

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

* * * * *

ZOOM VIDEOTAPED DEPOSITION OF
WESLEY ALLINGER
Thursday, March 7, 2024
8:12 a.m. PST

* * * * *

SARAH MILUNSKI, ESQ.
ATTORNEY FOR DEFENDANT

BELLE VIVIENNE, RPR, CRR, NJ-CRR,
WA/CO/NM-CCR
NATIONALLY CERTIFIED REALTIME
COURT REPORTER
VERITEXT LEGAL SOLUTIONS
JOB NO. 6476883
866.299.5127

A P P E A R A N C E S

FOR THE PLAINTIFF:

ROBERT F. MCCAULEY III
FINNEGAN HENDERSON FARABOW GARRETT
& DUNNER LLP
Stanford Research
Park 3300 Hillview Avenue
2nd Floor
Palo Alto, California 94304
650.849.6600
Robert.mccauley@finnegan.com

FOR THE DEFENDANT:

SARAH MILUNSKI
LEWIS RICE LLC
600 Washington Avenue, Suite 2500
Saint Louis, Missouri 63101
314.444.7600
SMilunski@lewisrice.com

VIDEOGRAPHER:

Dustin Brown

ALSO PRESENT:

Bob Brash

- - -
I N D E X
- - -

Testimony of:

WESLEY ALLINGER

MS. MILUNSKI..... 7

MR. MCCAULEY..... 334

MS. MILUNSKI..... 343

- - -
E X H I B I T S
- - -

NO.	DESCRIPTION	PAGE
Exhibit 113	Plaintiff Fox Factory, Inc.'s Amended Initial Disclosures Pursuant to Fed.R.Civ.P.26.....	28
Exhibit 114	Page Vault cover sheet with Motocross Action Product Test: Fox Factory KTM 450SXF Podium RC3 Shock, Motocross Action Magazine.....	100

E X H I B I T S (Continued.)

NO.	DESCRIPTION	PAGE
Exhibit 115	Settlement and License Agreement.....	277
Exhibit 116	Settlement and Cross-License Agreement....	281
Exhibit 117	Settlement and License Agreement dated December 15, 2005.....	291
Exhibit 118	License Agreement.....	295
Exhibit 119	License Agreement dated August 2012.....	305
Exhibit 120	Patent License Agreement dated November 9, 2007.....	307
Exhibit 121	Photographs.....	317
Exhibit 122	Photos from Mountain Bike Magazine website.....	331

- - -

DEPOSITION SUPPORT INDEX

- - -

Directions to Witness Not to Answer

Page Line

none

12 25

211 7

Request for Production of Documents

Page Line

none

Stipulations

Page Line

none

Question Marked

Page Line

none

1 THE VIDEOGRAPHER: Good morning.
2 We are on the record at 8:12 a.m. on
3 March 7, 2024. This is the video
4 recorded deposition of Wesley
5 Allinger. My name's Dustin Brown here
6 with our court reporter Belle
7 Vivienne. This deposition is being
8 held remotely. The caption of the
9 case is Fox Factory, Incorporated,
10 versus SRAM LLC.

11 Please note that audio and video
12 recording will continue to take place
13 unless all parties agree to go off the
14 record. If there are any objections
15 to proceeding, please state them at
16 the time of your appearance beginning
17 with the noticing attorney.
18 Appearances, please.

19 MS. MILUNSKI: Sarah Milunski of
20 Lewis Rice on behalf of SRAM LLC.

21 MR. MCCAULEY: Robert McCauley
22 on behalf of plaintiff Fox Factory and
23 also Mr. Allinger.

24 WESLEY ALLINGER,
25 having been first duly sworn by the

1 Certified Stenographic Realtime Reporter,
2 testified as follows:

3 EXAMINATION

4 BY MS. MILUNSKI:

5 Q. Good morning, Mr. Allinger.
6 How are you?

7 A. I'm well. How are you,
8 Sarah?

9 Q. Doing well. Can I get you
10 to state your full name for the record?

11 A. Sure. It's Wesley Edward
12 Allinger.

13 Q. Okay. And you've been
14 deposed before, correct?

15 A. That's correct, yes.

16 Q. Do you remember the process
17 and the rules or do you want me to go
18 over them for you?

19 A. I -- I -- why don't you hit
20 the high points for me.

21 Q. Sure. You understand that
22 you're here today and that you've been
23 sworn in by the court reporter so the
24 testimony you give today is under oath,
25 correct?

1 A. Yes. Yes, I do understand
2 that.

3 Q. And it's important for the
4 court reporter that we don't talk over
5 one another. So I know that Zoom can
6 make that a little bit more complicated,
7 but if you could wait for me to finish my
8 questions, I will in turn try and wait
9 for you to finish your answers, okay?

10 A. Fair enough, yes.

11 Q. And you're doing great so
12 far, but if you could just continue to
13 give verbal answers rather than shakes or
14 nods of the head, that will also assist
15 the court reporter. And if you forget to
16 do it, I will remind you, not trying to
17 be rude in any way, but just making sure
18 that we have a nice, clean record, okay?

19 A. Yes.

20 Q. And if any of my questions
21 are unclear, just please let me know. If
22 you answer my question, I am going to
23 assume that you understand the question;
24 is that fair?

25 A. Fair, yes.

1 Q. Okay. And if you need to
2 take a break at any time today, that's no
3 problem. I would ask that if there's a
4 question pending, you answer that
5 question and then we can go ahead and
6 take a break.

7 A. Okay.

8 Q. All right. Where are you
9 today giving your deposition?

10 A. I'm in Palo Alto,
11 California, at the Finnegan office.

12 Q. Okay. And is anyone in the
13 room with you?

14 A. No.

15 Q. Okay. And other than
16 discussions with your counsel, which I
17 don't want you to tell me about, how did
18 you prepare for this deposition?

19 A. You said other than the
20 discussions with my counsel?

21 Q. Correct.

22 A. I certain -- I certainly
23 spent time with my counsel, much time
24 preparing. I -- you know, took a look at
25 all of the topics that I was asked to

1 prepare for, spent considerable time
2 thinking about those topics, and again,
3 working with my counsel to make sure I
4 was prepared. You know, I thought back
5 about the preliminary injunction
6 preparation that I did and the previous
7 deposition that you and I were involved
8 in. So I spent a lot of time thinking
9 through all that.

10 I did talk to two colleagues
11 to make sure that, you know -- in
12 particular with the older IP, you know,
13 that was -- or with the bottom out cup,
14 the '223 Patent, anything in relation to
15 that, it's been -- it's been a long time,
16 so I did spend some time with one
17 colleague on that particular topic. You
18 know, I have -- I had a lot of topics to
19 think about and -- and they were very,
20 you know, broad so I wanted to be sure I
21 was ready, and I did spend quite a bit of
22 time making sure that I could answer
23 questions today.

24 Q. Okay. So let's break a
25 little bit of this down.

1 You said you thought about
2 your previous depo. Did you review that
3 previous depo that you gave in this case?

4 A. I didn't read everything
5 exactly, but I did review it yeah, yeah.

6 Q. Okay.

7 (Cross talk.)

8 A. I mean, it's long, right?
9 It's a long -- a lot to read, right?

10 BY MS. MILUNSKI:

11 Q. Yep. And when you reviewed
12 your deposition, did you have anything --
13 see anything in there that you wanted to
14 correct or change?

15 A. Nothing that hadn't --
16 nothing new or anything, you know, out of
17 the ordinary or different. I -- I just
18 wanted to make sure that I had the facts
19 at the top of mind, you know, so we could
20 talk through everything again, right.

21 Q. Sure.

22 A. Yes.

23 Q. Okay. But nothing -- as you
24 sit here, you don't -- nothing stands out
25 to you as, oh, you know, I think I made a

1 mistake when I testified previously, I'd
2 like to make -- set the record straight,
3 nothing like that?

4 A. Not -- sitting here today, I
5 can't -- I can't think of anything today,
6 sitting here now, yeah.

7 Q. Great. And then you
8 indicated you talked to two colleagues as
9 part of your preparation for today; is
10 that correct?

11 A. That's correct, yes.

12 Q. And who were those two
13 colleagues?

14 A. I talked to Jared Connell
15 and I talked to Everet Ericksen.

16 Q. Okay. Let's take Jared
17 Connell first.

18 When did you talk to Jared?

19 A. For sure yesterday --
20 yesterday or the day before. I can't
21 remember exactly.

22 Q. Did you talk to him before
23 or after he gave his deposition?

24 A. After.

25 Q. Did you discuss the

1 testimony that he gave during his
2 deposition?

3 A. No, I did not. I -- I
4 wanted to check with Jared on some
5 specific marking as, you know --

6 MR. MCCAULEY: Objection, Wes,
7 I'm sorry, I was on mute. I was
8 trying to object.

9 Sarah, his conversations were
10 with counsel present, they're
11 privileged and I'm going to instruct
12 him not to answer.

13 MS. MILUNSKI: Okay.

14 BY MS. MILUNSKI:

15 Q. Did you have any
16 conversations with Mr. Connell in
17 preparation for this deposition that were
18 outside of the presence of counsel or
19 were all of them with your counsel
20 present?

21 A. All of them were with.

22 Q. Okay. And you -- let's see.
23 Did Mr. Connell give you any documents or
24 written information?

25 A. He did not.

1 Q. Okay. And you also spoke
2 with Mr. Ericksen; is that correct?

3 A. Yes.

4 Q. Okay. Was that in the
5 presence of counsel or did you speak with
6 Mr. Ericksen outside the presence of
7 counsel?

8 A. That was in the presence of
9 counsel also.

10 Q. Okay. Did Mr. Ericksen give
11 you any documents or written information
12 for you to review?

13 A. He did not.

14 Q. Other than Mr. Connell,
15 Mr. Ericksen, and your attorneys, did you
16 speak with anyone else to prepare for the
17 deposition today?

18 A. I did not.

19 Q. Okay. How long were your
20 conversations with Mr. Connell?

21 A. I would say five minutes,
22 more or less, in total.

23 Q. And what about Mr. Ericksen,
24 about how long was your conversation with
25 Mr. Ericksen?

1 A. Five to ten minutes.

2 Q. Okay. And have you reviewed
3 any documents to prepare for today's
4 deposition?

5 MR. MCCAULEY: That's a yes or
6 no answer, Wes.

7 A. Yes.

8 BY MS. MILUNSKI:

9 Q. And what did you review to
10 prepare for the deposition today?

11 MR. MCCAULEY: I'm sorry, Sarah,
12 you need to lay the proper foundation
13 for that for you to ask that question.

14 MS. MILUNSKI: In what way, Rob?

15 MR. MCCAULEY: You need to ask
16 him if any of the documents refreshed
17 his recollection and, if so, then he
18 can answer.

19 MS. MILUNSKI: Well, I'm
20 entitled to know what -- how he
21 prepared for a 30(b)(6) deposition and
22 what is the basis of his knowledge.

23 MR. MCCAULEY: Sarah, what I
24 just said is a correct statement of
25 law.

1 MS. MILUNSKI: Agree to
2 disagree.

3 BY MS. MILUNSKI:

4 Q. But, Mr. Allinger, did any
5 of the documents that you reviewed
6 refresh your recollection about the
7 testimony you're about to give today?

8 A. Yes.

9 Q. Okay. And what did you
10 review?

11 A. A lot of documents that were
12 pertaining to both cases, so if you'd
13 like me to answer, I'm going to split
14 them up into kind of two cases. When I
15 looked back at the -- the patent, the
16 '223 patent, right, I mean, that was,
17 again, probably -- what are we looking
18 at -- I don't know -- 13 -- 10, 13 years
19 ago so I definitely needed to look over
20 that. I needed to look over some
21 article -- an article in particular
22 about -- about our technology, our RC3
23 Podium technology and its review. Let me
24 see.

25 Short of that, I think a lot

1 of what I did to prepare for the '223
2 part of it or the bottom out cup was a
3 lot of thinking about what happened, just
4 because it was so long ago, right? I
5 mean, it was a time when -- you know, 15
6 years or whatever, 14, 15 years ago.

7 For the bleeder valve
8 patent, I reviewed that patent and I did
9 a lot -- again, I did a lot of just
10 thinking back to the preparation for
11 the -- the preliminary injunction
12 deposition. And, you know, and -- and
13 the facts that we talked about there,
14 the -- the reviews, the media reviews,
15 but a lot of it was just kind of thinking
16 back to those documents and -- there --
17 there was just so much. There was --
18 there was a lot -- a lot to review and
19 get ready for, so...

20 Q. Okay.

21 A. I hope that's an okay answer
22 for you.

23 Q. Yes, absolutely.

24 So it sounds like you
25 reviewed both the '223 and the '331

1 patents; is that correct?

2 A. I did, yes, that is correct.

3 Q. Did you review the -- the
4 file history to prepare for today's
5 deposition for either of those patents?

6 A. I did not.

7 Q. Okay. Did you look at any
8 drawings in relation to either of those
9 patents?

10 A. Well, both of those patents
11 contained art, right? So, you know, I --
12 I looked over the -- the patent in its
13 entirety so I was, you know, up to speed
14 with -- with what it was trying to say
15 and --

16 (Cross talk.)

17 BY MS. MILUNSKI:

18 Q. Fair enough.

19 And -- and so I guess my
20 question is, did you look at any drawings
21 or figures outside of the patents
22 themselves?

23 A. To prepare for today, I did
24 not.

25 Q. Okay. And you -- you were

1 employed by Fox Factory, Inc.; is that
2 correct?

3 A. Yes, that's correct.

4 Q. And the last time I deposed
5 you, your title was executive vice
6 president of the specialty sports group
7 or SSG; is that correct?

8 A. That's correct.

9 Q. And is that still your job
10 title?

11 A. That's correct, yes.

12 Q. Have your responsibilities
13 at Fox Factory changed at all since I
14 last took your deposition?

15 A. No.

16 Q. Okay. And who do you report
17 to?

18 A. Chris Tutton, our president.

19 Q. And who are your direct
20 reports?

21 A. I have several direct
22 reports. Hopefully I'll make sure I -- I
23 get all of them. So Jerry Tsao in Taiwan
24 runs our factory and operations in
25 Taiwan. Jerry reports to me. Bill

1 Brown, who is our VP of engineering
2 for -- across our entire SSG division,
3 reports to me. Let me see. I have a
4 couple other -- an IT person, Pingting
5 X-U that reports to me and -- let me see,
6 make sure I have everything because
7 we've -- we've changed a bit recently and
8 one of our guys retired that used to
9 report to me. I think that's a pretty
10 good list for now. Yeah. I -- I can't
11 remember anyone else, yeah.

12 Q. And you said Jerry Tsao is
13 in -- is based in Taiwan?

14 A. That's right. That's right.

15 Q. Okay. And Bill Brown is
16 based where?

17 A. He was in Scotts Valley up
18 until recently and now he's in Asheville,
19 North Carolina.

20 Q. Does Fox have operations in
21 Asheville, North Carolina?

22 A. Yeah, we have a -- an
23 engineering team there and those -- those
24 folks did report to Bill and still do,
25 he's just located there now. We have a

1 service center there and a call center
2 for, you know, for repairs and service of
3 our product -- of our product and it's
4 mainly oriented to the east coast.

5 Q. Okay.

6 A. Right.

7 Q. And -- and the IT report,
8 Pingting, did I get that right?

9 A. Yeah, yeah, and -- and
10 that's really in relation to, you know,
11 so recent -- not recently, well, over the
12 last few years, we've been implementing a
13 new ERP system and so you can imagine
14 that the ERP goes hand in hand a lot with
15 the operations and the development of
16 product, and she's our representative as
17 we're -- as we've been introducing that
18 new ERP system so that's why we're kind
19 of tied, right, because there's a lot
20 that goes on when you have a new ERP
21 system transition in all of these
22 multiple locations, so...

23 Q. Okay. And ERP stands for?

24 A. Enterprise resource -- it's
25 like an MRP, right, so it's -- it's a

1 system that companies use to enter
2 orders, track orders, order material,
3 that sort of thing, right.

4 Q. And where is Pingting based
5 out of?

6 A. She's in Vancouver now, but
7 she spent time in Taiwan when we did the
8 implementation there. Now she's in
9 Vancouver, that's her home base.

10 Q. And anyone else that reports
11 directly to you?

12 A. Yeah, I was just trying to
13 make sure I covered everyone. We have
14 one person named Stefan, who is our wheel
15 kind of guru and he currently reports to
16 me. And when I say "wheel guru," he's --
17 he's the one that -- that thinks about
18 our wheel products from a marketing,
19 engineering and operations point of view.
20 So how much we sell, you know, how the
21 product line is doing, he would -- he
22 would serve as sort of a product line
23 manager maybe in another company.

24 Q. And where is Stefan located?

25 A. Stefan is in Vancouver also,

1 yep.

2 Q. Okay. And Mr. Allinger,
3 what's your highest level of education?

4 A. A bachelor's degree --

5 Q. And what was your --

6 A. -- in mechanical
7 engineering.

8 Q. And when did you receive
9 your bachelor's degree in mechanical
10 engineering?

11 A. Yeah, I was just thinking
12 about that last night because I thought
13 you might ask me. I believe it was 1988,
14 '87 or '88, yeah.

15 Q. And where did you receive
16 that degree?

17 A. Oakland University in
18 Michigan, Rochester Hills, Michigan.

19 Q. And how long have you been
20 in the bicycle industry now?

21 A. So I actually started in the
22 bicycle industry at a company called
23 RockShox and that would have been
24 1988-ish, yeah, right -- yeah,
25 something -- right around there.

1 Q. Okay. And what did you
2 start -- what was your position at that
3 time?

4 A. I was an engineer and a
5 designer for rear shocks.

6 Q. Okay. And have you been in
7 the bicycle industry continuously since
8 approximately 1988?

9 A. No. So when I came to Fox
10 in roughly 2000, 2001, I -- I was hired
11 to be in the Powersports division, and so
12 the Powersports division is motorcycles,
13 snowmobiles, ATVs and now side-by-sides.
14 And I spent up until in or around 2012 in
15 the Powersports team. So I was the
16 general manager of the Powersports group
17 for that period of time, but not the --
18 okay, so I'm going to reiterate. I was
19 the general manager for probably the last
20 three years. Prior to that, I was the
21 engineering manager. Prior to that, I
22 did design work. So that was kind of my
23 career in the Powersports group, yeah --

24 Q. Okay.

25 A. -- during that time, yeah.

1 Q. And over your career, you
2 have been a named inventor on, I think,
3 around 18 different patents; does that
4 sound correct to you?

5 A. I'm sure it's close to that.
6 I don't know the exact number, yeah.

7 Q. All right.

8 A. Yeah.

9 Q. Did you look at any of the
10 patents that you're named on other
11 than -- the '223 in preparation for this
12 deposition?

13 A. I did not.

14 Q. Are you familiar with what
15 the patents that you're named as an
16 inventor on generally describe?

17 A. Yes, I believe so. I
18 think I -- you know, if we wanted to talk
19 specifically -- specifically about any
20 one of them, we should take a close look
21 at it so I can refresh my memory since
22 they're -- it's over a long period of
23 time and it's, you know, varying topics.

