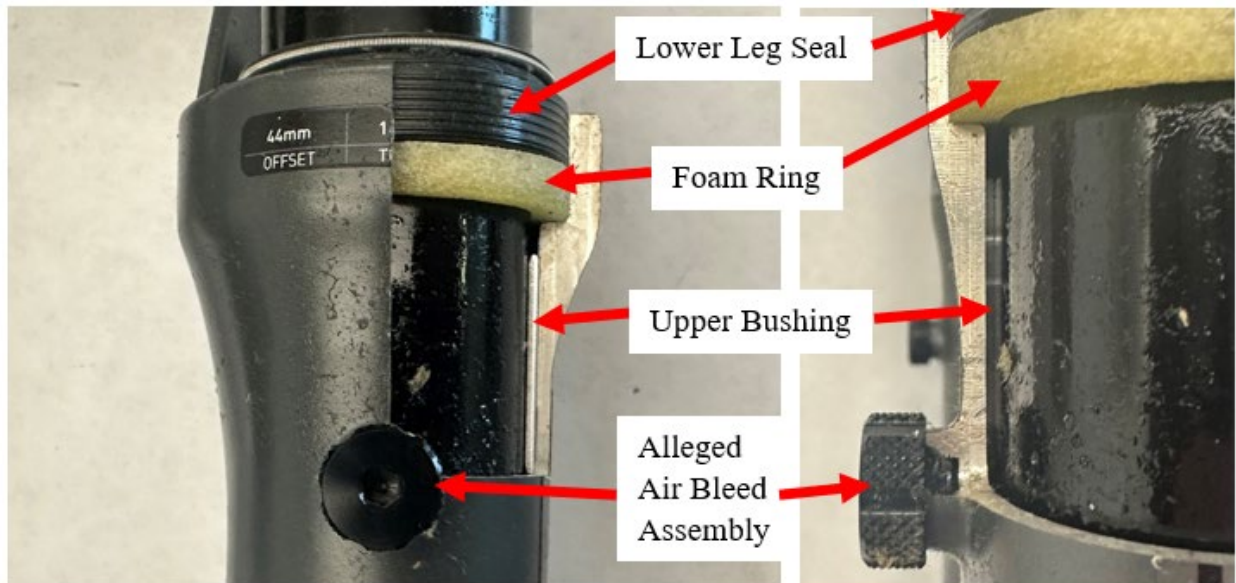
SRAM's BoXXer Ultimate Fork



SRAM's Lyrik Ultimate Fork



SRAM's Pike Ultimate Fork



SRAM's Zeb Ultimate Fork

65. Further, the term “equalizing ambient pressure within said lower fork” would have been self-contradicting to a POSITA. The term “ambient pressure” in the context of the ‘331 patent refers to the atmospheric air pressure external to the fork (for example, *see* ‘331 patent at Col. 1, lines 47-48; Col. 3, lines 36-39; Col. 3, lines 52-53; and Col. 4, lines 15-16). If the internal pressure inside the lower fork was already the same as the external ambient pressure, then the term “ambient pressure within said lower fork” might make sense on its face, but then there would be nothing to *equalize* since the internal and external pressures would already be the same. In other words, either the pressure inside the fork is already equal to the ambient air pressure (which negates the need for an air bleed assembly), or the term is nonsensical. Thus, the term is indefinite, for this and for the reasons discussed in my Invalidity Report.

66. In his Infringement Report, Dr. Slocum twice states: “The air bleed assembly is configured for equalizing ambient pressure within the lower fork tube *within* the ambient air pressure outside the fork.” Slocum Infringement Report at ¶ 59 and ¶ 101 (emphasis added). Not only does Dr. Slocum attempt to add language that is not in the claim to resolve the indefiniteness of the statement, but he also adds further confusion by asserting the pressure within the lower fork tube is also within the ambient air pressure.

Claim element 1[e]: a fluid passage disposed between an interior of said lower fork and an exterior of said lower fork; and

67. As mentioned previously, the Accused Forks include “lower fork tubes” but do not include the claimed “lower fork.”

Claim element 1[f]: a manually operable valve located in said lower fork and coupled to said fluid passage, said manually operable valve having a first position substantially closing said fluid passage and a second position allowing a fluid to flow between said interior and said exterior, said manually operable valve disposed between said lower leg seal and said first end of said lower fork, and

68. As mentioned previously, the Accused Forks include “lower fork tubes” but do not include the claimed “lower fork.”

69. The term “said manually operable valve having a first position substantially closing said fluid passage” is indefinite for the reasons discussed in my Invalidity Report.

70. Under SRAM’s proposed claim construction of “air bleed assembly disposed,” the Accused Forks do not include a manually operable valve ***located between the lower leg seal and the upper bushing.***

71. Under SRAM’s proposed claim construction of “manually operable,” the Accused Forks without the Pressure Relief Valve do not include a manually operable valve because a tool is needed to open and close the plug. Further, the plug in the Accused Forks is not a valve.

Claim element 1[g]: wherein said fluid passage and said manually operable valve are located at a distance from an oil bath lubrication within said lower fork, such that when said manually operable valve is in said second position, most, if not all of said oil bath lubrication remains within said lower fork and such that when trapped air pressure inside said lower fork, that is higher than a local ambient air pressure outside of said suspension fork or shock absorber, is relieved most, of said oil bath lubrication that is within said lower fork remains within said lower fork.

72. As mentioned previously, the Accused Forks include “lower fork tubes” but do not include the claimed “lower fork.”

73. Under SRAM’s proposed claim construction of “air bleed assembly disposed,” the Accused Forks do not include a manually operable valve ***located between the lower leg seal and the upper bushing.***

74. Under SRAM's proposed claim construction of "manually operable," the Accused Forks without the Pressure Relief Valve do not include a manually operable valve because a tool is needed to open and close the plug. Further, the plug in the Accused Forks is not a valve.

75. I also note that Fox's proposed claim construction includes the requirement that the air bleed assembly be arranged relative to the resting level of the oil bath in the lower fork leg(s). However, the "resting level" depends on many factors including an unspecified orientation of the fork itself. Furthermore, the orientation of the fork is itself unclaimed in the '331 patent, as admitted by its named inventor, William Becker. *See* Becker Deposition (February 13, 2024) at page 90, line 3-page 91, line 11.

76. In fact, in his Infringement Report, Dr. Slocum shows photographs of Accused Forks lying flat on a wooden floor (*see* figures on pages 28, 30, 32, 33, 35-37, 39-42, 44- 46, 53, 55-57, 59-60, 62-68, 71-75, and 78). Of these 59 photographs, at least 16 show a fully assembled fork in an orientation where the lower fork leg(s) could be completely filled with oil and no oil would leak out when the accused air bleed assembly was opened. Furthermore, the photograph page 41 shows Dr. Jonathan Slocum using "the most natural grip" to unscrew a plug while the fork is lying flat on the floor.