24 Q. What are the topics
25 generally that you're a named inventor on

1 for your patents?

2 A. I think it might be hard to
3 be really general about it because
4 there's -- there's several things, but
5 they're going to be related to shock
6 absorber technology, the use of shock
7 absorbers on the vehicles that, you know,
8 we -- we supply our product to. They
9 could also be future-looking-type patents
10 where we're thinking about what the
11 future might be in product lines and
12 things we might want to get into in the
13 future related to, you know,
14 forward-looking, you know, what does the
15 world look like in ten years? There's
16 those kind of patents and that kind of
17 thinking that goes on. So in that
18 regard, if we do want to talk about them,
19 we should -- you know, I'm going -- I'm
20 going to need to just reacquaint myself
21 with each one other than the two we
22 talked about.

23 Q. Sure. We might -- we might
24 do that later on.

25 Okay. Are you aware that

1 Fox's amended initial disclosures
2 disclose that you are the named inventor
3 of the '223 patent and have, "Knowledge
4 regarding the inventorship, ownership,
5 conception and reduction to practice of
6 inventions claimed in the '223 patent"?

7 A. That's a long one, Sarah.
8 I'm just going to read it very quickly,
9 what you just asked me. Yes, yes, I am,
10 yeah.

11 Q. And if I refer to the '223
12 patent, do you understand I'm referring
13 to U.S. Patent No. 8,550,223?

14 A. When I -- yeah, when I think
15 of the '223 patent, I believe we're
16 thinking about the bottom out cup patent.

17 Q. Right.

18 A. Yeah.

19 Q. So if I refer to that,
20 you'll know what I'm meaning?

21 A. Yeah, let's call it '223 or
22 bottom out cup, not 8,255 -- that whole
23 thing.

24 Q. Got it.

25 Do you believe that you have

1 relevant knowledge for this case besides
2 what was disclosed in Fox's amended
3 initial disclosures? And I'm happy to
4 mark that -- those initial disclosures if
5 you want to take a look at it.

6 A. Do you believe you have
7 relevant knowledge in this case besides
8 what was disclosed --

9 MR. MCCAULEY: I'm going to
10 object to that question as vague and
11 calling for a narrative.

12 Go ahead, Mr. Allinger.

13 A. I'm just trying to
14 understand the question so I'm just
15 reading it.

16 BY MS. MILUNSKI:

17 Q. Sure. What we'll do is --
18 I'm going to go ahead and mark -- and I
19 think we're on 113.

20 (Exhibit 113, Plaintiff Fox
21 Factory, Inc.'s Amended Initial
22 Disclosures Pursuant to
23 Fed.R.Civ.P.26, marked for
24 identification.)

25 BY MS. MILUNSKI:

1 Q. All right. You should see
2 in Exhibit Share what I've marked as
3 Exhibit 113.

4 A. Okay. So that's looking
5 over on this screen; is that correct?
6 Nothing's changed from what I'm looking
7 at other than I can see the dialogue --
8 the dialogue.

9 Q. Okay. Do you have access to
10 Exhibit Share?

11 A. Yes. I believe so, yeah.
12 Yeah.

13 Q. Okay. If you go in Exhibit
14 Share, there should be Deposition of
15 Wesley Allinger and then a Marked
16 Exhibits folder.

17 A. I'm looking at exhibits
18 folder that has 69 through 80.

19 THE COURT REPORTER: That's
20 probably the wrong day. I don't know.

21 A. March 5th. There's a bunch
22 of days, modified. There's --

23 MR. MCCAULEY: Today's March
24 7th.

25 THE WITNESS: Say again, I'm

1 sorry.

2 MR. MCCAULEY: Today is March
3 7th. I'm not sure what folder --
4 (Cross talk.)

5 A. I'm -- when someone said
6 that, my eyes went to "date modified,"
7 which I realized doesn't mean much. I'm
8 looking at a folder that has Exhibits 69,
9 70, 71, 2, 3, 4, 5, 6, 7 --

10 BY MS. MILUNSKI:

11 Q. I think you're in the wrong
12 folder. So on Exhibit Share, there
13 should be -- I can walk you through like
14 the breakdown here.

15 A. I see a hierarchy of
16 folders. Maybe that's it --

17 Q. Yes.

18 (Cross talk.)

19 BY MS. MILUNSKI:

20 Q. So Fox Factory versus SRAM,
21 then depositions.

22 A. Yep.

23 Q. Do you see that?

24 And if you go down to
25 Deposition of Wesley Allinger 3-7-2024.

1 A. Okay. My --

2 Q. Do you see that?

3 (Cross talk.)

4 A. -- particular one ends, it
5 says Deposition of Jared Connell, so I
6 think there needs to be some work done
7 here.

8 (Cross talk.)

9 THE COURT REPORTER: Was the
10 witness' e-mail address added to the
11 folder?

12 THE TECHNICIAN: It is. Let me
13 put a link to the folder.

14 MS. MILUNSKI: Do you want to go
15 off the record?

16 THE WITNESS: Let me just click
17 on this link that's in the chat.

18 MR. MCCAULEY: Wes, I'm going to
19 come around and assist, okay?

20 THE COURT REPORTER: Can we go
21 off the record?

22 MR. MCCAULEY: Oh, I thought we
23 were. Yeah, let's go off the record.

24 THE VIDEOGRAPHER: Going off
25 record at 8:36 p.m. -- excuse me --

1 a.m.

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

4 THE VIDEOGRAPHER: We're back on
5 record 8:46 a.m.

6 BY MS. MILUNSKI:

7 Q. All right. Mr. Allinger,
8 are you able now to access what I've
9 marked as Exhibit 113?

10 A. Yes.

11 Q. Okay. And have you seen
12 this document before?

13 A. One second. If -- I may
14 have, I'm sure at some point, but I can't
15 be positive and we'll need to look it
16 over, which is I'm sure what we're going
17 to do next so...

18 Q. You got it.

19 So if you scroll down to
20 what's marked as page 3 at the bottom --

21 A. Okay. I'm on page 3.

22 Q. Okay. This is what Fox has
23 identified as people with knowledge that
24 could be relevant to this case.

25 And do you see your name?

1 A. Yes.

2 Q. Okay.

3 A. On page 4, though. I see it
4 on page 4.

5 Q. Yeah, it's page 4 of the
6 PDF, but the page number at the bottom
7 says 3.

8 A. I understand.

9 Q. And if you look at the far
10 right column, do you see "Subject of
11 Information" and then it includes that
12 you're the named inventor on U.S. Patent
13 No. 8,550,223.

14 Do you see that?

15 A. Yes, I do.

16 Q. And then it also indicates
17 that you have, "Knowledge regarding the
18 inventorship, ownership, conception and
19 reduction to practice of inventions
20 claimed in the ['223] patent"; is that
21 correct?

22 A. So where are you reading
23 from there? Knowledge of -- regarding
24 inventorship, I see that, yes, that's
25 correct, okay.

1 Q. Okay. Now, do you believe
2 that you have relevant knowledge for this
3 case besides what is disclosed in Fox's
4 amended initial disclosures?

5 MR. MCCAULEY: Objection, vague,
6 calls for a narrative.

7 Go ahead, Mr. Allinger.

8 A. If we're talking -- yeah,
9 when we're talking about the '223 patent,
10 I was certainly involved as an inventor
11 and through that whole process, I was in
12 the Powersports group as I mentioned, and
13 my colleagues that were involved are
14 mentioned here also. So certainly I
15 would have some relative knowledge, yeah.
16 There's --

17 BY MS. MILUNSKI:

18 Q. Okay. And what I'm trying
19 to find out is if you believe that you
20 have knowledge that you're prepared to
21 give beyond what's disclosed in these
22 disclosures?

23 MR. MCCAULEY: Same objections.

24 A. So I believe -- I believe
25 what you're asking me is if you asked me

1 questions about this, I'll be able to
2 answer them if it's not explicitly
3 something that's already in the document?
4 Is that kind of the question?

5 BY MS. MILUNSKI:

6 Q. No --

7 (Cross talk.)

8 A. I'm going to do my best to
9 answer your questions and I do believe I
10 have relative knowledge.

11 BY MS. MILUNSKI:

12 Q. Okay. What I -- what I'm
13 asking is, this is what Fox has indicated
14 you might testify about in this case if
15 asked questions, and what I'm trying to
16 find out is if there's areas of knowledge
17 that you might have that you think that
18 you would be qualified to give that's not
19 identified in this document so that I
20 have the ability to go and ask you
21 questions about what that knowledge is?

22 A. I see. I see. Can you give
23 me examples --

24 MR. MCCAULEY: Wait. Yeah, go
25 ahead, Mr. Allinger, ask her your

1 question.

2 A. If you can give me some
3 examples of -- of those kinds of
4 questions, I could try to answer whether
5 I have relative knowledge past this.

6 BY MS. MILUNSKI:

7 Q. Well, what I'm trying to
8 find out is what you believe you have
9 knowledge of beyond what's been
10 disclosed, if anything?

11 MR. MCCAULEY: Sarah's, he's
12 been disclosed on a bunch of different
13 30(b)(6) topics today and he's given
14 testimony in a PI hearing.

15 MS. MILUNSKI: And I understand
16 that, Rob. In the 30(b)(6) though,
17 he's testifying as a corporate
18 representative.

19 BY MS. MILUNSKI:

20 Q. And, Mr. Allinger, what I'm
21 asking you about right now is your
22 personal knowledge.

23 A. Okay. And I -- and I'm
24 trying, Sarah, so I -- I -- I understand
25 what's written here, and I was involved

1 in the process of developing -- we're
2 talking about the bottom out cup --
3 the -- the shock that we tested,
4 developed, and sold. And so if there's
5 aspects of that continuum that you would
6 like to talk to me about, I'm prepared to
7 try to answer your questions, of course.

8 Q. Okay. So do you believe
9 that this Exhibit 113 is a fair, accurate
10 and complete disclosure of the relevant
11 knowledge that you're going to be
12 providing and testimony that you're going
13 to be providing in this case?

14 A. Yes --

15 (Cross talk.)

16 MR. MCCAULEY: Wait a minute,
17 Mr. Allinger.

18 Sarah, that's not a fair
19 question. Do you want to let him get
20 off the record and I can talk to you
21 about it about it? But you're --

22 MS. MILUNSKI: No --

23 (Cross talk.)

24 MR. MCCAULEY: You're asking him
25 for attorney/client privileged

1 communications if you're asking him
2 what he's prepared to testify about in
3 this case.

4 MS. MILUNSKI: No, I'm not.

5 (Cross talk.)

6 MR. MCCAULEY: Yes, you are.

7 MS. MILUNSKI: Rob, please
8 object to the form and limit your
9 objections to that instead long
10 speaking objections. Let's get that
11 taken care of now, okay? He's
12 answered the question. I'm going to
13 move on.

14 BY MS. MILUNSKI:

15 Q. All right. Mr. Allinger,
16 taking a look at the '223 patent, and I
17 can go ahead and put that in because that
18 has been previously marked.

19 A. Okay. So we'll go back one
20 and you'll pop in a new file and we'll
21 look at it; is that correct?

22 Q. Yes.

23 A. Okay.

24 Q. And this was previously
25 marked as Exhibit 48.

1 Are you -- do you have it in
2 front of you, Mr. Allinger?

3 A. It is -- no additional files
4 have popped up in this folder.

5 Q. Okay.

6 A. I only have that original
7 113.

8 Q. You might need to refresh.

9 A. Okay. There it is. Okay.
10 Is that Exhibit 48?

11 Q. Yes.

12 A. Okay. And I've opened it.

13 Q. Great.

14 A. And I'm going to zoom in a
15 bit. Okay.

16 Q. Do you recognize this as the
17 '223 patent that you were a named
18 inventor on?

19 A. I do.

20 Q. Okay. And what was your
21 contribution to the invention that
22 resulted in the '223 patent?

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

1 Go ahead, Mr. Allinger.

2 A. Okay. So the question was
3 what was my contribution? Okay. So the
4 inventors listed here are my coworkers at
5 the time. They both actually worked for
6 me. This was a Powersports -- as I
7 mentioned, this is that time period
8 during Powersports. This is also a time
9 period when we were trying to identify as
10 a small Powersports team some inventions
11 that would allow us to sell unique
12 products into this space and this space
13 is, you know, motorcycles, right?
14 Motorcycles, suspension, two-wheel
15 suspension, vehicle suspension.

16 The three of us talked
17 multiple times about how we could do
18 this, and we identified this invention
19 after, you know, much thought about kind
20 of problems we were trying to solve and,
21 you know, we determined that the
22 invention that this -- this patent
23 outlines would be a great -- a great help
24 to the rider and -- and the
25 circumstances. So, you know, we

1 collaborated together on the idea and
2 then we executed that idea as a team.

3 BY MS. MILUNSKI:

4 Q. And how would you describe
5 the technology that's created by the '223
6 patent?

7 A. I would describe it as an
8 adjustable bottom out cup. And that's --
9 yeah, that's a broad term, right?
10 It's -- it's a -- that's the best single
11 way to describe it. And that's what sets
12 it apart from -- from the art, previous
13 art that's referenced.

14 Q. And you talked about the
15 collaborative effort between the three
16 named inventors, but was there a specific
17 idea or -- or something that you brought
18 to the table specifically?

19 A. Well, I'd have to -- this --
20 this is tough, right, Sarah, this was
21 many, many years ago. But if you picture
22 an engineering team, you know, in a room
23 with a white board thinking about how to
24 solve a problem, that's the kind of
25 discussion that was going on and it was

1 the three us that were having that
2 discussion and trying to figure out how
3 to solve this problem.

4 Q. Do you recall what -- and
5 does Christopher Paul Cox, does he go by
6 Paul?

7 A. He goes by Paul, that's
8 correct.

9 Q. Yeah. And -- and so what
10 did -- what did Mr. Cox contribute, if
11 you can recall?

12 A. So if you think about,
13 again, an engineering team and I was an
14 engineering manager and Paul and Everet
15 were engineers, we all kind of -- you
16 know, everybody's got their own thing
17 that they're really good at, right, or
18 the thing that they do, right? And in
19 this case between the three of us, Paul
20 was the -- the better CAD designer and
21 designer in general. And so I hope I'm
22 answering your question. Paul was the
23 one who had to draw the lines on the
24 paper once we, you know, thought of the
25 idea together and figured it out. Everet

1 certainly is a huge part of that. He's
2 got a master's degree in -- in shock
3 absorber technology so, you know, his --
4 his contribution is more on that end of
5 it, right?

6 So, again, it's -- it's that
7 collaboration that allows you to execute
8 an invention like this and an idea. And
9 then my -- you know, my point of view, my
10 background as a mechanical engineer and
11 understanding the use cases here and what
12 we needed to do to -- to develop an
13 innovative product, right? So, again,
14 you know, it's -- it's this sort of
15 collaboration of three -- of three, you
16 know, engineers and designers.

17 Q. And you described
18 Mr. Ericksen's background, but do you
19 recall what he specifically contributed
20 to the group effort?

21 A. The engineering part of it
22 for sure and the idea -- the ideation, we
23 were -- we were thinking about how we
24 could do something that would help the
25 situation of a hard bottom-out with --

1 with different vehicle weights and
2 different rider weights and different
3 rider styles and different tracks. You
4 know, how could we really help that
5 situation of -- of a hard bottom-out
6 situation, and to get very specific on
7 exactly what he said 13 years ago that,
8 you know, let's do this or let's do that,
9 I -- I can't answer that question for
10 you.

11 Q. Okay. Mr. Ericksen said
12 that he came up with the primary idea
13 of -- of the adjustable hydraulic bottom
14 out.

15 Does that sound right to
16 you?

17 A. I mean, it's certainly
18 possible that as we were talking, you
19 know, someone said, well, let's make it
20 adjustable, and then it was like, yeah,
21 okay, that could work, but, you know,
22 we'll need X, Y, Z to do that, you know,
23 and that's sort of the process, right,
24 when you have three inventors. You
25 really can't point to one and say, you

1 know, one thing or the other. But then
2 you have to remember that when Everet --
3 if Everet said that, I'm sure he did
4 because you told me he did, but, you
5 know, it -- it was a collaborative
6 process and I'm sure if we talked to him
7 again, he would tell you the same so...

8 Q. And do you agree that the
9 '223 patent is not limited to bicycles?

10 A. Yes, yes. The intention of
11 this patent --

12 MR. MCCAULEY: Objection, calls
13 for a legal conclusion, but go ahead,
14 Mr. Allinger, finish your answer.

15 A. Keeping in mind that we were
16 trying to solve a problem, right, and --
17 and the problem we were trying to solve
18 at the time was related to two-wheel
19 vehicles, in particular, motorcycles,
20 but, you know, we know that motorcycles
21 and bicycles and --

22 (Reporter clarification.)

23 A. -- are very similar.
24 They're both two-wheel vehicles. And in
25 the case of, you know, what we do at Fox

1 is we try to make those vehicles work
2 very well in an off-road environment,
3 right?

4 BY MS. MILUNSKI:

5 Q. And when you guys came up
6 with this concept that's, you know, set
7 forth in the '223 patent, did you
8 research whether other vehicles had the
9 same or similar technology?

10 A. So, you know, when we were
11 developing this patent, we had to look at
12 prior art and, you know, I'm seeing a lot
13 of it listed here -- or references, I
14 guess that's the technical word, right,
15 references in the patent, but we also
16 knew our competitors and certainly some
17 of those references were Ohlins, Ohlins
18 patents, and some -- I'm hoping I'm
19 answering your question. So I'm
20 trying -- we're thinking about what's the
21 state of the art and -- and what we
22 could do that's more -- that's inventive
23 and helpful in addition to that.

24 I'm not sure I answered your
25 question, Sarah, so ask again if I did

1 not.

2 Q. Sure. So it sounds like you
3 looked at some of Ohlins' patents as you
4 were developing the technology that's
5 described in the '223 patent; is that
6 fair?

7 A. That's fair.

8 Q. Okay. Did you look at any
9 other patents other than Ohlins?

10 A. Well, when you -- when you
11 start -- when you look at Ohlins, you
12 kind of have to look back and that's --
13 there is a long list here, right, of
14 these references. I'm sure that we've
15 looked at them. I can't say I've looked
16 at all of them in great detail. We
17 definitely focused on kind of the current
18 state of the art. And I know -- if you
19 see these numbers, I mean, you can see
20 that they go way back, right? So Ohlins
21 was the main focus and what was being
22 done in the industry at the time, yep.

23 Q. And is Ohlins a competitor
24 of Fox's in the Powersports arena, if you
25 will?

1 A. Yeah, certainly at the time
2 and currently Ohlins is a -- is a -- is a
3 powersport -- you know, their heritage is
4 powersports, right, and so Ohlins and Fox
5 share a very similar, you know, history
6 in terms of how long they have been
7 companies, but also --

8 (Reporter clarification.)

9 A. -- history in terms of the
10 markets they address, yep.

11 BY MS. MILUNSKI:

12 Q. Okay. And does Ohlins also
13 have bicycle part offerings?

14 A. They do now and that's
15 fairly -- you know, that's in the last --
16 and I probably don't have this perfectly
17 right, but I'm going to say in the last
18 ten years, they've entered the bicycle
19 market.

20 Q. Okay. And other than
21 looking at prior patents, did you look at
22 any other vehicles, technology, anything
23 like that as part of your research into
24 what the state of the art was?

25 A. Well, keep in mind that at

1 the time, you know, we sold motorcycle
2 shock absorbers, right, both road bikes
3 and we actually sold motorcycle --
4 motocross shock absorbers, so we were
5 very -- very well-acquainted with the
6 other brands other than Ohlins, what
7 those riders needed, you know, what was
8 being done in the world to make them
9 faster and to make the performance
10 better. So I think that's a very general
11 answer, but I think you get it, right?
12 We were -- we were involved very heavily
13 in that industry at the time, yeah.

14 Q. And you agree that the '223
15 patent can apply to shocks on any type of
16 vehicle, whether they're two-wheel like
17 you were explaining with motorcycles or
18 bicycles, or four wheels, correct?

19 MR. MCCAULEY: Objection, calls
20 for a legal conclusion.

21 Go ahead, Mr. Allinger.

22 A. This particular patent, you
23 know, it outlines in -- in the -- what's
24 the -- I don't even know the right words.
25 We have the abstract and then you've got

1 sort of the problem statement and -- and
2 the solutions.

3 This -- this was with a
4 two-wheel vehicle in mind, right? This
5 was with the problem we were trying to
6 solve in mind. And so when I take --
7 when I think about the context of it,
8 it's definitely around motorcycles,
9 bicycles. That was our line of thinking
10 at the time. It wasn't thinking about
11 broadly that we can use this everywhere.
12 We were thinking about how we solve this
13 problem, and this problem is unique to --
14 to two-wheel vehicles and to -- and
15 particularly to motorcycles and motocross
16 because, again, like I mentioned, they --
17 that's very different -- if you think
18 about a motorcycle or bicycle, they are
19 vehicles that have weight that's similar
20 to the rider, right? So the rider has a
21 significant contribution to the way the
22 whole system performs, whether it's a
23 bicycle on a downhill course or riding
24 anywhere, or a motorcycle, like in this
25 case, on a motocross track. So the

1 adjustability part of it, and the reason
2 we went after this is because you have
3 different rider weights and different
4 skill levels having a huge effect on the
5 overall performance of the system.

6 And when you talk about a
7 car, you know, the weight of a person
8 versus the car is a much less significant
9 thing. So we weren't thinking about four
10 wheels. We will were thinking about two
11 wheels when we solved this problem.

12 BY MS. MILUNSKI:

13 Q. Let me ask you this: Is the
14 patent itself limited to a two-wheeled
15 vehicle?

16 MR. MCCAULEY: Same objections.

17 Go ahead, Mr. Allinger.

18 A. I mean, the word "limited"
19 is interesting. The problem we were
20 trying to solve was -- was for a
21 two-wheel vehicle. You know, I've seen,
22 you know, you can -- you can make
23 stretches, but that's not -- that's not
24 really what -- what the -- the -- you
25 know, if someone read this that was a

1 shock designer, they would understand
2 that this is -- this is designed for
3 the -- the intent that I have talked
4 about.

5 BY MS. MILUNSKI:

6 Q. And what I'm -- you
7 understand what claims are in a patent,
8 Mr. Allinger, correct?

9 A. I do, yes.

10 Q. Are the claims limited to a
11 two-wheeled vehicle?

12 MR. MCCAULEY: Objection, asked
13 and answered, calls for a legal
14 conclusion.

15 Go ahead, Mr. Allinger.

16 A. I mean, we can look at them
17 again one by one. I -- I don't see words
18 specifically in the claim that say that,
19 right.

20 BY MS. MILUNSKI:

21 Q. Okay.

22 A. But, again, in the context
23 of the whole -- you got to kind of look
24 at the whole thing, right. And, I mean,
25 we're all -- that's the world we're in.

1 And this patent was -- you know, if a
2 patent was just a bunch of claims sitting
3 there, that's -- there's no context,
4 right, so when I think about it -- when I
5 think about it, and when I think about it
6 as an engineer or a designer or someone
7 who wanted to, you know, learn what was
8 being taught here, you got to read the
9 whole thing, so I guess that's my point.

10 Q. So is it your understanding
11 that this patent wouldn't apply to a
12 shock absorber on a car?

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

15 Go ahead, Mr. Allinger.

16 A. So -- so cars -- the
17 particular -- let's talk about off-road
18 cars, right, so that's something that
19 we're -- we understand, off-road cars and
20 trucks. Do off-road cars and trucks have
21 bottom-out situations when they're off
22 road? Of course, they do. We have
23 technologies at Fox where we have bypass
24 tubes and -- and -- and compression
25 adjusters and those sort of things that

1 handle similar kinds of problems.

2 BY MS. MILUNSKI:

3 Q. And -- and my question was,
4 do you understand that the '223 patent
5 could apply to shock absorbers in those
6 situations for a four-wheeled vehicle in,
7 for example, the off-road context that
8 you were just referring to?

9 MR. MCCAULEY: Same objections.

10 Go ahead, Mr. Allinger.

11 A. I believe you could take
12 technologies that cross many different
13 shock absorbers technologies and in the
14 right circumstances, they could be
15 useful. So, yes.

16 BY MS. MILUNSKI:

17 Q. So your answer is yes, you
18 believe the '223 patent could apply to a
19 four-wheeled vehicle?

20 A. I do believe that, yeah.

21 Q. Okay. Are you aware that
22 the same technology that's described in
23 the '223 patent was used on vehicles in
24 rally car races in the 1990s?

25 MR. MCCAULEY: Objection, lacks

1 foundation.

2 Go ahead, Mr. Allinger.

3 A. I don't believe that rally
4 cars used adjustable bottom out cups in
5 the 1990s. I -- I don't know that -- I
6 don't believe that to be the case. I
7 mean, our patent is about an adjustable
8 bottom out cup so...

9 BY MS. MILUNSKI:

10 Q. Did you do any research when
11 you were developing the '223 patent into
12 what technology was currently being used
13 in four-wheeled vehicles or were you
14 focused only on two-wheeled vehicles?

15 A. We were primarily focused on
16 two-wheel vehicles, but, again, Fox was,
17 you know, more broadly in a lot of these
18 markets and we had no -- I had no
19 knowledge of an adjustable bottom out cup
20 being used in a rally, whatever you
21 mentioned, a rally car in the 1990s.

22 Q. Did you do any research into
23 rally cars at the time?

24 A. The research that we would
25 have done at the time wouldn't -- so

1 rally car shocks are -- you know, I'm not
2 a rally car shock expert but rally --
3 because we -- Fox is not a rally shock
4 company, but the shock absorber company
5 that make shocks for rally cars are most
6 likely the same ones that we are pretty
7 acquainted with technologies. So I would
8 have to say that if there is an
9 adjustable bottom out cup in a rally car
10 in the 1990s, that we would have known
11 about that.

12 Q. Okay. Did you e-mail back
13 and forth between yourself and -- and
14 the -- Mr. Cox and Mr. Ericksen about the
15 invention that's claimed in the '223
16 patent?

17 A. Did we e-mail back and
18 forth? Again, right, so, again, we're
19 talking 13 years ago so -- and we're
20 talking Fox being a much smaller -- a
21 much, much smaller company. I mean, I
22 don't know. I don't -- I don't recall.
23 I would -- I would say that most of our
24 discussion at that time since we were
25 probably sitting very close together

1 was -- was very much, you know, just a
2 collaboration at that point. I doubt we
3 went back and forth because we were in
4 this -- you know, like I said, I could
5 see them, where they were sitting so I
6 doubt we talked much on e-mail. I --
7 doesn't make sense.

8 (Cross talk.)

9 A. I was just going to add the
10 whole world was much smaller back then,
11 but I didn't need to add that so...

12 BY MS. MILUNSKI:

13 Q. You know, more recently in
14 more modern times if there is a major
15 technological development at Fox, would
16 you expect there to be e-mails about that
17 subject matter?

18 MR. MCCAULEY: Objection, vague.

19 Go ahead.

20 A. So we'll call it modern
21 times, right? So we've -- we've talked a
22 lot about what we should talk about, what
23 we shouldn't talk about, and -- and how
24 we should do it. And when it comes to
25 IP, we're extremely careful and so I --

1 I -- I would say I highly doubt that
2 there's a lot of e-mail conversation
3 going on talking specifically about
4 inventions and ideas that we think we
5 could patent.

6 BY MS. MILUNSKI:

7 Q. Okay. So why don't you --
8 you still have Exhibit 48 on your screen,
9 right?

10 A. That's correct.

11 Q. Okay. Can you go to Fox --
12 and I'm just going to refer to the last
13 label so I don't have to put in six zeros
14 here so Fox 5 and it's got figures 3A and
15 3B on it. Let me know when you're there.

16 A. Oh, Fox 25. I see down in
17 the bottom corner --

18 (Cross talk.)

19 BY MS. MILUNSKI:

20 Q. The Bates number.

21 A. Okay. I see figures 3A and
22 3B, yep.

23 Q. And can you identify for me
24 the compression chamber on figures 3A and
25 3B?

1 A. The compression chamber; is
2 that what you said?

3 Q. Yes.

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

6 Go ahead, Mr. Allinger.

7 A. So when I think about
8 compression -- so a compression chamber
9 so -- when we think about compression
10 chambers as shock absorber designers,
11 when the -- when the -- because these
12 shocks are complicated, Sarah, right,
13 there's a lot of paths for oil, right?
14 When the -- when the shaft is going into
15 the shock, everything that is being
16 compressed as a result of that activity,
17 I think of as the compression chamber --
18 or -- or I think of as compression. When
19 I think of compression chamber as a -- as
20 a -- as a designer, I think about the
21 kind of the main portion in the cylinder
22 below the main piston, but -- but -- but
23 I do recognize that in a compression
24 stroke, the entire -- the entire mass of
25 oil that's below the piston, right,

1 that's being pushed by the piston is
2 being compressed.

3 MR. MCCAULEY: Sarah, we've been
4 going about an hour. When you get to
5 a reasonable spot, can we take a
6 break?

7 MS. MILUNSKI: Okay. We've --
8 we've actually only been going 30
9 minutes since the last time we took a
10 break.

11 MR. MCCAULEY: That was wasn't
12 what I would call a break for
13 Mr. Allinger. That was a stressful
14 period trying to get him wired up on
15 Exhibit Share.

16 MS. MILUNSKI: Okay.

17 BY MS. MILUNSKI:

18 Q. If I could just get you
19 then -- do you -- do you see on figures
20 3A and 3B, Mr. Allinger --

21 A. I do.

22 Q. -- that there are a bunch of
23 different numbers?

24 A. I see those, yes.

25 Q. And how they point to

1 different parts of what's described in
2 the '223 patent, correct?

3 A. Yes.

4 Q. Okay. Is there a number
5 that you can point to on here that you
6 associate with the compression chamber?

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

9 A. If someone asked me what the
10 compression chamber was, I would say,
11 again, with -- with the -- I'm going to
12 add some more words to -- to my answer,
13 but my general answer is 222 and 220, but
14 I do recognize that the channel or the
15 areas that -- you see 280 there and 281,
16 they're not -- not what they're pointing
17 to, but where they're at, there's oil in
18 there that's being compressed also, but I
19 would call the compression chambers
20 where -- where 222 and 220 are pointing.

21 BY MS. MILUNSKI:

22 Q. Okay.

23 A. In general -- in general,
24 what I would say, in general.

25 Q. And can you also point out

1 the numbers to me for the rebound
2 chamber?

3 MR. MCCAULEY: Same objections.

4 A. Not really in these pictures
5 because I think of the rebound chamber as
6 the portion of oil on the other side of
7 the piston, right? And I'm not seeing
8 that main piston in these pictures. I
9 kind of see it in 3B, but I don't see a
10 number sort of pointing to it. So when I
11 think -- any shock -- anybody that makes
12 the designs or understands shocks would
13 think of the rebound chamber as kind of
14 being to the right in a rebound stroke so
15 that's trying to extend the shock.

16 In 3B, it would -- it would
17 be this -- the chamber to the right of
18 the screen, to the right of that main
19 piston that's being called -- there's
20 nothing pointing to it actually. There's
21 no number. But you -- you -- you know
22 what I'm talking about. There's shims on
23 both sides of it. It's the piston on the
24 right side of the 3B picture.

25 BY MS. MILUNSKI:

1 Q. Sure.

2 (Cross talk.)

3 A. I stopped, that was it.

4 BY MS. MILUNSKI:

5 Q. If you go to the next page,
6 you can -- well, actually, two pages
7 down, you can see figure 4.

8 Do you see the rebound
9 chamber on figure 4?

10 A. Figure 4, so that is page 6,
11 221. Again, 221 is -- yeah, is what a --
12 a shock absorber person like myself or
13 Everet or Paul or anyone who understands
14 would call the rebound chamber in an
15 extension stroke.

16 Q. Okay. And if you could also
17 just point out for me what number is
18 associated with the bottom out cup.

19 MR. MCCAULEY: Objection, vague.

20 A. Numbers associated with the
21 bottom out cup, I think there's more than
22 one. You need a bottom out piston so I
23 guess that's -- nothing's pointing to it.
24 Let's find the right figures. I guess
25 275 is the cup. That -- that sounds

1 right to me. We have a secondary or --
2 the second piston that goes into the cup,
3 which there's nothing pointing to it.
4 Let me look on the other figures. I'm
5 sure one of them must point to it. 251
6 looks like it's pointing to the -- a part
7 of that piston that enters into the cup
8 to create the -- the adjust -- the force
9 that we're adjusting as the invention.
10 We've got the adjuster itself in figure
11 3A. That's the bottom out cup adjuster.
12 I believe those are numbers 350, 360,
13 355, 370, 400. I've talked about 275
14 already.

15 We also have the blow off --
16 there's a blow-off circuit in there.
17 Figure 3B I'm looking at right now.
18 Yeah, figure 3B, the part -- part of it
19 is this blow-off circuit also, which I
20 believe are numbers 275, 301 -- 305, I
21 believe that's pointing to the spring in
22 that blow-off circuit. I may not have
23 got them all, but you get the idea. If
24 you want to ask me more specifics, please
25 do.

1 MR. MCCAULEY: Sarah, I asked
2 for a break about ten minutes ago.

3 MS. MILUNSKI: Okay. We'll take
4 a break. Five minutes okay?

5 MR. MCCAULEY: Can we do ten?

6 MS. MILUNSKI: Sure.

7 MR. MCCAULEY: Thank you.

8 THE VIDEOGRAPHER: Off record,
9 9:19 a.m.

10 (Whereupon, a brief recess is
11 taken.)

12 THE VIDEOGRAPHER: We're back on
13 record at 9:35 a.m.

14 BY MS. MILUNSKI:

15 Q. Okay, Mr. Allinger, do you
16 still have the '223 patent up in front of
17 you?

18 A. I do, Exhibit 48, correct?

19 Q. Yeah. 48, you've got it.

20 If you could go now down to
21 the last couple of pages, so Fox 11.

22 A. Okay.

23 Q. And take a minute for me
24 just to read claim 1. Let me know when
25 you're ready.

1 A. You want me to read claim 1,
2 yep, okay. Okay.

3 Q. How many pistons are in
4 claim 1?

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

7 Go ahead, Mr. -- Mr. Allinger.

8 A. So claim 1 is talking about
9 a shock absorber with a bottom out cup
10 and a bottom out cup -- so you have a
11 main piston and then you have a piston
12 that goes into the bottom out cup.
13 That's the way I read that one.

14 BY MS. MILUNSKI:

15 Q. So do you believe that claim
16 1 describes one or two pistons?

17 A. I believe that it describes
18 a shock absorber that has a main piston
19 and -- a second -- I want to call it a
20 secondary piston or some -- something
21 that goes into a bottom out cup that
22 gives you that extra compression force.
23 You need that -- if you have a bottom out
24 cup, you need that, so that's the --
25 that's what's implied there in claim 1.

1 Q. Is there an actual reference
2 other than the implication to a second
3 piston in claim 1?

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

6 Go ahead, Mr. Allinger.

7 A. I -- I think it's -- my
8 answer stands. I think it's implied when
9 you have a bottom out cup that you would
10 have a piston or some -- something that's
11 going into that cup to create the extra
12 force. Otherwise, you wouldn't have one.
13 Or you wouldn't have one without the
14 other so I believe that it's in there.

15 BY MS. MILUNSKI:

16 Q. Okay. And how many pistons
17 are described in claim 11?

18 MR. MCCAULEY: Same objection.

19 Go ahead, Mr. Allinger.

20 A. Claim 11. All right. I'm
21 going to -- I'm going to take a minute to
22 read it. There, I've read the claim and
23 you -- I believe it's -- it's the same
24 answer. There's a -- there's a bottom
25 out cup being talked about in -- in a

1 shock absorber, and a shock absorber
2 would have a main piston and a -- some
3 sort of secondary piston, then it goes
4 into the bottom out cup.

5 BY MS. MILUNSKI:

6 Q. Okay. So you believe that
7 claim 11 has -- describes two pistons?

8 A. Yes, I do -- I do believe
9 that.

10 Q. Okay. And what about claim
11 17, how many pistons are described there?

12 MR. MCCAULEY: Same objection.

13 Go ahead, Mr. Allinger.

14 A. I need to read 17 so...
15 So when I read 17, it's
16 actually -- it's -- it's building --
17 right -- it's building on some previous
18 patents. It's adding in -- it's talking
19 again like -- like claim 1 and claim 11
20 did, about a shock absorber with a bottom
21 out cup, so it's still talking about
22 that. So that -- my answers for those
23 two is very similar here, and then it's
24 adding a blow-off valve, which we had
25 talked about before the break, which I

1 hope I got the numbers right. It's
2 talking about that blow-off valve, and
3 then it's also adding in in the last
4 portion of that claim the path for an
5 adjustable metering rod. So, again, it's
6 build -- it's building up on -- on
7 earlier claims.

8 BY MS. MILUNSKI:

9 Q. Right. So my question was:
10 How many pistons are described in claim
11 19?

12 MR. MCCAULEY: 19?

13 A. You said 17.

14 BY MS. MILUNSKI:

15 Q. I'm sorry, 17, 17.

16 MR. MCCAULEY: Same objections.

17 Go ahead, Mr. Allinger.

18 A. Yeah, so in -- in the
19 first -- I believe I have -- have this
20 right. In the first two, it's describing
21 something similar as claim 1 and claim 11
22 and then it's adding in a -- it's adding
23 in the blow-off, which you could say that
24 a blow-off valve -- I'm going to say
25 that's a blow-off valve. So it's adding

1 in the blow-off valve, so I'm not going
2 to include that. I wouldn't think of it
3 as a piston necessarily if I was a
4 designer looking at this, the blow-off
5 valve.