77. Dr. Slocum states in his Infringement Report that he tested the 2023 Lyrik and the 2024+ Lyrik Ultimate forks. Slocum Infringement Report at ¶ 79. Dr. Slocum does not state his testing conditions. For example, Dr. Slocum does not state the orientation of these two forks when performing his testing. It is my opinion that, in some orientations, all of the oil in either fork will spill out from the threaded hole made for the threaded plugs used on these fork models. On the other hand, I would not expect oil to leak from either fork if they were placed flat on a floor, as shown in the figures on page 53 of Dr. Slocum's Infringement Report.

78. Thus, at a minimum, Dr. Slocum has failed to include in his Infringement Report all of the bases and rationales for his opinions. Moreover, it is my opinion that his testing is unreliable to show the claimed elements at least because the testing does not show if the supposed air bleed assemblies would leak. Instead, Dr. Slocum placed the forks into positions that Fox has argued in the past are not acceptable for testing these limitations.

79. Moreover, this highlights the fact that the '331 patent fails to provide any guidance on how these limitations may be tested to confirm or deny infringement. Without any sort of testing, the scope of these relative terms in these limitations cannot be determined to any level of precision. In my opinion, as discussed in detail in my Invalidity Report, the claims of the '331 patent are insolubly indefinite. Dr. Slocum's failure to discuss or provide his testing conditions, and his and Fox's scattered approach to the meanings of the terms in these limitations, further bolsters my indefiniteness opinions.

2. *Dependent claim 2*

Claim 2: The lower fork and air bleed assembly combination of claim 1, wherein said fluid comprises: a gas.

80. As an initial matter, this claim is indefinite for the reasons discussed in my Invalidity Report. As a result, this claim cannot be properly analyzed for infringement.

81. As mentioned previously, the Accused Forks include "lower fork tubes" but do not include the claimed "lower fork."

82. Additionally, claim 2 is dependent on claim 1, and the Accused Forks do not infringe claim 1.

3. *Dependent claim 3*

Claim element 3[pre]: The lower fork and air bleed assembly combination of claim 1, said air bleed assembly further comprising:

83. As an initial matter, this claim is indefinite for the reasons discussed in my Invalidity Report. As a result, this claim cannot be properly analyzed for infringement.

84. As mentioned previously, the Accused Forks include “lower fork tubes” but do not include the claimed “lower fork.”

85. Under SRAM’s proposed claim construction of “air bleed assembly disposed,” the Accused Forks do not include an air bleed assembly *located between the lower leg seal and the upper bushing*.

86. Additionally, claim 3 is dependent on claim 1 and the Accused Forks do not infringe claim 1.

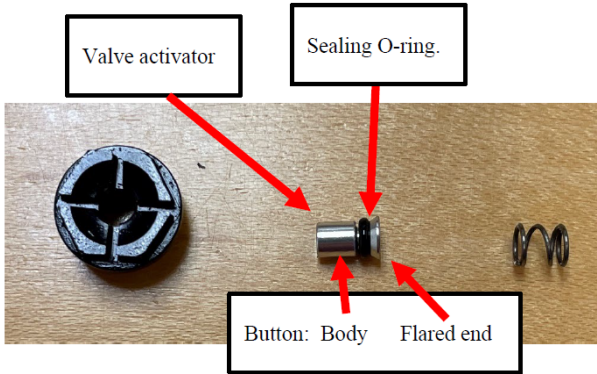
Claim element 3[a]: a valve activator coupled with said manually operable valve, said valve activator comprising

87. Under SRAM’s proposed claim construction of “manually operable,” the Accused Forks without the Pressure Relief Valve do not include a manually operable valve because a tool is needed to open and close the plug. Further, the plug in the Accused Forks is not a valve.

88. Under Fox’s proposed claim construction of “a valve activator coupled with said manually operable valve,” the Accused Forks without the Pressure Relief Valve do not include a valve activator “that is separate from the [alleged] manually operable valve.” As can be seen from Dr. Slocum’s Infringement Report, Dr. Slocum alleges that the threaded plugs for the Accused Forks are both the claimed manually operable valves and the claimed valve activators. *See* Slocum Infringement Report at pages 42 and 55. Further, Dr. Slocum provides no opinions for

infringement of the Accused Forks without the Pressure Relief Valve under Fox's proposed construction of "a valve activator coupled with said manually operable valve."

89. Further, under Fox's proposed claim construction of "a valve activator coupled with said manually operable valve," the Accused Forks with a Pressure Relief Valve do not include a valve activator that itself is physically separate from the manually operable valve. Again, Dr. Slocum does not offer any opinions in this report that the Accused Forks with a Pressure Relief Valve infringed under Fox's proposed constructions of "a valve activator coupled with said manually operable valve." The Accused Forks with a Pressure Relief Valve fail to include a valve activator at least because the Pressure Relief Valve is not a valve without the valve stem. The figure below is from Fox's infringement contentions. Dr. Slocum accuses this same structure. Slocum Invalidity Report at ¶¶ 115-116. The alleged air bleed assembly consists of a circular plate with a hole in it (what Fox and Dr. Slocum claim is the manually operable valve) and internal stem part (what Fox and Dr. Slocum claim is the valve activator). Without the internal stem, this structure could not be considered to be a valve at all. Instead, it would be a mere circular plate threaded into the fork, the circular plate having an open hole in the middle. Further, there would be no ability for the manually operable valve (as alleged by Fox and Dr. Slocum) to close, because the part that performs the closure (the internal stem) is not part of the manually operable valve.

Claim	U.S. Patent No. 9,739,331	Rockshox Lyrik Ultimate
6[b]	a sealing O-ring comprising:	The Rockshox Lyrik Ultimate has a sealing O-ring. 

Claim element 3[b]: an activation position placing said manually operable valve into said first position; and

90. Under SRAM’s proposed claim construction of “manually operable,” the Accused Forks without the Pressure Relief Valve do not include a manually operable valve because a tool is needed to open and close the plug. Further, the plug in the Accused Forks is not a valve.

Claim element 3[c]: a deactivation position placing said manually operable valve into said second position, and whereupon when in said activation position, the trapped air pressure in said lower fork is equalized with the local ambient air pressure.

91. As mentioned previously, the Accused Forks include “lower fork tubes” but do not include the claimed “lower fork.”

92. Under SRAM’s proposed claim construction of “manually operable,” the Accused Forks without the Pressure Relief Valve do not include a manually operable valve because a tool is needed to open and close the plug. Further, the plug in the Accused Forks is not a valve.

93. It is clear that claim 1 requires the first position to be the closed position while claim 3 requires the first position to be the open position. Since claim 3 is dependent on claim 1,

it is my opinion that claim 3 is indefinite, including for the reasons discussed in my Invalidity Report). The same result is true under SRAM's proposed claim construction of "whereupon when in said activation position, the trapped air pressure in said lower leg is equalized with the lower ambient air pressure."

94. In his Infringement Report, Dr. Slocum admits that the words in claim 3 have to be interpreted as their opposite to be consistent with claim 1: "Reading 'activation' as 'deactivation' in claim 3 does not alter the meaning or scope of claim 3; rather, it makes claim 3 clearer and consistent with claim 1." Slocum Infringement Report at ¶ 88. I disagree with Dr. Slocum's misreading of the clear language of the claims.

4. *Dependent claim 4*

Claim 4: The lower fork and air bleed assembly combination of claim 3, wherein said valve activator comprises: a button to select said activation position and said deactivation position.

95. As an initial matter, this claim is indefinite for the reasons discussed in my Invalidity Report. As a result, this claim cannot be properly analyzed for infringement.

96. Claim 4 is dependent on claims 1 and 3, and the Accused Forks do not infringe claims 1 and 3.

97. As mentioned previously, the Accused Forks include "lower fork tubes" but do not include the claimed "lower fork."

98. Under SRAM's proposed claim construction of "air bleed assembly disposed," the Accused Forks do not include an air bleed assembly ***located between the lower leg seal and the upper bushing.***

99. The Accused Forks without the Pressure Relief Valve do not include a button at least because there is no button to be pressed on a threaded plug. To the extent that any of the

threaded plugs used by SRAM were somehow considered a button, then so would the plugs and screws discussed in my Invalidity Report, rendering the claim invalid.

100. Since claim 3 is indefinite because it is not possible for a POSITA to reconcile the conflicting limitations as to “activation position” and “deactivation position” (as well as for the reasons discussed in my Invalidity Report), claim 4 is also indefinite.

101. As mentioned previously, under Fox’s proposed claim construction of “a valve activator coupled with said manually operable valve,” none of the Accused Forks include a valve activator that is separate from the manually operable valve, nor do the Accused Forks include a manually operable valve if the valve stem is the valve activator.

102. Under SRAM’s proposed claim construction of “manually operable,” the Accused Forks without the Pressure Relief Valve do not include a manually operable valve because a tool is needed to open and close the plug. Further, the plug in the Accused Forks is not a valve.

5. *Dependent claim 5*

Claim 5: The lower fork and air bleed assembly combination of claim 3, wherein said valve activator is located on a die-cast feature of said lower fork.

103. As an initial matter, this claim is indefinite for the reasons discussed in my Invalidity Report. As a result, this claim cannot be properly analyzed for infringement.

104. Claim 5 is dependent on claims 1 and 3, and the Accused Forks do not infringe claims 1 and 3.

105. Under SRAM’s proposed claim construction of “air bleed assembly disposed,” the Accused Forks do not include an air bleed assembly ***located between the lower leg seal and the upper bushing.***

106. Under SRAM's proposed claim construction of "manually operable," the Accused Forks without the Pressure Relief Valve do not include a manually operable valve because a tool is needed to open and close the plug. Further, the plug in the Accused Forks is not a valve.

107. As mentioned previously, the Accused Forks include "lower fork tubes" but do not include the claimed "lower fork."

108. I note that Dr. Slocum's Invalidity Report fails to provide any evidence that the "valve activator" is located on a die-cast feature of the fork. Dr. Slocum alleges that the valve activator "is the screwhead or knob of the screw-type valve, that is used by a user to turn the screw (by hand with or without a tool) to manually open and close the valve." Slocum Infringement Report at ¶ 83. The evidence presented by Dr. Slocum does not show the head of the plug being located on a die-cast feature of the fork. Instead, the plug may be screwed into/out of the die-cast fork leg, but it is not at any point "on" the fork leg. The same is true for the stem that Dr. Slocum alleges is the valve activator for the Accused Forks with the Pressure Relief Valve. *See* Slocum Infringement Report at ¶ 121 (image showing that the silver stem is not on nor in contact with any portion of the lower leg tube).

109. As mentioned previously, under Fox's proposed claim construction of "a valve activator coupled with said manually operable valve," none of the Accused Forks include a valve activator that is separate from the manually operable valve, nor do the Accused Forks include a manually operable valve if the valve stem is the valve activator.

110. Under SRAM's proposed claim construction of "manually operable," the Accused Forks without the Pressure Relief Valve do not include a manually operable valve because a tool is needed to open and close the plug. Further, the plug in the Accused Forks is not a valve.

6. *Dependent claim 6*

Claim element 6[pre]: The lower fork and air bleed assembly combination of claim 5, further comprising:

111. As an initial matter, this claim is indefinite for the reasons discussed in my Invalidity Report. As a result, this claim cannot be properly analyzed for infringement.

112. Claim 6 is dependent on claims 1, 3, and 5, and the Accused Forks do not infringe claims 1, 3 and 5.

113. As mentioned previously, the Accused Forks include “lower fork tubes” but do not include the claimed “lower fork.”

114. Under SRAM’s proposed claim construction of “air bleed assembly disposed,” the Accused Forks do not include an air bleed assembly *located between the lower leg seal and the upper bushing*.

115. Under SRAM’s proposed claim construction of “manually operable,” the Accused Forks without the Pressure Relief Valve do not include a manually operable valve because a tool is needed to open and close the plug. Further, the plug in the Accused Forks is not a valve.

Claim element 6[a]: a diametrical recess; and

116. The Accused Forks without the Pressure Relief Valve do not include a diametrical recess. In his Infringement Report, Dr. Slocum makes no reference to Accused Forks without the Pressure Relief Valve for claim element 6[a].

117. The Accused Forks with a Pressure Relief Valve do not include a diametrical recess. Rather, they include a constant diameter bore with a valve seat at one end for engaging the O-ring. To the extent that the Accused Forks with a Pressure Relief Valve are considered to have

a diametrical recess, then so would Huang, Schrader, Keller, and Kraft, as discussed in my Invalidity Report.

118. Under SRAM's proposed claim construction of "manually operable," the Accused Forks without the Pressure Relief Valve do not include a manually operable valve because a tool is needed to open and close the plug. Further, the plug in the Accused Forks is not a valve.

Claim element 6[b]: a sealing O-ring comprising:

119. The Accused Forks without the Pressure Relief Valve do not have a sealing O-ring as recited/claimed. In his Infringement Report, Dr. Slocum makes no reference to Accused Forks without the Pressure Relief Valve for claim element 6[b].

Claim element 6[c]: a sealed position; and

120. The Accused Forks without the Pressure Relief Valve do not include a sealed position as recited/claimed. In his Infringement Report, Dr. Slocum makes no reference to Accused Forks without the Pressure Relief Valve for claim element 6[c].

Claim element 6[d]: an unsealed position,

121. The Accused Forks without the Pressure Relief Valve do not include an unsealed position as recited/claimed. In his Infringement Report, Dr. Slocum makes no reference to Accused Forks without the Pressure Relief Valve for claim element 6[d].