6 And then in the last
7 paragraph, the metering rod is not adding
8 in another piston. It's a metering rod,
9 an adjuster for compression and for
10 rebound flow. So I think the answer's
11 the same, two pistons. I think that's
12 how anyone that was reading this would
13 interpret that.

14 BY MS. MILUNSKI:

15 Q. Okay.

16 (Cross talk.)

17 A. As a shock designer, I think
18 that's how you would interpret that.

19 BY MS. MILUNSKI:

20 Q. Just so I'm clear then, you
21 believe that claims 1, 11 and 17 all
22 describe two pistons; is that correct?

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

1 Go ahead.

2 A. I think that -- please ask
3 the questions again. I suppose compound
4 means you had two questions in there. So
5 I'm not -- if you had two --

6 BY MS. MILUNSKI:

7 Q. Yeah, I understand that your
8 attorney is trying to signal things to
9 you and that you're trying to interpret
10 his signals, but if you could just listen
11 to my question.

12 A. I'm not. I just -- when I
13 heard "compound," I just -- I thought
14 maybe there was two questions and I
15 thought I only heard one. That's all.

16 Q. Sure.

17 A. Yeah.

18 Q. Yeah, I did only ask one
19 question.

20 So I just want to confirm
21 that your prior testimony that -- it is
22 your testimony that claims 1, 11 and 17
23 all describe two pistons?

24 MR. MCCAULEY: Same objections.

25 Go ahead, Mr. Allinger.

1 A. I -- I believe that's
2 correct, yes, in the way I've
3 characterized it, yeah.

4 BY MS. MILUNSKI:

5 Q. Okay. So the fact that in
6 claim 17 it describes a first piston and
7 a second piston doesn't change your
8 understanding that claims 1 and 11, which
9 only refer to a single piston, that they
10 all have two pistons according to you; is
11 that correct?

12 MR. MCCAULEY: Same objections.

13 Go ahead, Mr. Allinger.

14 A. Again, I think reading -- I
15 think reading this, it's very clear if --
16 if -- if we're talking about specific
17 subtleties in language. Again, as it --
18 I think as someone who's reading this,
19 it's very clear to me what -- what this
20 is trying to say or what this is saying,
21 and it's -- it's teaching me that when
22 you have a bottom out cup, you have to
23 have some way to generate the force in
24 that bottom out cup. And it requires a
25 second piston to do that.

1 BY MS. MILUNSKI:

2 Q. And that second piston is
3 explicitly described in claim 17,
4 correct?

5 A. In claim 17 in the -- you
6 know, the -- what looks like to be the
7 second paragraph, the second major
8 paragraph, there is a specific term
9 "second piston," yes.

10 Q. Okay. And that specific
11 term is absent from claims 1 and 11; is
12 that true?

13 A. I have to go -- just take a
14 look here. In 17, you know, there's --
15 there's the -- so claims 1 and 11 -- I
16 said 17, I meant 11 -- claims 1 and 11
17 both reference bottom out cup and as I
18 mentioned before, you need to have some
19 way to generate force in that bottom out
20 cup, otherwise, you wouldn't talk about a
21 bottom out cup.

22 In claim 11, they are
23 mentioning, again, it's -- it's the same.
24 It's -- the word second -- the word used
25 in 17, "second piston," is not explicitly

1 used in claim 1 or claim 11, but it's
2 implied.

3 Q. Okay. And take a look at
4 claim 8 for me, if you could. And do you
5 see the reference to a fluid path in
6 claim 8?

7 A. Okay. So claim 8 is the --
8 is the damper of claim 7. And 7 is 6 and
9 6 is 5 and 5 goes back to 1, okay. So
10 I'll have to think out loud or think
11 about this. Okay.

12 Q. Well, my question was simply
13 that claim 8 references a fluid path; is
14 that correct?

15 A. It reference -- claim 8 has
16 the words "fluid path," that's correct,
17 yes.

18 Q. Okay. My next question is
19 probably the one you're going to need to
20 think about.

21 A. Okay.

22 Q. Is claim 8's fluid path a
23 claim in claim 5 between the cup and the
24 rebound portion of the chamber or is it
25 the fluid path in claim 1 that's formed

1 in the bottom out cup for providing fluid
2 communication to the compression portion
3 of the chamber?

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

6 Go ahead, Mr. Allinger.

7 A. Okay. So I want to restate
8 your question. Is the fluid path in
9 claim 8 the adjuster -- the bottom out
10 cup adjuster that's -- that's the user
11 adjustable or is it something else; is
12 that your question?

13 BY MS. MILUNSKI:

14 Q. So my question is, is the
15 claim 8's fluid path --

16 (Cross talk.)

17 BY MS. MILUNSKI:

18 Q. -- is the fluid path
19 described in claim 8, is that the fluid
20 path that is described in claim 5 or is
21 it the fluid path that is described in
22 claim 1?

23 MR. MCCAULEY: Same objections.

24 Go ahead, Mr. Allinger.

25 A. Okay. Let me just -- give

1 me a second to read through, please.

2 Okay. So claim 5, I'm going to go step
3 by step the way I would think about this.
4 I think the way that you'd think about it
5 reading it. Claim 5 -- 5 is adding a
6 fluid path between the cup and the
7 rebound portion of the chamber.

8 And then claim 6 says
9 there's a check valve and it's
10 adjustable, that rebound portion of the
11 chamber, that fluid path to the rebound
12 portion of the chamber. And so it's --
13 it's -- it's adding complex -- it's
14 adding another layer on to the rebound
15 portion.

16 Claim 7 is talking about a
17 check valve so it's, again, taking that
18 fluid path and adding another element,
19 which is the check valve so that when you
20 get to claim 8, I believe it's talking
21 about that first -- in claim 5, the --
22 fluid -- rebound chamber form --
23 (reading) -- I'm sorry, I'm sorry. I'm
24 talking -- I'm thinking. Give me a
25 second, please.

1 Okay. This is talking about
2 the fluid path through the shaft. That's
3 what I believe claim 8's talking about.
4 The -- that's that second reflow path.
5 Because it's building on these other
6 claims that are talking about that
7 particular feature.

8 BY MS. MILUNSKI:

9 Q. Do you believe it's
10 referring to the fluid path that's
11 described in claim 5?

12 MR. MCCAULEY: Same objections.

13 Go ahead.

14 A. Yes, yeah, I do, I do. I
15 think it's the rebound reflow path.

16 BY MS. MILUNSKI:

17 Q. Okay. And you understand
18 that claim 5 relies on claim 1, correct?

19 A. Yeah, when I think of the
20 sequence we just went through and I think
21 of claim 1, 5, 6, the way I'm reading it
22 and the way I believe that it was written
23 and should be interpreted is that it's
24 building on -- on claim 1, but it's
25 adding a feature that claim 1 doesn't

1 talk about. So I -- I feel like after
2 that, that's the feature that they're
3 building on.

4 Q. And -- and is there a
5 separate fluid flow path that's described
6 in claim 1?

7 MR. MCCAULEY: Same objections.

8 Go ahead, Mr. Allinger.

9 A. Well, the fluid flow path
10 that's described in claim 1 has to do
11 with the bottom out cup. That's the way
12 I read it, yeah, which is not the same --
13 it's not the same fluid path. The fluid
14 path in claim 1 is talking about the
15 adjust -- yeah, it's talking about the
16 adjustability of the captured fluid in
17 the bottom out cup.

18 And in claim 7, it's talking
19 about this extra fluid -- well, in
20 claim 8, it's talking about the extra
21 fluid that they start to introduce that
22 fluid path as a notion in claim 5, yeah,
23 and then they build on it through
24 claim 8. That's the way I read it and I
25 think that's the way that, you know, that

1 this -- this narrative is -- is teaching
2 the invention.

3 BY MS. MILUNSKI:

4 Q. Okay. I'm going to mark
5 another exhibit for you. This has been
6 previously marked as 70.

7 THE COURT REPORTER: Are you
8 going to mark it or just add it?

9 MS. MILUNSKI: I'm -- I'm going
10 to -- it's in the folder.

11 A. Okay. So --

12 THE COURT REPORTER: Hold on,
13 please. I just want to know if you
14 want the record to reflect you're
15 marking it.

16 (Cross talk.)

17 MS. MILUNSKI: It's been
18 previously marked.

19 THE COURT REPORTER: Okay, thank
20 you.

21 MS. MILUNSKI: I'm just putting
22 it in the folder so that the witness
23 has easy reference.

24 BY MS. MILUNSKI:

25 Q. So it should be there now,

1 Mr. Allinger.

2 A. Is that Exhibit 70?

3 Q. Correct.

4 A. Okay.

5 Q. And do you recognize this as
6 the notice of Videotaped Deposition of
7 Plaintiff Fox Factory, Inc. Pursuant to
8 Federal Rule of Civil Procedure 30(b)(6)?

9 A. I'm reading all that. I've
10 seen so many of these documents. They
11 all -- they start to all look the same --
12 so I -- I see what you've put here and --
13 and you read what it says, yeah.

14 Q. Okay.

15 A. I understand, yep.

16 Q. Have you seen this document
17 before that was previously marked as
18 Exhibit 70?

19 A. I'm sure I've seen it, but I
20 have not studied it, Sarah. There's just
21 a lot of these documents that look very
22 similar so...

23 Q. Do you understand that
24 you've been designated as Fox's corporate
25 representative for topics 1, 3, and then

1 5 through 14 that are in Exhibit 70?

2 A. Just -- just let me look at
3 it real quickly. So I believe that this
4 is listing out the topics that I needed
5 to prepare for, correct?

6 Q. That -- that is what I would
7 have expected.

8 A. Yep. So my -- so, yes, is
9 in my answer.

10 Q. Okay. And are you prepared
11 to answer questions about each of those
12 topics numbers 1, 3, and 5 to 14 today?

13 A. Yes, I am.

14 Q. Okay.

15 A. Then again -- again,
16 these -- Sarah, these -- these documents
17 look -- I'm not trying to be a pain, but
18 they look really similar all the time and
19 when you just throw them out there, I --
20 I -- you know, I'd have to look at them,
21 I'm sorry, but there's a lot to --

22 (Cross talk.)

23 BY MS. MILUNSKI:

24 Q. Absolutely. Take your time
25 looking at the documents.

1 So for topics 1 and 3
2 specifically, which are, "Fox's efforts
3 to promote and market products purporting
4 to use the claimed inventions of the '223
5 Patent," and, "Fox's sales of products
6 purporting to use the claimed inventions
7 of the '223 Patent," what did you do
8 specifically to prepare to testify
9 regarding those two topics?

10 A. So the '223 patent, we're
11 still talking about the bottom out cup,
12 we're still talking about something that
13 was done by Fox many years ago. So my
14 preparation, a lot of my preparation was
15 thinking back to what we did, right?

16 And, again, as I mentioned
17 earlier, I wasn't very, very much
18 intimately involved in -- in us
19 developing and selling this product so my
20 preparation was -- was, you know, trying
21 to get my -- my brain back 13 years ago
22 and remembering what all the things that
23 we did to get to where we are today so...

24 Q. Okay.

25 A. And I think that's adequate

1 and that's probably about the best I
2 could do, right?

3 Q. Did you look at any
4 marketing or promotional materials that
5 Fox created relating to the '223 patent
6 or the Podium RC3 shock?

7 A. Marketing-wise, I looked at
8 a media review, right? That's the
9 Motocross Action article by Jody Weisel,
10 I believe, one that we were real proud
11 of, one that stuck out in my mind. I
12 definitely reviewed that one. Short of
13 that, again, you know, Fox being a much
14 smaller company 13 years ago in terms of
15 marketing material and those sort of
16 things, this was an aftermarket product,
17 I -- I didn't have anything to review in
18 terms of that, but I do know what we did.
19 I remember what we did.

20 Q. When you say you "remember
21 what we did," what are you referring to?

22 A. You -- you had asked about
23 marketing and -- I believe you had asked
24 about marketing and testing and sales of
25 the product and that's what I'm referring

1 to.

2 Q. Yeah. My question was about
3 whether you looked at any documents that
4 Fox created of promotional or marketing
5 materials relating to either the '223
6 patent or the product that Fox ultimately
7 put on the market practicing on the
8 claims that are described therein.

9 A. I didn't review any of those
10 materials other than the article that I
11 told you about.

12 Q. Okay. And did you look at
13 any sales documents for Fox's sales of
14 the Podium RC3 shock?

15 A. I did not.

16 MR. MCCAULEY: Objection, lacks
17 foundation.

18 Go ahead, Mr. Allinger.

19 A. I answered the question.

20 BY MS. MILUNSKI:

21 Q. Which of Fox's products do
22 you understand used the claimed invention
23 in the '223 patent?

24 A. I believe it to be the
25 Podium RC3 shock that we've been talking

1 about today.

2 Q. And what years did Fox sell
3 the Podium R -- RC3 shock?

4 A. So I believe we started 2009
5 and for several years after that, two to
6 three years after that.

7 Q. So 2009 to either 2011,
8 2012; is that accurate?

9 A. Somewhere in that range is
10 probably close, yep.

11 Q. And what are motocross
12 bikes?

13 A. Motocross bikes -- so a
14 motocross bike is a motorcycle, so it has
15 a motor, and these days it could even
16 have an electric motor, but in those
17 days, it had a two-stroke motor, which is
18 a two-cycle engine. There were also
19 four-cycle engines, so very high-output
20 motors in a two-wheel motorcycle, with
21 long suspension travel at both the front
22 and rear wheel so it can handle jumps.
23 I'll use a term whoop-de-dos. Maybe you
24 guys know that term, I'm not sure, but it
25 goes like this (indicating), right?

1 They're good at handling that, berms, you
2 know, big jumps.

3 When you watch TV and you
4 see something called Supercross, that's a
5 dirt bike -- that's a motocross bike.
6 Yeah. They also ride them outside
7 though, so they ride them in open desert
8 riding at high speeds, you know, that
9 encounter bumps. And so that's the kind
10 of motorcycle that we're talking about
11 when you -- when you mention motocross.

12 Q. And was the Podium RC3 shock
13 used on motocross bikes only or also on
14 motorcycles?

15 A. Well, motocross bike is a
16 motorcycle, right, so that's -- that's a
17 subset of motor -- motorcycles is this
18 big balloon and motocross bikes are
19 inside there. We sold the RC3 for
20 motocross applications.

21 Q. Exclusively?

22 A. Yes.

23 Q. Okay.

24 A. I mean, we didn't tell
25 whoever bought it what they had to do

1 with it, but we designed it for that
2 application.

3 Q. I think you said earlier you
4 only sold the Podium RC3 shock on the
5 aftermarket.

6 Did I hear that correctly?

7 A. It was intended to be an
8 aftermarket sale. I don't believe we had
9 an OE customer. And one interesting
10 thing during that time frame, and even
11 now, when you mention motocross bikes,
12 right, those bikes are primarily, you
13 know, like Honda and Kawasaki and Suzuki,
14 Yamaha, KTM, and they come with -- they
15 come with suspension -- with shocks and
16 we made this shock to go on those bikes,
17 so did that -- I'm not sure that answered
18 your question.

19 Q. Does SRAM sell motocross
20 bikes or motocross bike suspension
21 parts -- parts?

22 MR. MCCAULEY: You're asking
23 about SRAM?

24 MS. MILUNSKI: Yes.

25 MR. MCCAULEY: Okay.

1 BY MS. MILUNSKI:

2 Q. To your knowledge.

3 A. I don't -- I don't think so
4 and when I -- when you say motocross
5 bikes, I'm talking about the bikes I just
6 talked about, right, motorcycles that you
7 ride off road, and I don't believe so.

8 Q. Okay. And you agree that
9 the Podium RC3 shock is the only Fox
10 shock that's ever practiced the invention
11 of the '223 patent, correct?

12 A. The only Fox shock that's --
13 that's practiced our '223 patent? That's
14 correct.

15 Q. And that shock has not been
16 sold for over a decade, right?

17 A. I -- again, I think we sold
18 it for -- we started 2009 and we sold it
19 for a few years after that, three, maybe
20 three years after that. If I say
21 definitively it hasn't been sold, I
22 would -- I would need to be careful
23 because we had distributors, right, and
24 we have people that buy shocks and, you
25 know, you can have this -- like, someone

1 could have had one of those shocks for a
2 year after that and still sold it or --
3 you know, I don't know. And those are
4 not Fox-owned companies, right? So you
5 know how when things go into the
6 aftermarket, right, you -- they're --
7 they're out in the world, right, so...

8 Q. Right. And you don't have
9 any insight into what those people are
10 doing or selling, correct?

11 A. If they're not Fox-owned,
12 then it's very difficult -- I mean, our
13 distributors that we're really close to,
14 our main distributors, we know what
15 they're doing for sure, but this
16 particular industry, especially at the
17 time that we're talking about was a lot
18 of mom-and-pop, right, shops across the
19 country that were buying shocks from us
20 so...

21 Q. So at least Fox hasn't made
22 a sale of the Podium RC3 shock in over a
23 decade; is that at least fair?

24 A. I -- I think it's probably
25 close, but it's not -- you know, I

1 can't -- I can't tell you exactly when we
2 stopped selling them. I'm going to say
3 it's two to three years after 2009.

4 Q. Okay. So that would be --

5 (Cross talk.)

6 BY MS. MILUNSKI:

7 Q. -- 2011 or 2012, correct?

8 A. '9, '10, '11, '12, yeah,
9 yes.

10 Q. And it's 2024 now, right?

11 A. That's right.

12 Q. So a decade would be 2014,
13 right?

14 A. Yes.

15 Q. Okay.

16 A. You're just trying -- you
17 want to -- sure, that is a reasonable
18 assumption, no doubt.

19 Q. Okay. Just -- and you can
20 see where I'm going with my question,
21 Mr. Allinger, but just so, you know,
22 Belle doesn't go crazy here.

23 A. I'm sure I can't -- I can't.
24 I'm not sure because --

25 Q. Just let me finish my

1 questions --

2 A. Okay.

3 Q. -- before you start to
4 answer. Okay.

5 So the -- so Fox has not
6 sold -- Fox itself has not sold the
7 Podium RC3 shock for over a decade; is
8 that correct?

9 A. I just can't say
10 definitive -- I would say in general we
11 stopped selling them, but I -- I mean, if
12 you're going to produce something and
13 say, look, you did sell those in 2015,
14 then I'm going to be -- you know, I don't
15 know that, right, necessarily, right?
16 We -- we got out of that business. We
17 sold our inventory and I'm telling you
18 that was two to three years after we
19 started.

20 Q. And Fox has other rear shock
21 product offerings that are on bikes, not
22 motorcycles but bikes; is that correct?

23 A. And bicycles, yes, yes.

24 Q. And what are those other
25 rear shock bicycle product offerings that

1 Fox offers currently?

2 A. Well, it's a long list. I'm
3 not sure I can give you an extensive list
4 of -- all of our rear shocks for
5 bicycles? Is that -- is that what you're
6 asking me?

7 Q. Yes.

8 A. Like, what are all our rear
9 shocks for bicycles?

10 (Cross talk.)