Claim element 6[e]: wherein said sealed position seals between said die-cast feature and said lower fork, whereupon when said valve activator is moved from said activation position to said deactivation position, said sealing O-ring moves into said diametrical recess, thereby attaining said unsealed position and letting air pressure by-pass into or out of said lower fork via a vent hole

122. As mentioned previously, the Accused Forks include “lower fork tubes” but do not include the claimed “lower fork.”

123. Since claim 3 is indefinite because it is not possible for a POSITA to reconcile the conflicting limitations as to “activation position” and “deactivation position” (as well as for the reasons discussed in my Invalidity Report), claim 6 is also indefinite.

124. The Accused Forks without the Pressure Relief Valve do not include a sealed position as recited/claimed. In his Infringement Report, Dr. Slocum makes no reference to Accused Forks without the Pressure Relief Valve for claim element 6[e].

125. The Accused Forks without the Pressure Relief Valve do not include an unsealed position as recited/claimed. In his Infringement Report, Dr. Slocum makes no reference to Accused Forks without the Pressure Relief Valve for claim element 6[e].

126. The Accused Forks without the Pressure Relief Valve do not have a sealing O-ring as recited/claimed. In his Infringement Report, Dr. Slocum makes no reference to Accused Forks without the Pressure Relief Valve for claim element 6[e].

127. As mentioned previously, under Fox’s proposed claim construction of “a valve activator coupled with said manually operable valve,” none of the Accused Forks include a valve activator that is separate from the manually operable valve, nor do the Accused Forks include a manually operable valve if the valve stem is the valve activator.

128. Dr. Slocum’s Infringement Report provides no evidence or explanation as to how the “sealed position seals between said die-cast feature and said lower fork” as claimed. *See* Slocum

Infringement Report at ¶ 124. Specifically, the seal does not appear to seal between any portion of the lower fork and anything else, nor between any die-cast feature and anything else. Instead, the seal shown on page 76 of Dr. Slocum's Infringement Report shows only a potential seal being made between the interior of the Pressure Relief Valve's outer ring and the exterior of the valve stem. Dr. Slocum notes here in his Infringement Report with red annotations the "seal bore," which is where the seal performs its sealing. This "seal bore" area is not between any portion of the lower fork leg nor any die-cast feature. Further, I note that the figure in Dr. Slocum's Infringement Report on page 75, which shows the structure Dr. Slocum suggests that is a die-cast feature, shows that the lower fork leg and the die-cast feature are formed integrally. Accordingly, the O-ring cannot, in any circumstances, seal between these integral parts.

7. *Dependent claim 7*

Claim 7: The lower fork and air bleed assembly combination of claim 3, wherein said manually operable valve comprises a spring coupled with said valve activator, whereupon when said valve activator is moved into said deactivation position, said spring biases said valve activator toward said first position.

129. As an initial matter, this claim is indefinite for the reasons discussed in my Invalidity Report. As a result, this claim cannot be properly analyzed for infringement.

130. Claim 7 is dependent on claims 1 and 3 and the Accused Forks do not infringe claims 1 and 3.

131. As mentioned previously, the Accused Forks include "lower fork tubes" but do not include the claimed "lower fork."

132. Under SRAM's proposed claim construction of "air bleed assembly disposed," the Accused Forks do not include an air bleed assembly *located between the lower leg seal and the upper bushing*.

133. Since claim 3 is indefinite because it is not possible for a POSITA to reconcile the conflicting limitations as to “activation position” and “deactivation position” and for the reasons discussed in my Invalidity Report, claim 7 is also indefinite.

134. The Accused Forks without the Pressure Relief Valve do not include a spring. In his Infringement Report, Dr. Slocum makes no reference to Accused Forks without the Pressure Relief Valve for claim 7.

135. The Accused Forks without the Pressure Relief Valve do not include an unsealed position as recited/claimed.

136. As mentioned previously, under Fox’s proposed claim construction of “a valve activator coupled with said manually operable valve,” none of the Accused Forks include a valve activator that is separate from the manually operable valve, nor do the Accused Forks include a manually operable valve if the valve stem is the valve activator.

137. Under SRAM’s proposed claim construction of “manually operable,” the Accused Forks without the Pressure Relief Valve do not include a manually operable valve because a tool is needed to open and close the plug. Further, the plug in the Accused Forks is not a valve.

8. *Dependent claim 8*

Claim 8: The lower fork and air bleed assembly combination of claim 7, wherein said second position comprises: a sealing engagement between said sealing O-ring and a seal bore, wherein when in said sealing engagement, said trapped air pressure does not by-pass into or out of said lower fork.

138. As an initial matter, this claim is indefinite for the reasons discussed in my Invalidity Report. As a result, this claim cannot be properly analyzed for infringement.

139. Claim 8 is dependent on claims 1, 3, and 7, and the Accused Forks do not infringe claims 1, 3, and 7.

140. As mentioned previously, the Accused Forks include “lower fork tubes” but do not include the claimed “lower fork.”

141. Under SRAM’s proposed claim construction of “air bleed assembly disposed,” the Accused Forks do not include an air bleed assembly *located between the lower leg seal and the upper bushing*.

142. Since claim 3 is indefinite as to “activation position” and “deactivation position” and for the reasons discussed in my Invalidity Report, claim 7 is also indefinite and therefore claim 8 is indefinite as dependent on claim 7. Further, I disagree with Dr. Slocum’s misreading of the clear language of claim 8 to say that “second position” somehow means the opposite, namely, “first position.”

143. The Accused Forks without the Pressure Relief Valve do not include a sealing engagement between said sealing O-ring and seal bore as recited/claimed. In his Infringement Report, Dr. Slocum makes no reference to Accused Forks without the Pressure Relief Valve for claim 8.

144. The term “said sealing o-ring” has no antecedent basis. Claim 8 depends on claim 7, which depends on claim 3, which depends on claim 2, which depends on claim 1 – none of which introduce a “sealing o-ring”. Without an antecedent basis, the meaning of the term is not clearly understood and, for the reasons discussed in my Invalidity Report, is indefinite.

145. As described in my Invalidity Report, the specification discloses that “trapped air pressure” is air pressure trapped inside the lower fork. Something inside the lower fork cannot “by-pass into” the lower fork because it is already inside. In other words, the term is contradictory and nonsensical. Thus, for this reason and for the reasons discussed in my Invalidity Report, the term is indefinite.

IX. The '223 Patent

146. A product cannot infringe an indefinite or otherwise invalid patent claim. Accordingly, the Accused Shocks do not infringe the '223 patent because the '223 patent claims are invalid for all of the reasons discussed in my Invalidity Report.