11 A. What are all our rear shocks
12 for bicycles?

13 BY MS. MILUNSKI:

14 Q. Yes.

15 A. I'm going to -- it's --
16 okay. So I'll -- we have series of
17 shocks. We have float shocks, DHX
18 shocks. We have DPS shocks. I mean, we
19 have a whole list. I think for me to
20 really be comprehensive, I should go to
21 our website and give you all the
22 different names because they -- they
23 change, you know, as time goes by, as
24 you -- as you guys know at SRAM, you have
25 a lot of different shocks with different

1 series and -- yeah, so we sell lots of
2 shocks for bicycles. I think that's the
3 point.

4 Q. And the float -- the DHX,
5 the DPS that you just listed, those are
6 all used on bicycles?

7 A. That's right.

8 Q. Okay. And none of those
9 series at any level, whether it's the
10 factory, the rhythm, across the spectrum,
11 none of them use the technology described
12 by the '223 patent, correct?

13 A. That's correct.

14 Q. And, in fact, Fox has never
15 sold a bicycle rear shock that practices
16 on the '223 patent; is that correct?

17 A. Yeah, to the best of my
18 knowledge, that's correct.

19 Q. And my understanding is that
20 Fox in this litigation has not produced
21 any sales data relating to the Podium RC3
22 shock; is that your understanding?

23 A. That's my understanding,
24 yeah, it was a long time ago and, like --
25 like I mentioned earlier in the

1 discussion, we changed our MRP and ERP
2 systems and all of our tracking systems
3 since then so it's really -- we don't
4 have that data.

5 Q. Do you have any independent
6 understanding of Fox's sales of the
7 Podium RC3 shock?

8 A. My understanding -- I
9 wouldn't be able to give you quantities,
10 but my understanding -- my level of
11 understanding there is that we had a few
12 small, as I mentioned earlier -- I'm
13 going to call it mom-and-pop, but they
14 are small operations that we sold that
15 shock to, to then sell to end customers
16 that owned motocross bikes.

17 Q. And so you stopped -- it
18 sounds like you got rid of all of your
19 Podium RC3 inventory after about three
20 years; is that correct?

21 A. That's what we attempted to
22 do, yeah. We -- when we were done, we
23 wanted to be done so...

24 Q. And why did you decide to
25 discontinue that shock?

1 A. Yeah, that's -- that's --
2 that's got a few layers to it. So as I
3 mentioned earlier, the -- the -- when we
4 talked about motocross bikes, the big
5 players are Yamaha, Honda, Kawasaki,
6 Suzuki, KTM and at that time, those bikes
7 came with pretty good suspension, right,
8 I would say -- I would say adequate
9 suspension for most -- most riders. And
10 as I mentioned also, this mom-and-pop
11 industry that has developed for
12 motocross, especially at that time,
13 started in the '70s, right? So the
14 motorcycle and dirt bikes -- dirt bikes
15 is another word for motocross bikes --
16 when dirt bikes were big, really big in
17 the '70s, lots of tracks, you know,
18 around the country where people would
19 ride their bikes, their dirt bikes also
20 became places where you would have this
21 mom-and-pop or this -- I'm going to call
22 it a guru that would do tuning, right?
23 And so these bikes came with shocks and
24 this guru, like, Sarah, if you bought a
25 dirt bike and you lived in Santa Clara,

1 you'd go to this dirt bike track, right?
2 And if you wanted it to perform for you,
3 then that local guru would take it and
4 do -- do their work on it, give it back
5 to you. So we had to compete with that,
6 right?

7 So we're offering a really
8 nice solution that's bolt on, but it was
9 expensive. And so you got your dirt bike
10 and you're ready to go ride and this
11 person at the track says, I can tune that
12 for you for -- I'll make up a number --
13 \$200, right? And it will be just right
14 for you. And so that's what you'll do
15 rather than spend, I don't remember our
16 sale price, but in the aftermarket, I'm
17 sure it was in the order of around \$1,000
18 at least, right? So you got to make that
19 choice and, you know, for us to have
20 volume, even though it was a great shock,
21 to compete with that guru and that local
22 track and that lower price point, it
23 just -- we weren't getting the
24 quantities. It wasn't worth us being in
25 that business because of that complexity

1 in that market.

2 Q. Okay. And I know you just
3 said that Fox didn't have any sales
4 volume, sales data relating to the Podium
5 RC3 shock.

6 Does it have any documents
7 showing the cost of production of that
8 shock or the -- or Fox's profit margin?

9 A. I'm sure -- I'm sure we
10 don't have the profit margin. The cost
11 might -- might, you know, if I -- maybe
12 it's in that Jody Weisel article, you
13 know, the retail price, that's about as
14 close as I can get. You know, if we can
15 find the aftermarket retail price
16 which --

17 (Cross talk.)

18 BY MS. MILUNSKI:

19 Q. My question --

20 A. I don't remember it exactly
21 was my answer.

22 Q. Okay. My question was a
23 little bit different, which is the cost
24 to Fox to create and manufacture it.

25 A. So -- you know, I -- I know

1 that wouldn't be in a document that we
2 could get our hands on for sure because,
3 you know, again, we talked about all the
4 reasons why back then we didn't have
5 those kinds of -- that kind of
6 information. But, you know, Fox as a
7 company at the time, they had to decide,
8 you know, where to spend their money.
9 And I'll -- and I'll tell you, we did
10 spend a fair amount of money developing
11 this. We were excited about it because
12 it kind of got Fox back to their heritage
13 of being a motocross -- you know, Bob
14 started the company with a motocross
15 shock in 1974.

16 So we were excited about
17 getting back into that -- that business
18 and, you know, that Motorcross Action
19 article really shows that the -- the --
20 the customer was excited -- the media at
21 least was excited about -- about us being
22 back in there so we did spend a fair
23 amount of time -- you know, Everet, we
24 talked about Everet earlier, but he went
25 to a lot of races and I did too where we

1 worked exclusively with athletes on that.
2 So there was a fair amount of money spent
3 to do testing, development, you know,
4 prototyping and all of that to get it
5 right, but -- but for me to give you an
6 exact number on the cost for us to -- to
7 do all those things, it's just not
8 available.

9 Q. Okay. And you brought up
10 the motocross article again. Do you view
11 the Motocross Action Magazine to be an
12 authoritative reviewer --

13 A. At the time --

14 Q. Hold on one second -- oh,
15 sorry.

16 -- of motocross suspension
17 offerings?

18 A. Yeah, at the time, in
19 particular, Motocross Action, Dirt Bike
20 Magazine, these were -- these were the
21 periodicals that we were, you know, very
22 focused on. And the editor, Jody, that
23 wrote that article for Motocross Action
24 was definitely one of the, you know,
25 influencers at the time, right? That's

1 my best way to describe him. And we were
2 very excited about that article. We were
3 very, you know, excited how happy he was
4 with -- with the way the shock worked
5 and, you know, how they saw it was a
6 really benefit for the customer and --
7 the end of my answer. Sorry.

8 Q. I'm going to introduce what
9 I've marked as Exhibit 114.

10 (Exhibit 114, Page Vault cover
11 sheet with Motocross Action Product
12 Test: Fox Factory KTM 450SXF Podium
13 RC3 Shock, Motocross Action Magazine,
14 marked for identification.)

15 A. Okay. I'm going to go back
16 and then refresh. Tell me when.

17 BY MS. MILUNSKI:

18 Q. It should be there.

19 A. Okay. Yeah. Got it.

20 Q. And this is a motocross
21 magazine -- Motocross Action Magazine
22 article.

23 Is that -- do you recognize
24 that?

25 A. Okay. This isn't the exact

1 one I was referring to, but it's another
2 one, but I do recognize it.

3 Q. And --

4 A. I haven't read -- I haven't
5 read -- read this one in a while, but I
6 recognize it.

7 Q. Okay. And it is reviewing
8 the Podium RC3 shock that practices on
9 the '223 patent, correct?

10 A. That's correct, yes, yeah.
11 Well, I'm saying that because I'm looking
12 at the picture and I see the name and all
13 that, right, yeah.

14 Q. Okay.

15 A. Yeah.

16 Q. And -- and if you look at
17 page 2 of the article, it discusses the
18 bottom out control.

19 Do you see that?

20 A. The paragraph there is ease
21 of use, right, and then the picture below
22 it has a shock with the green control --
23 bottom out adjust cup control. I see
24 that, yes.

25 Q. And you see the paragraph

1 that starts, "(3) Bottom Out Control"?

2 A. Right below that, I do see
3 that paragraph.

4 Q. And do you understand that
5 that bottom out control that is described
6 in this article, that's the technology
7 covered by the '223 patent?

8 A. I do, yes.

9 Q. And the reviewer discusses
10 the performance of the shock in this
11 article, right?

12 A. Yeah, right below, he
13 summarizes his test feedback, yeah, I see
14 that.

15 Q. Okay. And it states that,
16 "Excessive bottoming [out] (under certain
17 loads) has always been a KTM bugaboo. We
18 thought that the Bottom Out Control would
19 stop this, but it didn't."

20 Did I read that correctly?

21 A. The last sentence of the
22 Performance paragraph, yes.

23 Q. And in the end, the reviewer
24 said that this shock never -- just never
25 worked for us, right?

1 A. Okay. What's the -- under
2 What's The Squawk?

3 Q. Yeah.

4 A. Is that what you're reading
5 from? I see -- I see what you're
6 reading, but we should -- we should talk
7 more about it in context of the comments
8 you made about the KTM because this is
9 bringing back some other things that I
10 remember. So...

11 (Cross talk.)

12 A. -- point is here, but -- is
13 there another question, Sarah? I'm
14 sorry.

15 BY MS. MILUNSKI:

16 Q. Yeah. So the reviewer's
17 conclusion under What's the Squawk, he
18 says, "This shock just never worked for
19 us"; is that correct?

20 A. Yeah, he says that, but,
21 again, he says that in context to a KTM
22 motorcycle, and I'd like to talk about
23 that in particular. So we mentioned
24 earlier -- I mentioned earlier that the
25 motorcycles at the time, KTM was one of

1 them, so there's Yamaha, Suzuki, Honda,
2 Kawasaki, KTM. Those were the big dirt
3 bikes, motocross bikes at the time that
4 we made this RC3 specifically for.

5 Now, in the case of the KTM,
6 KTM uses a nonlinkage -- so we're going
7 to have to get a little technical -- uses
8 a nonlinkage rear suspension. Okay. So
9 that -- that motorcycle has a rear swing
10 arm. That's where the rear wheel's
11 attached, right? Rear wheel goes up and
12 down, swing arm is attached. It has a
13 rear swing arm with no linkage. So the
14 linkage is something that connects to the
15 swing arm. That is what actuates the
16 shock absorber.

17 And on moto -- motocross
18 bikes at the time, other than KTM, so
19 that's Yamaha, Suzuki, Honda, Kawasaki,
20 they all have linkages. And what a
21 linkage does is it changes the kinematics
22 of the vehicle so the -- how much the
23 wheel goes up and how much the shock gets
24 compressed is changed by the linkage. A
25 motorcycle like a KTM, it's almost one to

1 one, so as the wheel goes up, the shaft
2 goes into the shock. The only difference
3 between the travel of the wheel and the
4 amount of shaft that goes into a shock is
5 where the shock is mounted on the swing
6 arm, okay? So it's -- so it's a longer
7 travel situation.

8 If you look at a Kawasaki,
9 Honda, KT -- Kawasaki, Honda, Suzuki or
10 Yamaha, at the time, they used a linkage,
11 and so a linkage is much more favorable
12 than what we designed the RC3 to work
13 with better than the KTM motorcycle,
14 which doesn't use a linkage.

15 Since then, KTM has actually
16 started using linkages and it's -- it's
17 the reason that the RC3 didn't perform on
18 this particular motorcycle at this --
19 with this particular reviewer.

20 Q. Okay. At the end of the day
21 though, the reviewer said that the bottom
22 out control didn't stop the quote,
23 excessive bottoming out under certain
24 loads; is that correct?

25 A. For this motorcycle that

1 does not have a linkage, right?

2 Q. Okay. All right. You can
3 put that one aside.

4 So has Fox produced any
5 documents in this litigation showing
6 Fox's volume of sales, revenue cost or
7 profit for any of its mountain bike rear
8 shock offerings, like a float?

9 A. Are we -- when you said
10 "this litigation," we're still talking
11 about the bottom out -- the '223 portion?
12 Are we still on that subject?

13 Q. Well, I'm just asking if Fox
14 has produced any documents showing its
15 volume of sales revenue, costs or profit
16 for any of its mountain bike rear shock
17 offerings, none of which practice on the
18 '223 patent, correct?

19 A. Right.

20 MR. MCCAULEY: Objection, lacks
21 foundation, calls for speculation.

22 Go ahead.

23 A. So -- so I believe Fox
24 produced any document that we were asked
25 to produce and -- and provided to our

1 attorneys. And, you know --

2 (Cross talk.)

3 A. -- if that was asked for
4 then I'm -- I'm -- that's my answer. I
5 didn't study any of those -- if you want
6 to ask me questions about those
7 documents, I didn't look those documents
8 over before today in preparation for this
9 deposition.

10 MR. MCCAULEY: He's not
11 designated on that topic, Sarah.

12 MS. MILUNSKI: He is --

13 (Cross talk.)

14 MR. MCCAULEY: I'm not sure if
15 you're confused on that. He was
16 designated on sales documents related
17 to the Podium RC3, and he's already
18 told you that they don't exist. You
19 had another witness who testified at
20 length about other spreadsheets that
21 were produced in this case.

22 MS. MILUNSKI: I'm not confused.
23 And he would -- I asked about shocks,
24 not forks, and also Mr. Allinger was
25 designated as Fox's corporate

1 representative regarding Fox's
2 document production, which I believe
3 is topics 13 or 14.

4 MR. MCCAULEY: Well, that's
5 true, but that's a very general
6 question for a lot of document
7 requests. I think you need to ask him
8 a specific question. He doesn't have
9 360-degree knowledge of all the
10 documents that were produced.

11 MS. MILUNSKI: Well, let's do
12 this.

13 BY MS. MILUNSKI:

14 Q. Mr. Allinger, you were
15 designated to -- on topic number 14; is
16 that correct, if you look back at Exhibit
17 70?

18 A. Exhibit 70, okay. Let's
19 take a look.

20 Number 14 you said?

21 Q. Yes.

22 A. "Fox's document production
23 in this Action." Okay. That's a
24 pretty -- pretty general topic, so when
25 you -- when you asked me the question

1 earlier, I -- I mean, did we produce a
2 document, if we were asked to produce it,
3 we produced it and gave it to our
4 attorneys.

5 Q. What did you do to prepare
6 to testify today regarding topic number
7 14?

8 A. Being that it's -- so this
9 is the way I think of topic 14. Being
10 that it's very general, my preparation
11 would be -- this is -- this is a question
12 I'm -- to me -- I think -- I think to
13 anyone, this is a question on how we
14 produce documents, not specific questions
15 about sales numbers on a document. So...

16 Q. Okay. My --

17 A. Yeah.

18 Q. My question was: How did
19 you prepare to testify today? What did
20 you do? What did you review? Who did
21 you talk to, other than your attorneys,
22 to talk today about topic 14, if
23 anything?

24 A. I didn't do anything
25 specific on -- on number 14 other than

1 what I've mentioned.

2 Q. Have you reviewed Fox's
3 document production in this action?

4 MR. MCCAULEY: In its entirety?

5 MS. MILUNSKI: Sure.

6 A. I have not reviewed it in
7 its entirety.

8 BY MS. MILUNSKI:

9 Q. Have you reviewed any
10 portion of it?

11 A. I would -- I would say that
12 we were -- again, I would reiterate what
13 I said earlier, which was for document
14 production, if we were asked to produce a
15 document, we produced it and gave it
16 to -- gave it to Finnegan. If -- and so
17 by doing that, going and finding it is
18 the production of the document. Studying
19 the document, I did not do.

20 Q. Did you review any of the
21 documents that have been produced in this
22 litigation?

23 A. I'm sure there's -- I'm --
24 in all the -- in the times that we've
25 gone through everything that we've gone

1 through, I've seen a lot of documents, so
2 I'm going to answer I have reviewed
3 documents. If we want to talk
4 specifically about a document, let's --
5 you know, we can look at it and I can try
6 to answer questions on that document.

7 Q. Okay. So as part of that
8 review, have you seen any documents that
9 either you've provided to your attorneys
10 or have reviewed as part of your
11 preparation for today that shows Fox's
12 volume of sales of -- for any of its
13 mountain bike rear shock offerings like
14 the float?

15 A. I did not review those in
16 preparation for this deposition.

17 Q. Have you ever seen them?

18 A. I've seen a lot of things
19 like that in -- you know, I'm -- I'm a VP
20 at Fox in the bicycle group, but
21 specific -- I'm sure -- I'm sure at some
22 point I've seen it, but I -- if you want
23 to ask me a question about it, we need to
24 look at it. There's so many documents.

25 Q. Okay. Does Fox maintain any

1 documents showing its sales at any point
2 in time of the Podium RC3 shock?

3 MR. MCCAULEY: Does it now?

4 MS. MILUNSKI: Right.

5 A. No, we talked about this
6 earlier. We -- we don't have records
7 showing the sales of RC3 shocks. It
8 was -- it was too long ago. It's not
9 available, and I'm not sure it was kept
10 track of the way we keep track of things
11 now.

12 BY MS. MILUNSKI:

13 Q. So fair to say then you have
14 no knowledge, as you sit here today,
15 about what the volume of sales was, where
16 in the world they were sold, you know,
17 United States, foreign countries,
18 anything like that, other than your
19 previous testimony that you believe it
20 was an aftermarket offering and not
21 offered to any OEs?

22 MR. MCCAULEY: Objection,
23 compound.

24 Go ahead.

25 A. I think I have very -- I

1 have recollection knowledge of -- off all
2 of those -- we could ask -- we could talk
3 specifically and I could try to answer
4 some questions there, but I don't have
5 exact numbers. That's -- like I said, it
6 was a long time ago. Now, do I have a
7 notion of where we sold them? As I
8 mentioned earlier, yes. And volume would
9 be tough for me to -- to guess, but I
10 could -- you know, if you want to talk
11 about that more, let's -- let's -- ask me
12 some questions about it, but, again, I've
13 got -- I've got to remember those things
14 because we don't have documentation.

15 Q. Right. And if I did ask you
16 questions about volume, would it be a
17 guess?

18 A. It would be -- it would be a
19 guess, but I guess I could get it close
20 magnitude-wise. That would be the best I
21 could do, you know. We didn't sell
22 50,000 RC3s, right? I know that.

23 Q. You sold something far less
24 than 50,000; is that correct?

25 A. That's correct.

1 Q. Okay.

2 A. Again, so -- so I would like
3 to qualify that just a little, Sarah.

4 So, again, we talked about
5 that -- that industry at the time and
6 that industry at the time was -- is the
7 small sort of mom-and-pop industry, so if
8 you can get in your mind you're intro --
9 you're introducing an aftermarket product
10 that's very niche and very specialized
11 into a small -- a small segment, then you
12 kind of get the idea of what your volumes
13 would be.

14 We sold them in the U.S.
15 certainly to several distributors or
16 mom-and-pop-type -- type folks. We sold
17 them locally to some riders and
18 influencers. We worked with a couple of
19 racers and then they were -- I believe
20 one or two of our distributors in Europe
21 that may have gotten a sample once we
22 released the shock, right? So that's the
23 kind of business that we're talking about
24 here, right?

25 Q. How quickly after the Podium

1 RC3 shock was launched did Fox decide to
2 discontinue it?

3 A. Again, I'm going to say, you
4 know, so if -- if we ran for about two to
5 three years, we probably made that
6 decision, you know, two -- between two --
7 year two and three, you know, and that --
8 but I'm guessing, but that's -- that
9 would make sense to me, yeah.

10 And, again, that decision
11 was based on -- well, I'm going to add
12 some more just to help -- but that
13 decision was, again, based on the size of
14 the market and what the company
15 priorities were at the time, not the
16 quality of the product because we -- we
17 were very proud of the quality of the
18 product and its performance.

19 Q. And what other motorcycle or
20 motocross shocks does Fox offer today?

21 A. Okay. So when we talk about
22 motocross, we're talking about dirt
23 bikes, right? We're not going to mix
24 motor -- motocross up with anything other
25 than a bicycle -- than a motorcycle -- a

1 dirt bike, correct? We don't sell shocks
2 into the dirt bike market today.

3 Q. And at the time in the 2009
4 to 2012 time period, did Fox have any
5 alternative motocross shock offerings
6 other than the Podium?

7 A. Yeah, we had -- so we had
8 another -- it overlapped a little and
9 I'm -- I'm going to have to think here.
10 We offered non-RC3 Podium-style shocks
11 for dirt bikes. They were mainly another
12 term for you -- mini moto dirt bikes so
13 they were motorcycles for -- motorcycles
14 are -- are -- are labeled by the CCs so
15 there's a 250 and a 400, you know, and
16 that sort of thing, right? So mini moto
17 are for children ages 5 to when they
18 start riding a 250. And so we made
19 shocks for 50CC bikes, 80CC bikes, 100CC
20 bikes, those are the mini moto shocks.
21 Those did not have RC3 technology on them
22 because they were trying to hit a much
23 lower price point and I believe that
24 overlapped around the same time period.

25 Q. Did that have a product name

1 what you were just describing, those
2 shocks?

3 A. I believe we called them
4 Podiums at the time, not Podium RC3.
5 Like a mini moto Podium -- and I'm not
6 entirely positive because I didn't go
7 back and look at anything related to mini
8 moto.

9 Q. And how long did Fox sell
10 the Podium for those mini moto dirt
11 bikes?

12 A. Okay. So for -- for those
13 dirt bikes, probably within that same
14 time period, maybe a year or two prior to
15 the RC3 invention, we were in that mini
16 moto market because we were trying to,
17 you know, again, break in because that
18 was our heritage.

19 Q. And you --

20 (Cross talk.)

21 BY MS. MILUNSKI:

22 Q. Go ahead.

23 A. Let me finish.

24 One other interesting point
25 though is at the time we loved to call

1 things Podium at Fox so we actually had
2 Podium shocks on other vehicles and you
3 mentioned -- because you mentioned mini
4 moto, but the word "podium" isn't
5 exclusive to motorcycle at Fox.

6 Q. So those other Podium shocks
7 that you just talked about that were used
8 on other vehicles, were they the same
9 type of design as the ones that were used
10 on the mini moto or were they --

11 A. They were all different so
12 they -- they could be -- we had Podium
13 shocks on snowmobiles that were -- I'm
14 going to -- another term, mono tube
15 shocks so no reservoir, no adjustability.
16 We call those Podium something. I don't
17 remember, Podium S or X or something.
18 And I'm pretty sure we had Podium shocks
19 on ATVs that either had a resi or did
20 not, mono tube versus resi.

21 So those -- those are
22 varying -- that's why -- that's why I
23 mentioned that Fox used the word Podium
24 quite often back then because they wanted
25 racers to get on the podium, right? So

1 this is how you do it.

2 Q. So for the Podium shocks
3 that were on the mini moto dirt bikes but
4 did not practice on the '223 patent, when
5 did you stop selling those?

6 A. Yeah, it probably is around
7 the same time frame as the RC3s because
8 it was judged -- again, it was that
9 segment of -- of motocross that we got
10 out of, yeah, for all those same reasons
11 that I talked about earlier. So in the
12 mini moto, it's no different than in the
13 adult moto. You still have the -- the
14 guru and the mom-and-pop shop and then
15 you still have a dirt bike that you
16 purchased that's actually pretty good to
17 start with so...

18 Q. And I think you said that
19 one was sold at a lower price point than
20 the Podium RC3; is that correct?

21 A. That's right, that's right.

22 Q. Do you know what the sales
23 volume for the Podium was?

24 A. So, again, that's the same
25 kind of business we talked about. We

1 didn't keep track, but back then, you
2 know, we're selling high -- higher priced
3 shocks than -- than if you had your bike
4 tuned, right, and we're selling them
5 exclusively into the mini moto market,
6 which is kids who ride competitively on
7 motocross bikes. So you can get an idea
8 of the volume there, right? And the idea
9 was, let's get the kids used to Fox
10 Podium, you know, let's get them, and as
11 they grow up, right, they're going to
12 want our other thing, right? But we
13 didn't continue with that plan and so...

14 Q. Hook them in young, yeah.

15 A. Yeah.

16 Q. Okay.

17 MR. MCCAULEY: Sarah, if you're
18 at a reasonable breaking point now or
19 in the next couple of minutes, can we
20 take a break?

21 MS. MILUNSKI: Yeah, I -- I'll
22 be reaching another breaking point in
23 a few minutes.

24 BY MS. MILUNSKI:

25 Q. And so Fox is now completely

1 out of the motocross shock business; is
2 that correct?

3 A. That's -- that's -- that's
4 correct, yeah.

5 Q. Okay. Since Fox does not
6 sell any shocks practicing on the '223
7 patent, would it be accurate to say that
8 Fox does not do anything to promote or
9 market any shock that practices on the
10 invention in the '223 patent currently or
11 for the past decade?

12 A. That would be fair to say.

13 Q. Okay.

14 MS. MILUNSKI: All right. Why
15 don't we take a break?

16 MR. MCCAULEY: Thank you.

17 THE VIDEOGRAPHER: Off record
18 10:36 a.m.

19 (Whereupon, a brief recess is
20 taken.)

21 THE VIDEOGRAPHER: Back on the
22 record 10:47 a.m.

23 BY MS. MILUNSKI:

24 Q. Mr. Allinger, can I ask you
25 to go back to what was previously marked

1 as Exhibit 70, and if you could take a
2 look at topic 5, which you've been
3 designated to testify about today, let me
4 know when you've had a chance to review
5 it.

6 A. I have. I've -- I've
7 reviewed it. And we've talked about some
8 of those topics. I understand.

9 Q. Okay. And what did you to
10 prepare to testify about regarding this
11 topic specifically?

12 A. As I mentioned earlier,
13 again, with the time frame, I -- you
14 know, I -- mostly, mostly thought about
15 all of these questions and -- and, you
16 know, my in-depth knowledge of what we
17 did during the time, just kind of thought
18 back and kind of went through in my mind
19 all the things that we've done -- that we
20 did with relation to '223 and the bottom
21 out cup and the RC3, much of it that I
22 talked about earlier, but that's -- that
23 was my preparation. And I think
24 that's -- that's about -- you know,
25 that's -- that's very adequate in the

1 circumstance, I mean --

2 Q. And what are all the factual
3 bases for Fox's belief that the '223
4 patent has been commercially successful?

5 A. Well, when you think, again,
6 about the size of the market,
7 commercially successful, I think it --
8 you think about the praise that you get
9 and the fact that it worked and we had
10 some racers on it and we had some
11 influencers using it and, you know, we
12 sold a number of them. I don't have the
13 exact number as we talked about, but, you
14 know, those are the bases for that.

15 And really, you know, when
16 you get an article, especially at the
17 time by someone like Jody in Motocross
18 Action, and some of the other write-ups
19 that we have, not necessarily the KTM one
20 that you showed me, that's how we would
21 judge that, right? We would say, look,
22 we made a great product. Racers and
23 riders love it, although it's expensive
24 and not competitive under the current
25 landscape. That's how we -- that's how

1 we determined that it was successful.
2 It's almost always performance based at
3 Fox. Did we create something that is
4 good? And we felt it was.

5 Q. Well, do you believe that
6 the Podium RC3 shock was commercially
7 successful?

8 A. I do. I just think that the
9 market is small, yep.

10 (Cross talk.)

11 A. You're looking for the
12 expert rider and you're looking for
13 someone who appreciates that next level
14 of performance and that market is small.

15 BY MS. MILUNSKI:

16 Q. And does Fox make a practice
17 of stopping production in sales of
18 commercially successful products?

19 A. If -- if we determined that,
20 you know, that particular market is --
21 the adjustable market's not big enough to
22 warrant the resources, you know. When
23 you -- when you produce a shock, for
24 example, there's -- there's probably a
25 lot of factors, but when you produce a

1 shock for a motocross bike, as we talked
2 about, motocross bikes are used by
3 children all the way up to adults, in
4 very extreme conditions, dangerous
5 conditions, right? And so if you decide
6 to produce products, whether or not the
7 market's big, but you have to consider
8 that, and then you have to consider
9 whether you want to be involved in that
10 industry for the amount of sales you're
11 getting, right? There's always a kind of
12 a give and -- or a thought process that
13 goes into that. So I'm sure we took all
14 of that into account when we made the
15 decision to not pursue motocross any
16 longer.

17 Q. Were there other companies
18 out there that were selling motocross
19 aftermarket shocks?

20 A. Sure. Sure. Yes, there
21 are, yeah, plenty.

22 Q. Are they also out of the
23 motocross business now?

24 A. I don't think so. I think
25 some of them probably are. You know,

1 some of the -- I know maybe one or two
2 that aren't. I do want to say, though,
3 like I mentioned earlier, that the
4 bikes -- the motocross bikes in
5 particular, that we defined as that
6 motorcycle, right, they come pretty
7 well-stocked with excellent performing
8 suspension. So in order to upgrade, you
9 really have to have the right buyer and
10 the right use case to do it.

11 Your question on whether
12 some people still do it. Yes, there
13 are -- there are -- there are several
14 that still make shocks for motocross
15 bikes in the aftermarket or --

16 Q. And you --

17 (Cross talk.)

18 A. As upgrades -- as upgrades.

19 BY MS. MILUNSKI:

20 Q. And Fox was never able to
21 sell the Podium RC3 shock to an OEM; is
22 that correct?

23 MR. MCCAULEY: Objection, I'm
24 sorry. Go ahead.

25 A. That's correct.

1 BY MS. MILUNSKI:

2 Q. What is the long-felt need
3 that the '223 patent addresses?

4 A. Okay. So we talked about
5 that earlier. The need was when you have
6 a motorcycle and you have a rider, right,
7 and the rider, as I mentioned earlier, is
8 a significant portion of the weight of
9 the machine, and so when you have a rear
10 shock, in order for it to feel really
11 good and for you to be, you know, the
12 best you can be on your bike, it needs to
13 get tuned for you, right, because --

14 (Reporter clarification.)

15 A. -- the best you can be on
16 your bike, and the shock needs to be
17 tuned for you, right? And so in the
18 past, you would go to, like I mentioned,
19 the guru at the track, or the mom-and-pop
20 shop, or you would send your shock into a
21 factory level up -- upgrader who's still
22 in business, like a Factory Connection,
23 for example, would be a good competitor
24 in that market.

25 And so the need that we were

1 trying to solve was, you don't need to do
2 all that. You just need to buy our shock
3 and use the adjusters, like the bottom
4 out adjuster and the other adjusters, to
5 get it dialed in for you. And if you go
6 to a different track or you get better
7 and more skilled where you demand more
8 from the shock, it can come along with
9 you on that ride, on that journey, and
10 you won't have to go get it retuned by
11 another person and take it off your bike
12 and not be riding for a while and waiting
13 for it to get serviced and changed.
14 So...

15 Q. And you talked about a
16 couple different adjustments. I think
17 you said the bottom out adjustment as
18 well as the other adjustments, but the
19 '223 patent just talks about the bottom
20 out adjustability, correct?

21 A. That's right. That's right.

22 Q. So -- and I -- I understand
23 that you were talking about the Podium
24 RC3 shock, correct?

25 A. Right. You had asked me

1 about the long-felt need that it -- that
2 it solved and that's -- it's that
3 tunability, that extra tunability that
4 allows you not to have to retune it via
5 these other methods that I talked about,
6 you know, that require you to take it off
7 your bike and mail it somewhere or take
8 it apart. Now you have the ability to --
9 and really -- really more than just that,
10 too, the Podium is a -- you know, we -- I
11 think the -- what you showed me had it at
12 \$900. You know, that's an expensive
13 unit, and we spend a lot of time getting
14 all our tolerances right and all the
15 machining and all of that so you have
16 something that can last and be rebuilt
17 and -- you know, and like I said, live
18 with you as you -- on your journey from
19 being a novice rider to an expert rider.

20 Q. And I want to focus on --
21 less on the Podium RC3 shock as a whole,
22 and I'm just asking about what's the
23 long-felt need that the '223 patent and
24 the technology described therein
25 addresses?

1 A. Okay. So maybe I wasn't --
2 I wasn't clear before.

3 The long-felt need is
4 that -- that tunability, right? So the
5 bottom out -- so one of the biggest
6 problems, again, when you have a heavier
7 expert rider on a stock motorcycle is
8 that they'll bottom out, right, or if you
9 put a light rider on that, then maybe
10 they won't bottom out, right? So the
11 shock has to cover that gamut. And the
12 RC3 handles any rider as they become more
13 and more aggressive and have more and
14 more bottom-out events that they can't
15 manage by putting a heavier spring on the
16 shock or cranking in their compression
17 adjuster, right, then they get a harsh
18 ride.

19 Now they can set that
20 expression adjuster where it needs to be
21 for most of the -- of the ride, but
22 during the big bottom-out events and the
23 other, you know, events that really make
24 that rear wheel have a big excursion, you
25 can deal with that energy with the bottom

1 out cup.

2 Q. Okay. And was that need for
3 tunability of bottom-out events, was that
4 a need felt only in motorcycles or
5 motocross or more widely?

6 A. Any time that a motorcycle
7 could bottom out, right? So you can
8 bottom out if you're flying across the
9 desert, you know, and you hit a rock or
10 something. So it's not -- it's
11 motocross -- you know, very directed at
12 motocross, but it's a bottom-out
13 protection, right? It's a way to tune
14 how the bike feels as it bottoms. And as
15 you get a heavier rider or a more
16 aggressive rider, that happens more often
17 and you want to be able to control that
18 and change the way it feels. Because if
19 you imagine, you could just hit really
20 hard, right, and that would be very
21 disruptive and you might crash.

22 Q. And are there other
23 solutions to the problem about bottoming
24 out?

25 A. Typically, bottoming out is

1 handled -- are there other solutions?

2 Yes. And, typically, they're -- it's
3 handled by an energy-absorbing device of
4 some sort, which, you know, we use on a
5 lot of our shocks also, which would be a
6 bottom-out bumper or something to absorb
7 the energy. Those come with other
8 problems though because they're
9 non-hydraulic so they're going to absorb
10 energy and return energy and, you know,
11 and in the -- in the world of motocross,
12 when you -- when you hit something hard,
13 you get bucked, if you can imagine that,
14 right? You hit a jump, you bottom out,
15 and you get bucked and now your back
16 wheel's off the ground and you're not in
17 control anymore.

18 So the bottom-out bumper
19 will tend to be more of that kind of a
20 result if your shock's not tuned right,
21 whereas if you have a bottom out cup, the
22 adjustable one, you could -- you could
23 adjust how -- how it feels as it goes
24 into that bottom out.

25 Q. And what technology -- what

1 bottoming out technology does Fox
2 currently use on its bicycle shocks?

3 A. So we use -- probably rely
4 on two or -- two different basic
5 mechanisms. One would be a bottom out
6 bumper, which I just described, right?
7 That one requires the shock to be tuned
8 very well for the application and the
9 rider. And our bicycle -- since the
10 bicycle and the rider -- the bicycle
11 isn't as heavy as a motorcycle. It gives
12 you a little more latitude to get a
13 bottom out bumper working properly and
14 not bucking. And then the other method
15 would be to catch -- you know, to have an
16 air spring, right? And air springs are
17 progressive. I do this with my hand, but
18 as you go into travel, you compress air.
19 It gives you more and more resistance as
20 you try to squeeze it. And so that's
21 another way to -- to protect bottom out.
22 And those are the ways we use in bicycle
23 currently, and the reason for those is
24 they're effective, lightweight,
25 relatively low cost if you compare them

1 to the RC3.

2 So you always have to weigh
3 that equation, right, what's appropriate,
4 what can you afford weight-wise, what can
5 you afford cost-wise.

6 Q. And over the last decade
7 when Fox has been innovating with its
8 rear shocks, it's always decided to use
9 the bottom out bumper or the air spring
10 as its bottom out technology rather than
11 trying to implement the technology
12 described in the '223 patent for its
13 bicycle rear shocks; is that correct?

14 A. Yeah. So when you think
15 about a bicycle, as I mentioned, weight
16 was an important factor. And in bicycle
17 frame design, as you -- as you know,
18 there's a ton of different OEs, a bunch
19 of different OEs, that all have their own
20 designs, right?

21 So the amount of space the
22 shock takes up and the amount that it
23 weighs is extremely important, right, to
24 a bike designer. So we call it "dead
25 length," another term. So the dead

1 length of the shock is important and when
2 you add RC3 technology, you add weight
3 and dead length and so, again, you have
4 an equation that you have to -- you have
5 a value proposition that you have to go
6 through to decide what technology you
7 would put on the bicycle application.
8 And the solutions we use are the result
9 of that value proposition.

10 Q. And Fox has been the
11 assignee of the '223 patent since 2009;
12 is that right?

13 A. I believe so, yes.

14 Q. But between 2009 and the
15 present, Fox has never added the
16 technology described in the '223 patent
17 to any of its mountain bike rear shock
18 offerings for the reasons you just
19 described?

20 A. Yeah, the -- the reasons I
21 described, which is that value
22 proposition are what lead us to determine
23 how we're going to handle the bottom out
24 situation on a bicycle.

25 And, again, if we add RC3

1 technology as we talked about, with the
2 bottom out cup and the secondary piston,
3 you add dead length to the shock, you
4 make it longer when it's fully compressed
5 and you can't -- when you make it longer,
6 you make it heavier, right. And when you
7 make it longer, frame designers didn't
8 leave us enough room. You know, we have
9 a 150 OE customers with different length
10 frames so as -- as SRAM knows, you know,
11 you guys actually came up with some
12 standards recently and we always want to
13 try to fit inside those standards and
14 sell a shock that -- that meets that
15 value proposition.