147. I note that, although Fox had previously accused the SRAM Accused Shocks of infringing claims 1-9, 11-15, and 19 of the '223 patent, Dr. Slocum's Infringement Report only includes opinions directed to claims 11-15 of the '223 patent. Accordingly, I limit my opinions in this Report to responding to Dr. Slocum's opinions in his Infringement Report. However, for clarity, claims 1-9 and 19 of the '223 patent are invalid for the reasons discussed in this Report and in SRAM's Responses to Fox's Second Amended Infringement Contentions, as well as in SRAM's prior Responses to Fox's Amended Infringement Contentions. Although I do not believe that Dr. Slocum should be afforded any opportunity to later include claims not in his current Infringement Report, were Fox or Dr. Slocum to provide any opinions or accusations not included in Dr. Slocum's Infringement Report, I reserve the right to respond to those newly provided opinions or accusations.

1. *Independent claim 11*

Claim element 11[a]: A fluid damper comprising:

148. As an initial matter, this claim is indefinite for the reasons discussed in my Invalidity Report. As a result, this claim cannot be properly analyzed for infringement.

149. Further, as discussed below, the Accused Shocks do not have the claimed bottom out piston nor the claimed fluid flow path.

Claim element 11[b]: a damper chamber divided by a piston mounted on a movable rod, into a primary compression and a primary rebound chamber;

150. The Accused Shocks do not have this limitation because the Accused Shocks do not have the claimed bottom out piston nor the claimed fluid flow path, as discussed below.

Claim element 11[c]: a bottom out cup in fluid communication with the damper chamber;

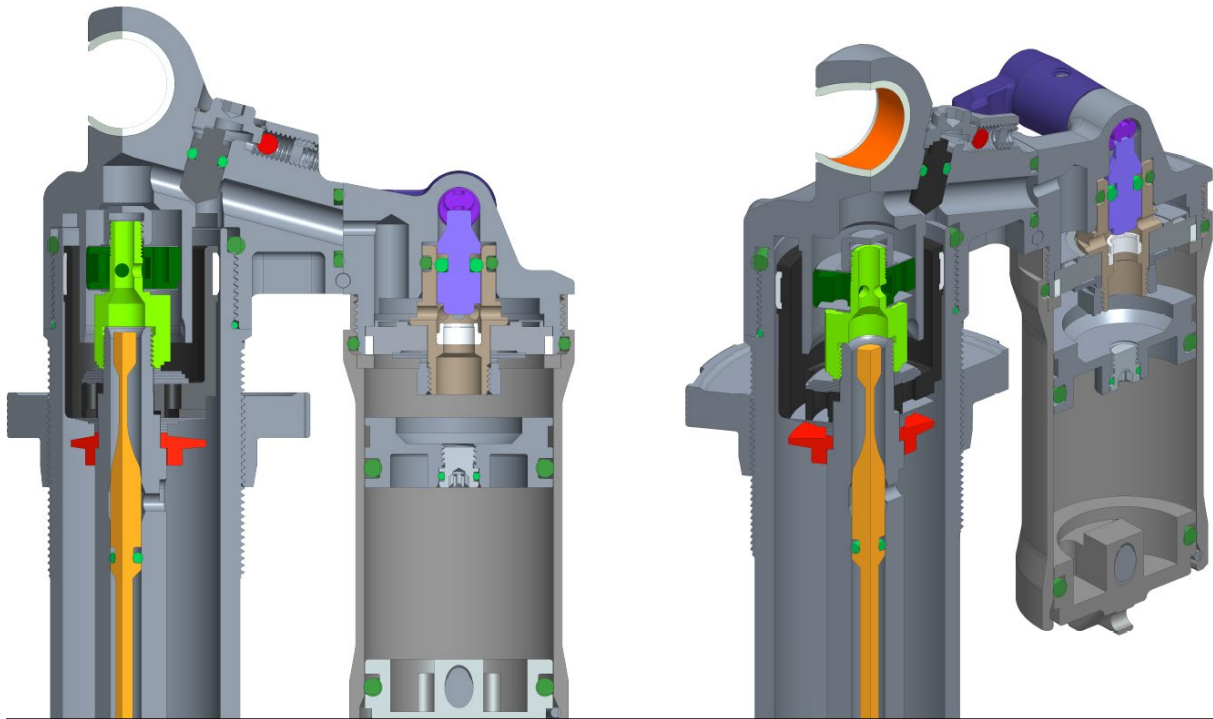
151. The Accused Shocks do not have this limitation because the Accused Shocks do not have the claimed bottom out piston nor the claimed fluid flow path, as discussed below.

152. This is particularly true under Fox's proposed claim construction of "bottom out cup" because of the lack of any form of sealing for the accused bottom out piston and accused bottom out cup, as discussed in more detail below.

Claim element 11[d]: a bottom out piston formed on the movable rod for sealingly engaging an interior of the bottom out cup,

153. The Accused Shocks do not have any seals on the alleged bottom out piston that engages with the area that Fox describes as the bottom out cup. Similarly, the alleged bottom out cup does not have any seals for engaging the alleged bottom out piston. The alleged bottom out piston has a smaller outer diameter than the inner diameter of the alleged bottom out cup, resulting a small annular area between the alleged bottom out piston and bottom out cup. These features,

including the lack of any seals, are shown in the following images from SRAM_FOX_CO_004094 and SRAM_FOX_CO_004095:



The purported bottom out piston is also shown in SRAM_FOX_CO_00657 without any form of seal:

32 Install the check piston assembly onto the damper shaft. Align the shim stack on top of the main piston.

Note: the cutouts on the check plate must face the main piston for the Hydraulic Bottom Out feature to function properly.

NOTICE

Keep the piston assembly parts in the order they were removed. Do not separate any parts from the piston assembly.

If any piston assembly parts are installed in the incorrect order, the piston assembly, including the tune shim stacks, must be reassembled in the correct order for proper shock function. Refer to the *Rear Suspension Shim Tuning Guide* for piston assembly and shim stack configurations.



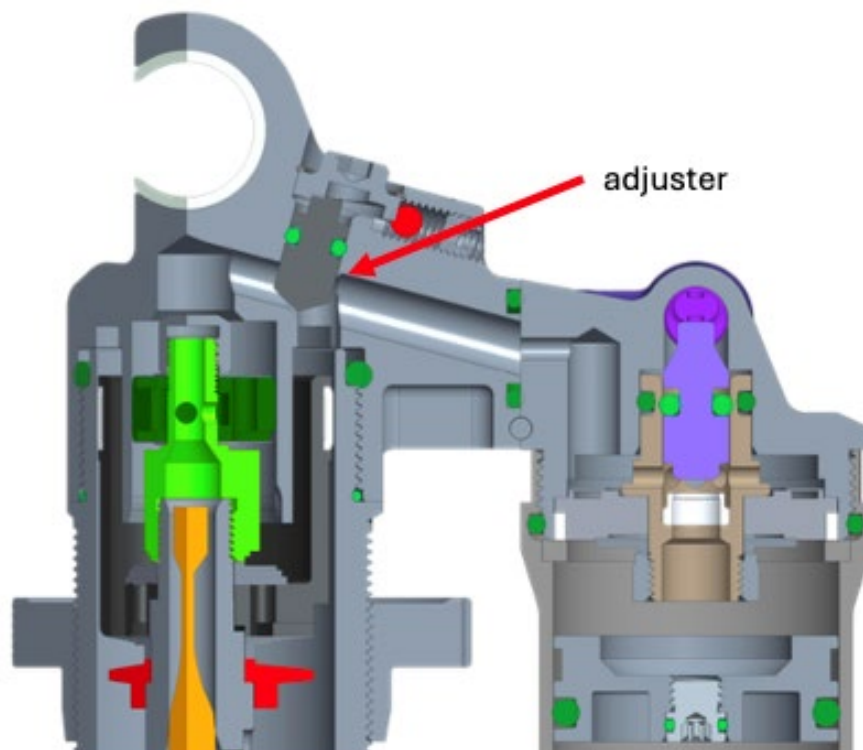
Check plate cutout



154. In his Infringement Report, Dr. Slocum agrees that the Accused Shocks lack any seals on the alleged bottom out piston or the interior of the alleged bottom out cup, instead contending that “when the bottom out piston is fully engaged with the bottom out cup near the end

of the compression stroke, only miniscule amounts of fluid will exit from the bottom out cup through the small annular gap that will unavoidably remain between the piston and the inner wall of the cup”. Slocum Infringement Report at ¶ 139.

155. Dr. Slocum, however, incorrectly concludes that only “miniscule amounts” of fluid will exit through the annular gap, nor does he attempt to quantify any measurements to support this assertion. In at least one instance, *most or all* of the fluid will exit through the annular gap. The figure below is a schematic of an exemplar Accused Shock. When the labeled adjuster is closed, completely obstructing the flow between the alleged bottom out cup and the reservoir, all of the fluid in the alleged bottom out cup above the dark green piston will bypass the piston via “blow back” (and to the rebound portion in the Super Deluxe Coil shocks) because it has nowhere else to exit the alleged bottom out cup. In this case, none of the fluid will flow towards the reservoir.



156. Further, Dr. Slocum is incorrect that the alleged bottom out piston “engages” the alleged bottom out cup at least because there is no sealing to cause engagement.

157. Thus, under SRAM’s proposed claim construction of “sealingly engaging an interior of the bottom out cup,” the Accused Shocks do not include this limitation because there is no bottom out piston that contacts the interior of the accused bottom out cup to prevent the passage of fluid.

158. Further, under Fox’s proposed claim construction of “sealingly engaging an interior of the bottom out cup,” the Accused Shocks do not include this limitation because there is no sliding contact between any piston and the interior of the accused bottom out cup, nor does Dr. Slocum provide any measurements or evidence to show any alleged sliding contact.

Claim element 11[e]: the damper including a first position in which the bottom out piston is not housed in the in the bottom out cup and a second position in which the bottom out piston is housed therein; and

159. The Accused Shocks do not have this limitation because the Accused Shocks do not have the claimed bottom out piston nor the claimed fluid flow path, as discussed in this Report.

Claim element 11[f]: an adjustable fluid flow path formed in the cup, the flow path providing fluid communication between the cup and the primary compression chamber in a compression stroke of the damper.

160. The Accused Shocks do not include an adjustable fluid flow path between the cup and primary compression chamber in a compression stroke. During a compression stroke, fluid flows from the alleged bottom out cup to the reservoir, not to the alleged primary compression chamber.

161. During a compression stroke, fluid will also flow from the alleged cup to the alleged primary compression chamber via blow back through the non-adjustable annular area between the

alleged piston and alleged cup. But there is no adjustable flow path providing fluid communication between the alleged cup and the alleged primary compression chamber in a compression stroke of the damper of the Accused Shocks. There is no path, there is no flow of oil, and there is no fluid communication.

162. Dr. Slocum may have recognized these facts, as I note that his rationale regarding the meaning of fluid communication in paragraph 143 of his Infringement Report is, at best, flawed. Specifically, Dr. Slocum appears to give the opinion that, because there is a first flow path from the alleged bottom out cup to the reservoir and a second flow path from the alleged compression portion to the reservoir, there must be a flow path between the alleged bottom out cup and the compression chamber. This is not true.

163. Fluid communication does not occur just because there are fluids that *may* intermix³ at some point. Instead, communication means that there is a direct path between two points. In support of his otherwise unfounded opinion, Dr. Slocum quotes a statement from SRAM: “fluid communication is made regardless of the direction of the fluid flow.” Slocum Infringement Report at ¶ 143. This statement from SRAM does not support Dr. Slocum’s opinion, however, because fluid communication requires a direct link between the two areas in fluid communication. The direction of flow may not matter, but that the fluid flows in either of the two directions does matter. In Dr. Slocum’s scenario, the alleged bottom out cup communicates with the reservoir, and the alleged compression area communicates with the reservoir. However, the alleged bottom out cup does not communicate with the alleged compression area because there is

³ I note that Dr. Slocum has not provided any evidence that these paths would intermix, nor has Dr. Slocum provided any rationale as to why they would intermix. In my opinion, these two pressurized flow paths, where the flowing material is relatively viscous and slow-moving, would most likely be laminar and would not intermix.

no path or travel of fluid between the alleged bottom out cup and the alleged compression area. It is unreasonable and contrary to the use of the term “fluid communication” to have the opinion that two streams that likely do not even intermix and travel to a third end location cause a fluid communication between desperate sources of the flows. For example, if person A is in communication with person B, and person C is in communication with person B, it is unreasonable to state that person A was in communication with person C. Accordingly, I disagree with Dr. Slocum’s opinion.

164. Moreover, the Accused Shocks do not include an adjustable fluid flow path formed in the cup because no fluid flow paths are formed in what Dr. Slocum alleges is the bottom out cup. For example, Dr. Slocum appears to point out the cup-shaped feature of the Accused Shocks as reading on this limitation. *See* Slocum Infringement Report at page 86. However, the alleged fluid flow paths (Slocum Infringement Report at page 93) are not formed in the cup-shaped area pointed to on page 86 of Slocum’s Infringement Report. In addition, under SRAM’s proposed construction of “an adjustable fluid flow path formed in the cup,” the Accused Shocks do not include any fluid flow paths formed within the alleged bottom out cup shown on page 86 of the Slocum Infringement Report.

2. *Dependent claim 12*

Claim 12: The damper of claim 11, wherein in the second position the bottom out piston is sealingly engaged within the bottom out cup.

165. As discussed earlier, the alleged piston does not have any seals for engaging with the alleged bottom out cup and the alleged bottom out cup lacks any seals for engaging the alleged piston. And for the same reasons discussed for claim 11, the Accused Shocks fail to include

anything “sealingly engaged within the bottom out cup” under either Party’s claim construction of the term.