16 Q. And -- and none of Fox's
17 current offerings in any of its -- in
18 powersports in SSG, in any of its arenas
19 use the technology that's described in
20 the '223 patent, right?

21 A. The other segments of our
22 business have determined how they handle
23 bottom out, right? And they -- they
24 don't use the RC3 -- or the '223 patent,
25 but there's other methods like I

1 described in the bottom out bumpers. If
2 you look at an off-road truck, they use a
3 secondary air spring as -- as the bottom
4 out system. So you -- you really got to
5 look at the application, what you're
6 trying to do, the package space, the
7 weight, the length of the shock to
8 determine when a certain solution works
9 the best, and all those things were
10 considered, you know, when we were trying
11 to solve that problem that the '223
12 addresses for motocross bikes.

13 Q. And then for the bicycle
14 industry though, the '223 patent
15 technology just wasn't delivering that
16 value proposition that you just talked
17 about --

18 (Cross talk.)

19 A. It would be hard for us to
20 introduce a longer shock that weighed
21 more when we had another way to do that
22 same job lighter and weighed less and fit
23 that application, which, again, is not
24 motocross, right? So we have to look at
25 the bicycle, the weight of the rider and

1 the way that that bicycle is used versus
2 a motocross bike that we talked about
3 that's hitting 30-foot-high jumps at 60
4 miles an hour, right? It's a different
5 ball game.

6 BY MS. MILUNSKI:

7 Q. So if -- you're not using
8 the technology at all right now, correct?

9 A. We are not using the
10 technology, that's correct.

11 Q. So why does Fox care if
12 others use the technology described in
13 the '223 patent?

14 A. Well, as I mentioned
15 earlier, we spent a significant amount of
16 time testing it. We're very proud of it.
17 We -- we feel like it's an invention
18 that -- that, you know, after you get a
19 patent on something -- and you can
20 correct me if I'm wrong here, but you got
21 a patent on something, that kind of gives
22 us the opportunity to decide when -- when
23 and who uses this patent at least for 20
24 years. And, you know, we spent the time
25 to develop it, considerable amount of

1 resources out in the field testing it, we
2 decided not to use it, but that
3 doesn't -- that doesn't mean everybody
4 else gets to, right?

5 Q. And I think you testified
6 previously that you designed it
7 specifically for motocross use in mind,
8 right?

9 A. We talked about that earlier
10 and you mentioned too it's not just --
11 it's -- it's -- it's two-wheel vehicles
12 and then -- and, in fact, you mentioned
13 that it could even go on other things,
14 but, again, our decision and our -- the
15 reason that we solved that problem was
16 with motocross in mind.

17 Q. Has Fox licensed the '223
18 patent to anyone?

19 A. No.

20 Q. So fair to say then that Fox
21 does not receive any royalties relating
22 to the '223 patent?

23 A. That's fair to say.

24 Q. Has Fox ever entered into
25 negotiations with a third party regarding

1 the potential licensing of the '223
2 patent?

3 A. Not that I know of and,
4 again, at the time, you know, the
5 competitors that we talked -- we talked
6 about one, Ohlins, I mean, there's not
7 necessarily the likelihood that they'll
8 look for a solution outside their own
9 business.

10 Q. What is Ohlins doing to
11 address bottoming out events for
12 motocross offerings?

13 A. Yeah, so we -- you know, we
14 cited a couple of theirs. I haven't
15 looked at what they're currently doing,
16 but they have -- you know, they have a
17 bottom-out technology that involves a cup
18 and a piston and that was referenced in
19 our -- you know, we looked at that patent
20 and we referenced it in our '223 patent.

21 Q. Do you know what that
22 reference is?

23 A. Do I know the patent number
24 or --

25 (Cross talk.)

1 A. I might recognize the patent
2 if you showed it to me.

3 BY MS. MILUNSKI:

4 Q. Okay.

5 A. Yeah.

6 Q. Are you familiar with the
7 prosecution history of the '223 patent?

8 A. I'm not intimately familiar
9 with that, no.

10 Q. Were you involved in that at
11 the time as one of the named inventors?

12 A. I'm trying to remember if I
13 had direct involvement with that. It
14 would be very limited and I -- and I
15 don't recall being directly involved.

16 Q. Okay. I'm going to show you
17 what's been previously marked as
18 Exhibit 49 and just ask as an initial
19 question if you recognize what's been
20 previously marked as 49?

21 A. Appears to be our patent
22 application for the '229 {sic} patent.

23 Q. Have you seen this document
24 before?

25 A. I mean, I'm sure I've seen

1 it. My name's on it. Yes.

2 Q. Did you write this patent
3 application?

4 A. I did not.

5 Q. Do you know who did?

6 A. At the time we had, it looks
7 like -- the attorneys that we worked with
8 to write this would have written the
9 patent application. I don't know their
10 names. I don't know their names.

11 Q. That's fine.

12 And in looking at page 3,
13 which has the Bates stamp of Fox 26, do
14 you see that Exhibit 49, the patent
15 application incorporates by reference in
16 its entirety U.S. Patent No. 6,446,771?

17 A. Is that paragraph 0005?

18 Q. Yes.

19 A. Let me just breeze through
20 that. I see that, yes.

21 Q. Do you know what technology
22 is shown in the '771 patent?

23 A. I think we should -- I -- I
24 believe -- well, you know what? I would
25 only be guessing, but I believe that

1 that's one of Ohlins patents I was
2 talking about, that it would be great to
3 look at and verify.

4 Q. All right. Give me a second
5 then. Let me ask you this because I'm
6 trying to find it: Did you review the
7 '771 patent at the time the application
8 was filed?

9 A. Yes.

10 Q. And does that patent contain
11 special definitions of terms used in the
12 claims of the '223 patent?

13 MR. MCCAULEY: Are you going to
14 show him the patent that he asked for?

15 MS. MILUNSKI: Well, I'm trying
16 to find it, Rob, but he can answer the
17 question.

18 MR. MCCAULEY: He has to see it.

19 A. I might -- can you ask your
20 question again. I'm not sure that I can
21 answer that specifically. Were you
22 asking me if there's terms in the '771
23 patent that we used?

24 BY MS. MILUNSKI:

25 Q. Yeah. Does the patent --

1 does the '771 patent contain special
2 definitions of terms used in the claims
3 of the '223 patent that you're aware of?

4 A. We're going to look at the
5 patent if you want to ask more specific
6 questions, but in general, I think that,
7 like we talked about, you know, shock
8 absorber designers are going to use
9 similar-ish terms, but I don't know what
10 terms they use. Without looking at it, I
11 have no idea. To remember that much
12 specifics would be tough.

13 Q. Do you know why the '771
14 patent was incorporated into the
15 application that resulted in the '223
16 patent?

17 A. We should look at it just to
18 be sure. I'm sure it had something to do
19 with the bottom out cup because I know
20 it's an Ohlins patent. I'm pretty sure
21 it's an Ohlins patent. We need to verify
22 all that before we talk more about it.
23 That would be great. If you want me to
24 make that assumption, if you --

25 (Cross talk.)

1 MR. MCCAULEY: No.

2 Mr. Allinger, stop guessing.

3 THE WITNESS: No, no, I'm just
4 saying.

5 A. If you want to ask me
6 questions about something I can't see, I
7 just can't be clear with my answers. I
8 guess that's my point.

9 BY MS. MILUNSKI:

10 Q. We'll circle back.

11 And do you see that same
12 page of Exhibit 49 incorporates by
13 reference the entirety of U.S. Patent No.
14 6,029,958?

15 A. I see that, yeah.

16 Q. Do you know, as you sit here
17 today, what technology is shown in that
18 patent?

19 A. I do think we need to look
20 at it to be sure. But if I -- let me
21 read -- let me read the paragraph.

22 Q. Go ahead.

23 A. Yeah, we should -- we should
24 double check this one if you want to ask
25 questions about this one. It's --

1 Q. Well, do you have a
2 recollection, as you sit here today, of
3 reviewing the '958 patent at the time the
4 application was filed?

5 A. At the time the application
6 was filed and prior, we reviewed a lot of
7 what is referenced, if not all of it, so
8 I would say that's included, but I would
9 need to look at it to see exactly what it
10 is.

11 Q. Okay. And going down to
12 page 6 of Exhibit 49, do you see that
13 U.S. Patent No. 7,374,028 is incorporated
14 by referenced in its entirety?

15 A. I need -- I need to -- I
16 see -- I see what you're saying, but I
17 would need to see the patents to -- if
18 you want to ask me any specific questions
19 on them.

20 Q. Well, my question was simply
21 whether Exhibit --

22 (Cross talk.)

23 A. Whether that's written --
24 whether what you're reading is written?
25 Yes, it is written.

1 BY MS. MILUNSKI:

2 Q. Okay. And I just ask you,
3 Mr. Allinger, if you could just wait for
4 me to finish my questions just so that we
5 have a nice clean record. I know that
6 it's hard, but --

7 A. Will do.

8 Q. Thank you.

9 And as you sit here today,
10 do you know what the technology -- what
11 technology is described in the '028
12 patent?

13 A. I mean, without looking at
14 it, Sarah, I think -- I can't really
15 answer the question.

16 Q. Okay. And in looking at
17 page 11, do you see that Exhibit 49
18 incorporates by reference in its entirety
19 The Lee Company Technical Hydraulic
20 Handbook, copyright 1996?

21 A. I see that written, yes.

22 Q. Do you know how many pages
23 that handbook is?

24 A. I can only imagine it's
25 huge.

1 Q. Did you read The Lee Company
2 Technical Hydraulic Handbook incorporated
3 by reference in its entirety at the time
4 the patent application was filed?

5 A. So this is interesting that
6 you're asking me this question and now
7 that I see this, I'm thinking back. You
8 know, that -- that Lee handbook is huge
9 and it covers a lot of topics, a whole
10 lot of topics, right? And we used a Lee
11 valve in the RC3 and, you know, there
12 would have been a portion of that
13 hydraulic handbook that would have been
14 pertinent, so I -- yes, that's my answer
15 for that one.

16 Q. Did you read the handbook
17 cover to cover at the time the
18 application was filed?

19 A. We read enough of it to
20 handle what we were dealing with and I
21 understood enough of what that handbook
22 was saying to understand what was
23 important for what we needed.

24 Q. Have you read that handbook
25 in its entirety at any point in time?

1 A. Cover to cover?

2 Q. Correct.

3 A. I mean, to have read a
4 handbook like that cover to cover would
5 be very interesting.

6 Q. So no?

7 A. It's a reference -- it's a
8 reference document. It's like an
9 encyclopedia, right? You find the thing
10 you want or the -- the subject and then
11 you look at it, right? And you
12 understand the encyclopedia has a lot of
13 technical knowledge in it and that's --
14 that's very similar to this handbook.

15 Q. Would the answer to my
16 question be no, you have not read it
17 cover to cover then?

18 A. Have I read basically an
19 encyclopedia of Lee valves cover to
20 cover? I have not.

21 Q. Okay. Do you know why that
22 handbook was incorporated into the
23 application in its entirety?

24 A. Rather than just a chapter,
25 I -- I -- I don't know. I'd have to

1 check. I'd have to -- I'd have to check.
2 I don't think it matters. It would be
3 like citing the dictionary, you know, and
4 calling out a word definition.

5 Q. Do you recall if there was a
6 specific definition used in The Lee
7 Company Technical Hydraulic Handbook,
8 copyright 1996, that you wanted to
9 specifically incorporate to provide
10 meaning to one of the terms of the --
11 what resulted in the '223 patent?

12 A. The use of a Lee handbook
13 would be like, again, the use of a
14 reference book, and so the Lee handbook
15 was used to determine -- so The Lee
16 Company produces -- produces a component,
17 right? And to be able to use that
18 component, much like a computer chip, you
19 know, you have to understand its
20 technical -- all -- all the aspects,
21 tolerances, size, how it's used, press
22 fit, and that -- and that's why this was
23 referenced and that's why this was used.

24 That particular valve, I
25 recall, has -- had certain

1 characteristics that we wanted to use and
2 The Lee Company was exclusive in that.
3 And that valve offered us what we needed
4 and so I believe -- and so it's important
5 to note that the use of that helped
6 enable the invention and -- and that's
7 why that was noted.

8 Q. Okay. I'm going to put up
9 what has previously been marked as
10 Exhibit 53.

11 A. Tell me when that's up.
12 It's not up.

13 Q. Yeah. Okay. It should be
14 there now.

15 A. 53.

16 Q. Yes, sir.

17 A. Okay. Oh, another document.
18 Okay. Trademark. Okay. I see it.

19 Q. Do you recognize what has
20 been previously marked as Exhibit 53?

21 A. I have to look at it
22 quickly. So we mentioned earlier that I
23 haven't studied this closely, but I do
24 recognize the document.

25 Q. Have you seen what's been

1 previously marked as Exhibit 53 before
2 today?

3 A. I've seen it, but I haven't
4 studied it.

5 Q. Do you recall when you've
6 seen it?

7 A. I probably couldn't pinpoint
8 it exactly, no.

9 Q. Let me ask you this way:
10 Have you -- did you see Exhibit 53 as
11 part of your preparation for your
12 deposition today or as part of this
13 litigation, or do you have a recollection
14 of reviewing Exhibit 53 back in October
15 of 2010 when the United States Patent and
16 Trademark Office sent it?

17 A. I have a recollection of
18 seeing it done and I know that -- just,
19 again, there's been quite a few documents
20 and -- but I haven't studied it recently.

21 Q. And do you see that Exhibit
22 53 is related to application number
23 12/463,927 with the filing date of May
24 11, 2009?

25 A. Yeah, you basically read

1 that top thing, yeah, I see that.

2 Q. And do you understand that
3 this is an office communication that was
4 issued in the application process for the
5 '223 patent?

6 A. I do.

7 Q. And looking at page 2, so
8 the next page of the document, do you see
9 under the heading of Disposition of
10 Claims that claims 1 through 20 are
11 listed as pending and also listed as
12 rejected?

13 A. I see that that's what's
14 written there, yeah, but, again, in
15 context, I'm not sure why, but I do see
16 that -- that written. We have --

17 (Cross talk.)

18 A. We'd have to study the
19 reasons and, you know, so my -- my
20 background is going to be limited on --
21 on some of the -- not necessarily the
22 content, but the way that things get
23 prosecuted or get turned into patents
24 and, you know, I know that -- I believe
25 in my -- in my experience, that the

1 practice -- there's a lot of back and
2 forth that happens and -- during these
3 sort of things. You know, these things
4 get written and changed and -- and
5 whatnot so -- you did read exactly what's
6 written there, I agree with you there.

7 BY MS. MILUNSKI:

8 Q. And looking at Fox 88.

9 A. Wait, wait, wait. Okay. So
10 88. Okay. I'm on that page.

11 Q. Paragraph 6, do you see that
12 it states that, "Claims 1-4, 8 [and] 12
13 are rejected under 35 U.S.C. 102(b) as
14 being anticipated by Larsson et al.
15 '958"?

16 A. I see -- I see that written,
17 but, again, we should make sure we take
18 it in context. I'm not sure of the
19 points you're making, but I see it
20 written.

21 Q. Are you familiar with the
22 Larsson reference?

23 A. I recognize the name and I
24 think it's an Ohlins person, so I do
25 think that -- I might -- I'm not --

1 without looking at that patent like we've
2 talked about, then I would know the
3 reference better, but I do recognize the
4 name and I'm sure it's on one of the
5 Ohlins patents, which we should take a
6 look at.

7 Q. Okay.

8 A. If you give me a second to
9 read it and then maybe you can find it
10 and we could figure that out.

11 Q. Yeah, so I'm going to show
12 you now what's been marked as Exhibit --
13 previously as Exhibit 54.

14 A. Let me spend one -- if you
15 don't mind, let me spend a minute just
16 reading paragraph 6.

17 Okay, I've read it.

18 Q. Okay. Do you see what I've
19 put up as Exhibit 54?

20 A. Let me grab it. I have to
21 refresh. I have Exhibit 54, yes.

22 Q. Do you recognize this
23 document?

24 A. Yes. This is one of the
25 Ohlins patents and there's Lennart

1 Larsson. Okay, yes, I do recognize it.

2 Q. And do you have any
3 understanding of how Larsson relates to
4 the initially submitted claims of the
5 '223 patent?

6 MR. MCCAULEY: Objection, vague.

7 THE WITNESS: Do I answer the
8 question?

9 BY MS. MILUNSKI:

10 Q. Yes.

11 MR. MCCAULEY: Yes.

12 A. Okay. This has a needle.
13 Yeah, I think I do understand.

14 BY MS. MILUNSKI:

15 Q. And what's your
16 understanding?

17 A. When you -- when you are
18 writing -- when you're writing a patent
19 and you're inventing and you're looking
20 at prior art and references and you want
21 to be sure you include -- this is what
22 I've been taught -- you want to be sure
23 you include references so that they're
24 not, you know, found later, right? And
25 this particular reference is in regard

1 to -- one of the aspects of this
2 particular reference is in regard to the
3 way that they're handling bottom out with
4 that needle.

5 Q. And the Patent and Trademark
6 Office in what we were just looking at,
7 previously marked Exhibit 53, relied on
8 this Larsson reference to reject claims 1
9 through 4, 8 and 12 as anticipated; is
10 that correct?

11 A. I mean, that's what's
12 written there, but I'm sure that, you
13 know, you've got to kind of think about
14 it all in context. And for me to
15 completely answer that, I should probably
16 take some time studying everything. I
17 mean, examiners did all that work, right?
18 We supplied them with the information.
19 That's the best answer I can give you at
20 this point. Without studying -- without
21 taking, you know, an hour or two and
22 going through every little thing here to
23 figure out what they were thinking and
24 what this is saying, it's hard to answer
25 your question.

1 I mean, we have a patent on
2 an adjustable bottom out cup, right, and
3 it was prosecuted and developed and we
4 had references shown and we have the
5 patent, right? So it's a process and
6 you're showing me part of the process and
7 asking me questions about it.

8 Specifically, I don't know what's inside
9 people's heads or how -- how this went
10 down specifically 15 years ago, right?
11 But we could figure it out if we spend
12 time looking all this over, but it could
13 take hours to do.

14 Q. Well, let's take a look now
15 at what was previously marked as
16 Exhibit 55. And let me know if you've
17 seen that document before.

18 A. Give me one second, 55.
19 I'll zoom in. This would be the same
20 answer as the other document, probably
21 saw it in detail many years ago and I'm
22 looking at it again now. But, yes, I
23 recognize it.

24 Q. And it's an office
25 communication dated February 3rd of 2011

1 for the same application, the 12/463,927,
2 correct?

3 A. Yeah, that's what's written
4 here. Yes, I see what you're reading.

5 Q. And so you understand that
6 this is an interview summary that was
7 issued in the application process for the
8 '223 patent?

9 A. Part of the prosecution of
10 that patent; is that the question?

11 Q. Correct.

12 A. This is part of it --

13 (Cross talk.)