166. Dr. Slocum is incorrect that “mostly all of the fluid flow from the bottom out cup will happen through the orifice port”. ¶ 145. As mentioned previously, in at least one situation, most or all of the fluid will bypass the piston via “blow back” because it has nowhere else to exit the alleged bottom out cup.

167. Additionally, claim 12 is dependent on claim 11 and the Accused Shocks do not infringe claim 11.

3. *Dependent claim 13*

Claim 13: The damper of claim 12, further including a fluid flow path formed between the cup and the primary compression chamber; wherein the capacity of the fluid flow path is adjustable.

168. Using either Party’s proposed claim constructions, the Accused Shocks do not infringe claim 13 because the Accused Shocks do not include a second adjustable fluid flow path (so there cannot be a “further ... flow path formed”). Claim 13 requires a second fluid flow path “wherein the capacity of the fluid flow path is adjustable” in addition to “an adjustable fluid flow path formed in the cup” required by claim 13.

169. The term “the fluid path” is undefined as there are at least two fluid paths from claims 11 and 13. Claim 13 adds the new limitation “wherein the capacity of the fluid flow path is adjustable”, but it is not clear as to which fluid path this limitation applies to.

170. As discussed in my Invalidity Report, the word “capacity” is never used in the specification. Without any clarification or context, the word “capacity” is indefinite because the capacity can mean a variety of things to a POSITA – even in the specific context of a shock

absorber – as well as for the reasons discussed in my Invalidity Report. Even Dr. Slocum appears to acknowledge this indefiniteness in paragraph 146 of his Infringement Report by rewriting the claim language to refer to the “capacity of the fluid flow” as opposed to the “capacity of the fluid flow path”, the latter of which is the actual claim language for claim 13.

171. Additionally, claim 13 is dependent on claim 12 and the Accused Shocks do not infringe claim 12.

4. *Dependent claim 14*

Claim 14: The damper of claim 13, further including an externally accessible adjuster connected to a valve disposed in the flow path.

172. The term “the fluid path” is undefined as there are at least two fluid paths from claims 11 and 13. Which of the flow paths claim 14 adds new limitations to is not clear. Thus, for these reasons and for the reasons discussed in my Invalidity Report, this claim is indefinite.

173. In his Infringement Report, Dr. Slocum states “*The “flow path” referred to in this claim is the adjustable flow path to and from the bottom out cup.*” ¶ 147. But claim 11 requires “an adjustable fluid flow path formed in the cup” and claim 13 requires a fluid flow path “wherein the capacity of the fluid flow path is adjustable.” Thus, Dr. Slocum overreaches by asserting which flow path claim 14 refers to.

174. Additionally, claim 14 is dependent on claim 13 and the Accused Shocks do not infringe claim 13.

5. *Dependent claim 15*

Claim 15: The damper of claim 14, wherein the externally accessible adjuster is manually adjustable.

175. Claim 15 is dependent on claim 14 and the Accused Shocks do not infringe claim 14.

X. Responses to Dr. Slocum's "Other Considerations"

176. Dr. Slocum adds to the end of his Infringement Report certain other statements he refers to as his opinion that are unrelated to infringement. Dr. Slocum states that "SRAM has not provided any viable design around that would avoid infringement of the asserted claims of the '331 and '223 patents." Slocum Infringement Report at ¶ 149. This statement is just not true. SRAM has provided a number of prior art references in this matter, testimony, and past actions, and each of those references shows preexisting, viable design arounds for the '331 and '223 patents, regardless of whether they individually or together render those patents invalid (which they do, as set forth in my Invalidity Report). As just one example, Bruckbauer clearly shows a push-button air bleed system that may be used in place of the inventions claimed in the '331 patent.

177. Further, the apparatuses disclosed in U.S. Patent Application No. 17/355,635 (U.S. Patent Application Publication No. 2022/0411007 A1) are viable designs around to the '331 patent. Specifically, this system allows for air within the lower fork tubes to be vented to ambient air without any intervention from a rider. The Abstract of this application states: "A bicycle suspension system with automatic venting and/or pressurizing of a sealed chamber that minimizes the pressure differential between the sealed chamber and the ambient environment." The Figures in this application show how this may be accomplished, including the use of a bypass channel formed on the inner tube of the telescoping fork. Air is able to bypass the wiper seal at this bypass channel, much like how air is able to bypass the piston seal in many rear shocks for bicycles. As

stated in paragraphs 4-9 of the application, small amounts of air are allowed to pass by the wiper seal each time the bypass channel is passed by the wiper seal.

178. There are also a number of systems that allow for venting through other areas of a fork, which would accomplish the same goal as the '331 patent. *See* Slocum Depo. at p. 33, line 18 to p. 66, line 6 (Dr. Slocum generally discussing various design-around options). Moreover, any number of methods may be used to vent a fork without the use of an air bleed assembly of any kind, including simply using a zip tie or coffee stirrer to burp the wiper seals of a given fork.

179. For the '223 patent, there are a vast number of alternatives for adjustable bottom out protection. For example, most shocks use a bottom out bumper or a coil spring, just like the Super Deluxe Coil shock. *See, e.g.*, SRAM_FOX_CO_000628, -000635, -000651, -000655. The bumper itself may be changed to adjust bottom out resistance. Further, an air spring may be used for bottom out protection, as is the case in all of SRAM's many air shock products. These devices have adjustable bottom out protection because the positive air spring in the shock will progressively increase in pressure as the shock is compressed, eventually leading to bottom out resistance before any metal-to-metal bottom out event occurs. The amount of resistance is adjustable with air pressure. Further, there are a number of other position sensitive damping systems, including those used in SRAM's Super Deluxe Air shocks. *See, e.g.*, <https://www.sram.com/en/rockshox/rockshox-technology/hydraulic-bottom-out> (showing the hydraulic bottom out protection system for SRAM's Super Deluxe Air shocks). These shocks have a needle that provides a hydraulic bottom out stop, in addition to an air spring. *Id.* All of these options are viable design around options for the '223 patent.

180. Dr. Slocum states: "In my opinion, these patents [US Patent Nos. 7,163,222; 6,217,049; 10,933,940] are technically on par with the '331 patent because, at a minimum, they

are all directed to improvements to suspension fork technology.” Slocum Infringement Report at ¶ 150. This statement does not make much sense and lacks a discussion of the required bases for such a broad conclusion. First, it is unclear what “on par” mean in this context. A POSITA would not know what Dr. Slocum means by this broad statement without more context. Further, I note that just because two technologies are both related to the same basic area of application (such as, to a suspension fork) does not automatically make those two technologies have the same level of value, applicability, or the like. For example, U.S. Patent No. 10,933,940 is very useful in modern forks because it strikes the right balance between additional weight and vibration reduction for small bumps/vibrations regardless of rider weight. U.S. Patent No. 10,933,940 represents an easy and inexpensive modification to modern forks that does not add much weight, but greatly improves the higher-velocity and lower travel impacts incident on a bicycle fork – the kind of bumps and “chatter” that are encountered in every ride and contribute significantly to hand and other fatigue while riding. *See* U.S. Patent No. 10,933,940 at Abstract; Col. 1, lines 58-62; Col. 2, lines 18-47. Further, I note that the ‘940 patent is integrated into SRAM lower (outer) fork legs as part of the overall damper system. It is intentionally included as a portion of the damper shaft and air spring shaft to purposefully improve performance of the fork. *See, e.g.,* <https://www.sram.com/en/rockshox/rockshox-technology/buttercups>. On the other hand, the ‘331 patent’s whole purpose is to address incidental, unintentional air springs in the lower (outer) fork legs that arise from time to time. It is an attempted solution to a potential problem in extreme conditions, as opposed to the ‘940 patent, which is a purposeful improvement to suspension forks. In my opinion, the purposeful inventions of the ‘940 patent are more beneficial as a result both from a technical and a value viewpoint. In fact, SRAM even tunes the right and left legs of their forks to best take advantage of the ‘940 patent’s benefits. *See id.* And your average rider could

feel the improvements of the ‘940 patent in every ride, even during a ride up and down a single neighborhood block.

181. Dr. Slocum goes on to state that he believes that the ‘940 patent is not more important than the ‘331 patent. *See* Slocum Infringement Report at ¶ 151. His rationale, however, makes no sense and is self-contradictory. It is apparent from his Infringement Report that he does not understand the technology of the ‘940 patent. The reduction in felt vibrations using the ‘940 patent is constant and addresses the most problematic of bumps/chatter, while the ‘331 patent only provides potential breakaway force reduction benefits only if the fork is subjected to extreme temperature or altitude changes and the user of the fork decides to release the negligible built-up pressure. And the ‘331 patent fails to provide any vibration reduction whatsoever. The supplemental spring used in the ‘940 patent is small and adds very little weight, contrary to Dr. Slocum’s statements. It is not included because some suspension fork users are heavy – it is included because the physical spring, in parallel with the air spring, will reduce vibration and trail chatter with no breakaway force required. The novel spring in the ‘940 patent will move when any minor, high-frequency forces are encountered. A suspension fork using the ‘940 patent inventions will always perform this way, under any conditions when used by any rider. And Dr. Slocum leaves out the most pertinent of all issues: air bleeds are still uncommon on bike forks because they are unnecessary for the vast majority of riders. The amount of pressure built up under normal riding conditions is negligible and could not be felt by even the savviest rider. A vast majority of bike riders do not ascend and descend for thousands of feet, nor do they ride fast/hard/long enough to significantly change interior pressures due to heat. Most riders travel at a slow pace over relatively short heights. This is why the use of the air bleeders in general is rare – no one needs

them but for the most serious riders over the steepest and most challenging high-altitude terrain, such as those on an actual mountain bike park like Whistler.

182. Further, I note that the ‘331 patent has a serious drawback: the push-button style air bleed assemblies get small amounts of oil onto your finger when actuated under pressure. One of the websites referenced by Dr. Slocum states: “These dials unthread rather than requiring you to depress a button, *which was known to weep oil* and prone to sticking on the previous design.” See <https://www.bikeradar.com/reviews/rockshox-boxxer-ultimate-review> (emphasis added). The oils within the forks are harmful and should not be handled. Yet, these air bleed assemblies literally coat the cyclist’s fingers with the oil. Hands in general are one of the worst surfaces for exposure since material on a cyclist’s hands will likely contaminate other portions of the rider subsequently.

183. Similar to the ‘331 patent, Dr. Slocum provides no analysis as to why the patents listed in his paragraph 152 are related in, or are technically “on par” with each other, or even what “on par” means, other than to say they are both related to a vehicle fork.

184. Regarding paragraph 153 of Dr. Slocum’s Infringement Report, Dr. Slocum provides no bases or evidence that “the sole purpose of these technologies is to the improve the performance of the forks and shocks[.]” Further, this is untrue in some situations. For example, the threaded plugs accused by Dr. Slocum do not improve the performance of any fork or shock. Even the push-button air bleed systems do not provide any benefit to a rider that does not change elevation significantly or does not ride hard/long enough to build up significant heat. Further, Dr. Slocum’s following statement is bereft of any support: “SRAM has specifically designed, promoted, and sold (directly or indirectly) the Accused Forks and Accused Shocks for that sole purpose to customers and end users in the United States.” Slocum Infringement Report at ¶ 153.

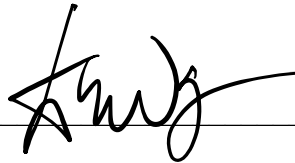
Dr. Slocum provides no bases for these broad conclusions, and without any bases, I cannot fully respond to these offered overbroad opinions. Without any bases or evidence, this statement amounts to speculation. Further, I understand that Dr. Slocum has no personal nor professional experience with SRAM's marketing considerations and specific sales/education tactics. *See, e.g.*, Slocum Depo. at p.12, lines 19 to p. 14, line 23.

185. Similarly, Dr. Slocum provides no bases for his opinion that: "end users and customers are now accustomed to SRAM's Pressure Relief Valve feature, and they understand the purpose and benefits of the air bleed technology." Slocum Infringement Report at ¶ 154. I have not seen any bases or evidence to support such a remark and without any bases, I cannot fully respond to these offered overbroad opinions. Without any bases or evidence, this statement amounts to speculation. Dr. Slocum does not state how he came to understand the knowledge and mindset of consumers in the bicycle industry. A review of his credentials places him as far adjacent to any portion of the bicycle industry. He appears to be more of an academic focused on precision engineering, as stated in his CV. *See also, e.g.*, Slocum Depo at p. 143, lines 13-22 (Dr. Slocum admitting to having never designed a shock absorber for a vehicle, nor a related air bleed assembly). The data available about potential upgrades would lead a POSITA to the opposite conclusion. I understand from testimony given during the Preliminary Injunction Hearing in this matter that very few upgrade kits (for upgrading a plugged SRAM fork to a SRAM fork with a Pressure Relief Valve) have been purchased on the aftermarket, in contrast with the many more (much more expensive) damper upgrades.

186. Dr. Slocum continues to provide statements without support in areas outside of his personal knowledge. Dr. Slocum states in paragraph 155 of his Infringement Report: "It is also reasonable to assume that SRAM has continued to tout the Pressure Relief Valves (air bleed

assembly technology) of the Accused Forks to end users, retailers, distributors, and OEM customers even though they may have tried to downplay it.” Dr. Slocum does not state his bases for this self-titled “reasonable” assumption. Without any bases or evidence, this statement amounts to speculation. At no time does Dr. Slocum purport to have any understanding of how SRAM interacts with their customers.

Dated: April 30, 2024

A handwritten signature in black ink, appearing to read 'Eric Wang', is written over a horizontal line.

Eric Wang, Ph.D.