14 A. Yes, I understand this to be
15 a part of it.

16 BY MS. MILUNSKI:

17 Q. Okay. And do you see an
18 interview summary listed on page 2 of
19 Exhibit 55?

20 A. Okay. That's Fox 098,
21 that's the page you're on, right?

22 Q. Yes, sir.

23 A. And you're reading from what
24 portion?

25 Q. Well, do you just see, first

1 of all, that this is an interview
2 summary?

3 A. I see that, yes, I do.

4 Q. And do you see that there's
5 a discussion of Larsson figures 1, 2 and
6 11+?

7 A. I see this -- the portion
8 that says, "Identification of prior art
9 discussed: Larsson figures 1, 2, 11+."

10 Q. Okay. And if you see the
11 underlined portion a little bit down
12 below there, it says, "The examiner
13 explained his interpretation of the
14 Larsson reference against the claims
15 above. The examiner maintained the
16 rejection against the claims. The
17 examiner" -- "examiner also suggested
18 examples of language that would more
19 narrowly define the claims," correct?

20 A. I see that written. I do.

21 Q. Am I correct that you did
22 not participate in the interview?

23 A. When -- when we probably
24 looked at this 10 or 13 years ago, we
25 might have advised -- the -- the

1 attorneys who were doing the prosecution
2 of the claims, that would probably be the
3 best of my recollection because there's
4 probably a fair amount of these
5 communications back and forth during the
6 prosecution.

7 (Cross talk.)

8 A. Just to remember the
9 specifics, it would be tough.

10 BY MS. MILUNSKI:

11 Q. Did you participate in the
12 interview with the examiner that's
13 described in Exhibit 55?

14 A. I did not.

15 Q. Okay. And then Exhibit 56
16 should be there.

17 A. I have 56 in front of me.
18 I'm just looking at it.

19 Q. Have you seen this document
20 before?

21 A. Yes, this would have been a
22 while ago though for sure. The same --
23 the same answer as the others, right? We
24 talked about the prosecution and the --

25 Q. And does this show a

1 Response to Office Action dated
2 October 8, 2010?

3 A. That's what's written here,
4 yeah.

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

9 A. I do.

10 Q. Did you have any discussions
11 with counsel relating to this response?

12 MR. MCCAULEY: That's a yes or
13 no answer, Mr. Allinger.

14 A. I'm just reading through the
15 response to see if it triggers whether I
16 talked to them directly about this. No.

17 MR. MCCAULEY: Sarah, when you
18 get to an appropriate breaking point,
19 can we take a break?

20 MS. MILUNSKI: Sure. Let me
21 just get this next one in.

22 A. Can I add some thinking to
23 that too?

24 The -- as we mentioned,
25 there's three inventors, right, and we're

1 working together with counsel to
2 prosecute this patent and I'm trying to
3 recall the answer to your specific
4 question, right, whether I talked to
5 counsel. And I don't recall and so I'm
6 answering no, but we could have easily,
7 keeping in mind this was 13 years ago,
8 talked about it. So my answer stays no,
9 but I'm just -- what's your next
10 question?

11 BY MS. MILUNSKI:

12 Q. Do you recall who was the
13 primary point of contact with the -- with
14 your counsel that was involved in
15 prosecuting the '223 patent?

16 A. No, because I --

17 Q. Would that have been you?

18 A. I don't recall who the
19 primary -- I don't recall who the primary
20 contact was for the counsel.

21 Q. Okay. Let's take a look at
22 Exhibit 57 and see if you've seen that
23 document before.

24 A. More of the -- same answer
25 as before. It was many years ago. And

1 I'm looking at it now.

2 Q. And you understand that
3 Exhibit 57 is also in regards -- it's an
4 office communication in regards to the
5 application that gave -- gave rise to the
6 '223 patent?

7 A. I do.

8 Q. And if you take a look at
9 page 2, it says that claims 1 through 22
10 are pending and those same claims are all
11 rejected, correct?

12 A. Page 2, 6, I see it written
13 there, yes.

14 Q. And if you go down --
15 (Cross talk.)

16 A. When we answer this, Sarah,
17 though we're talking about -- you know,
18 my understanding is that we're talking
19 about the prosecution of the patent,
20 right? And in the end, the patent was
21 granted and the invention is an
22 adjustable bottom out cup, which is not
23 shown in any of the art that you've shown
24 me in the references, right? So I'm
25 viewing this -- this is a process and

1 we're -- we're just kind of going through
2 the process and you're walking me through
3 it. I'm just not -- I don't understand
4 where we're headed.

5 BY MS. MILUNSKI:

6 Q. Okay. You don't need to.

7 If you take a look at Fox
8 118, paragraph 6, do you see that, again,
9 the examiner states that claims 1 through
10 4, 8 and 12 are all rejected --

11 A. Stop, stop. Did you say
12 Exhibit 118?

13 Q. No, Fox -- page Fox 118.

14 A. Okay.

15 (Cross talk.)

16 BY MS. MILUNSKI:

17 Q. The same exhibit -- Exhibit
18 57 that we were just looking at.

19 A. Thank you. I closed it
20 because I thought you were putting up
21 another one. I got it. Okay. Give me
22 the Fox reference number again.

23 Q. Sure, it's Fox 118.

24 A. Okay. Got it.

25 Q. Paragraph 6.

1 A. I see paragraph 6.

2 Q. And he, again, states,
3 "Claims 1-4, 8 [and] 12 are rejected...as
4 anticipated by or, in the alternative,
5 under U.S.C. -- 35 U.S.C. 103(a) as
6 obvious under Larsson et al."; correct?

7 A. I see that written, but
8 we're going to have to look more closely
9 if you want to ask me any detailed
10 questions on that. But I see it. Yes,
11 you're reading right from number 6. I
12 see it.

13 Q. And you understand that the
14 examiner was, again, rejecting the claims
15 in view of the Larsson reference that --
16 the same Larsson reference we looked at
17 earlier, right?

18 A. I understand this is part of
19 the process that the examiner is going
20 through with us to get a good
21 understanding of what's going on with our
22 invention.

23 Q. And part of that process was
24 rejecting claims 1 through 4, 8 and 12,
25 right?

1 A. That's -- that's the way the
2 process works, to my understanding,
3 right? They question, you answer. They
4 question, you answer.

5 Q. Okay.

6 MS. MILUNSKI: Why don't we go
7 ahead and take that break.

8 MR. MCCAULEY: Thank you. I
9 think we're going to need 15 minutes
10 or so because we need to order lunch.

11 THE VIDEOGRAPHER: Excuse me.
12 Going off record, 11:39 a.m.

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

15 THE VIDEOGRAPHER: We're back on
16 record, 11:56 a.m.

17 BY MS. MILUNSKI:

18 Q. Mr. Allinger, I just put in
19 your folder what was previously marked as
20 Exhibit 58.

21 A. Okay.

22 Q. And have you seen this
23 document before?

24 A. Yeah, it's going to be the
25 same response, years ago.

1 Q. And so you have a specific
2 recollection of seeing this document
3 years ago?

4 A. I don't remember
5 specifically on this document, but this
6 chain of showing the interrogatory -- or
7 not the interrogatories -- the
8 prosecution and we're going through, and
9 it's the same answer, yeah.

10 Q. Well, do you have a specific
11 recollection of viewing at the time any
12 of the file history documents, either
13 that Fox received or sent back to the
14 United States Patent and Trademark
15 Office?

16 A. This -- the specific, you
17 know, sort of -- the process of going
18 through the prosecution to get a patent,
19 I have a recollection that we went
20 through that process, and I'm, you know,
21 trying to answer the questions and look
22 at this and, you know, and -- but I don't
23 remember specifically every single thing,
24 right? So we're -- we're going to go
25 through it the way we're going through

1 it, and I'm going to give you that same
2 answer that I had for the other
3 documents. Looking at it -- let's look
4 at it and we'll go from there.

5 Q. Well, my question was: Do
6 you have a specific recollection of
7 looking at this document back at the time
8 when it was submitted to the United
9 States Patent and Trademark Office?

10 A. Specific, no. I mean, I
11 couldn't tell you the specifics in this
12 document looking at this cover page. The
13 process of going through the prosecution
14 and getting -- getting our claims and in
15 doing the invention, yes, but --

16 Q. Do you understand that this
17 is a response that was filed relating to
18 the application that gave rise to the
19 '223 patent?

20 A. I do understand that, as I
21 stated before, yes.

22 Q. And did you have any
23 discussions with counsel relating to this
24 response?

25 MR. MCCAULEY: It's a yes or no

1 question, Mr. Allinger.

2 A. I don't remember specific to
3 this one.

4 BY MS. MILUNSKI:

5 Q. I'm going to show you what's
6 been previously marked as Exhibit 59 and
7 let me know when you see that.

8 A. I see it.

9 Q. Have you seen this document
10 before?

11 A. I don't remember
12 specifically this document.

13 Q. Okay. You understand that
14 this is an office communication in the
15 application that gave rise to the '223
16 patent?

17 A. I do. I can -- I can -- I
18 see it all written there, yeah.

19 Q. And if you look on the
20 second page, do you see where it says,
21 "Request For Reconsideration/Other"?

22 A. I see that.

23 Q. And then the box is checked
24 stating, "The request for reconsideration
25 has been considered but does not place

1 the application in condition for
2 allowance because: applicant has made no
3 amendment to the claims to place the case
4 into condition for allowance. Please see
5 the explanation in the Final Rejection,"
6 correct?

7 A. I see that written under --
8 (Cross talk.)

9 A. I see it written under
10 number 11. Sorry.

11 BY MS. MILUNSKI:

12 Q. Did you have any discussions
13 with counsel relating to this response?

14 A. No.

15 Q. And I'm going to show you
16 what's been previously marked as Exhibit
17 60. And once you get it, just let me
18 know if you recognize this document.

19 A. I recognize it the same way
20 I recognize the other one, which is it's
21 a part of the process to get a patent
22 filed that everyone buys into, right,
23 including the examiner.

24 Q. And have you -- do you have
25 a recollection of having seen this

1 document before today?

2 A. I -- I can't remember
3 specifically on this one, again, but
4 it -- the process and the -- I mean,
5 there's a lot of documents you're putting
6 up, and I think it's indicative of the
7 process that goes under -- it goes -- the
8 process that happens when you're trying
9 to get a patent, right?

10 Q. And does this show a,
11 "Second Response to Office Action Dated
12 May 26, 2011 and Response to Advisory
13 Action Dated August 11, 2011"?

14 A. Yes, under, "Dear Sir," that
15 is the sentence that's written there,
16 absolutely.

17 Q. And do you understand that
18 this is a response that was filed
19 relating to the application that gave
20 rise to the '223 patent?

21 A. Yes, I understand that this
22 is, again, a part of that process and
23 that this is -- this is a response to
24 that process.

25 Q. And did you have any

1 discussions with counsel relating to this
2 response?

3 A. I -- I don't remember
4 specifically to this response.

5 Q. I'm going to show you what's
6 been previously marked as Exhibit 61.

7 A. I have it here.

8 Q. Okay. Have you seen this
9 document before today?

10 A. I'm only hesitating because
11 it is the same response to the question
12 about the process of developing the
13 patent and going through the claims with
14 the examiner, probably saw or discussed
15 some version of this, but I can't
16 remember specifically, but I do
17 understand that it's part of that.

18 Q. And does this show a
19 supplement to Second Response to Office
20 Action dated May 26, 2011, and response
21 to advisory action dated August 11, 2011?

22 A. Again, that's what's written
23 there. And when I'm looking through it,
24 I'm looking at, you know, language about
25 claims and, again, the process of

1 developing claims, this is an iterative
2 process that happens with every patent
3 and, you know, and in many cases, the
4 claims that you end up getting are not
5 the claims that you start with and so
6 this -- this process is -- is a -- is a
7 refinement and it's something that
8 happens with -- at least with the patents
9 that I've been associated with, the 18 or
10 so that we talked about earlier, right?
11 You have to do this process. So it being
12 unique and different and something
13 extraordinary in here, there isn't.

14 Q. And -- and this is
15 associated with the application for the
16 '223 patent, correct?

17 A. Yes.

18 Q. Did you have any discussions
19 with counsel relating to this response?

20 A. I can't remember.

21 Q. And then looking at
22 Exhibit 5 -- 62 --

23 A. Is that a new one?

24 Q. Yes. Just let me know if
25 you've seen this document before today.

1 A. This is another office
2 action. I can't -- I can't remember if
3 I've seen this specific document, but I
4 do understand it as part -- again, as
5 part of the process to prosecute the
6 patents.

7 Q. And more specifically, part
8 of the process to apply for a patent that
9 resulted in the '223 patent?

10 A. I'm assuming so. I'm
11 assuming it's in the vein of the others
12 and it looks to be that here. I notice
13 that the claims are different or that
14 they're being either rejected or talked
15 about. And, again, I -- I think this
16 just reiterates my contention that this
17 is part of the process and, you know,
18 it's just something that happens. Is
19 there a question on this document?

20 Q. Do you know -- you just
21 talked about the process. Do you know
22 what changes to the claims were made?

23 A. They were -- no, I don't
24 know exactly. I don't know exactly and I
25 have -- I would have to study this

1 prosecution history to understand that
2 and that -- and as you can see, it's --
3 you know, there's several documents that
4 you're showing me that would take some
5 time to study that to make sure that I'm
6 accurate in -- in what I say --

7 (Cross talk.)

8 BY MS. MILUNSKI:

9 Q. Okay.

10 A. It was a long time ago.

11 Q. In looking at page 2, which
12 is Bates stamped Fox 170, it says that
13 claims 23 to 41 are pending and that
14 those same claims are all rejected,
15 correct?

16 A. I see that written here
17 under Disposition of Claims, yes.

18 Q. Okay. And then going to Fox
19 172, paragraph 4 --

20 A. I'm, there, okay.

21 Q. -- do you see, "Claims 23-32
22 are rejected under 35 U.S.C. 112, first
23 paragraph, as failing to comply with the
24 written description requirement. The
25 claim(s) contains subject matter which

1 was not described in the specification in
2 such a way as to reasonably convey to one
3 skilled in the relevant art that the
4 inventor(s), at the time the application
5 was filed, had possession of the claimed
6 invention," correct?

7 A. You've -- you've read off
8 paragraph 4 and -- and, again, I'm going
9 to say that, you know, this is -- this is
10 the typical things that happen when
11 you're -- when you're heading towards
12 patent claims. You have to make sure
13 that they pass the high bar and that's
14 what -- that's what a prosecution history
15 is doing.

16 Q. And -- and the office action
17 summary continues, "It remains unclear
18 what is meant by the newly add[ed]
19 limitation of '...a fluid flow path
20 between the bottom out cup and the
21 compression portion of the chamber.'"

22 Do you see that?

23 A. I see that written here,
24 yes.

25 Q. Do you have any factual

1 basis to disagree with the statement of
2 the U.S. Patent and Trademark Office
3 that, the "fluid flow path is arranged
4 within the bottom out cup 275 and...not
5 'between' the cup and the compression
6 chamber"?

7 MR. MCCAULEY: Objection, lacks
8 foundation, calls for speculation.

9 Go ahead.

10 A. I need you to ask -- so when
11 I read this paragraph, my -- you know,
12 it's -- they're trying to get clarity on
13 the fluid flow path and as we -- we both
14 know, they -- they can be complicated,
15 right? And we -- the examiner wants to
16 be sure that someone skilled in the art
17 can read that and learn from it, right?
18 And that's what's happening here is
19 making sure that things are clear. So
20 I -- I know I probably didn't answer your
21 question so you might need to ask it
22 again.

23 BY MS. MILUNSKI:

24 Q. Okay. Do you have any
25 factual basis to disagree with the

1 statement of the U.S. PTO that, "The
2 fluid flow path is arranged within the
3 bottom out cup 275 and is not 'between'
4 the cup and the compression chamber"?

5 MR. MCCAULEY: Same objections.

6 Go ahead.

7 A. You know, I want to think
8 about it like a shock designer and
9 understand that that compression chamber
10 and that bottom out cup chamber are in
11 direct communication when the secondary
12 piston enters that bottom out cup that
13 that communication circuit favors one
14 path versus another. And so in getting
15 clarity on -- on how that actually works,
16 I think is what they're getting at here.

17 BY MS. MILUNSKI:

18 Q. Well, let's go back to the
19 '223 patent that was previously marked as
20 Exhibit 48.

21 A. Yeah, okay.

22 Q. And if you look at three
23 big -- figure 3B that we looked at a
24 little bit earlier today, do you
25 understand what's depicted in figure 3B?

1 A. Yes.

2 Q. Okay. Do you believe that
3 the fluid flow path shown by figure 3B is
4 arranged within the bottom out cup 275
5 and is not between the cup and the
6 compression chamber?

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

9 Go ahead.

10 A. Ask -- ask me that again,
11 please.

12 BY MS. MILUNSKI:

13 Q. Do you believe that the
14 fluid flow path shown by figure 3B is
15 arranged within the bottom out cup 275
16 and is not between the cup and the
17 compression chamber?

18 MR. MCCAULEY: Same objections.

19 A. So my interpretation and I
20 believe anybody who designs shock
21 absorbers' interpretation of 3B is that
22 the fluid flow path -- there's -- there's
23 several fluid flow paths, right? So when
24 I look at this, I understand that that
25 secondary piston is entering -- this is

1 showing it close to bottom out, but it's
2 entering into that bottom out cup and
3 until then, there's -- there's -- there's
4 communication that's different than when
5 it enters into the bottom out cup, right?
6 So it's -- it's a complicated answer.
7 It's not just one or the other.

8 So once it's entered, the --
9 the oil that's being compressed is forced
10 through the compression adjuster, right?
11 There's also a fair amount -- a small
12 amount of oil that's required through
13 tolerances and clearance between the
14 bottom out cup and the secondary piston
15 to allow dynamic action and so that it
16 doesn't cause friction and seize. And
17 then there's a flow path through the
18 shaft that is controlled by the rebound
19 adjuster, right? And that's kind of the
20 circumstance that's being shown here,
21 right? And the question you asked me, I
22 don't -- I don't know how to answer
23 differently than that.

24 BY MS. MILUNSKI:

25 Q. What does "within" mean to

1 you?

2 A. What does "within" mean?
3 Inside, inside a boundary.

4 Q. And what does "between" mean
5 to you?

6 A. "Between" means to me that
7 there's two things and that you are --
8 they're on -- you're in -- you're in --
9 you're in the middle -- or not in the
10 middle. You're just in between. What's
11 another word for "between"? You're
12 bounded by two things, you're inside two
13 things. That's a -- I am --

14 (Reporter clarification.)

15 A. I said I'm not a thesaurus
16 so I'm trying to say what "between" means
17 and I can't think of another word.

18 BY MS. MILUNSKI:

19 Q. All right. Let's hop back
20 to -- to Exhibit 62 if you could.

21 A. Okay.

22 MR. MCCAULEY: Sarah, FYI, our
23 lunch is here when you get to an
24 appropriate point.

25 MS. MILUNSKI: Okay. I'm just

1 going to wrap up this exhibit.

2 A. Okay. I'm on 62.

3 BY MS. MILUNSKI:

4 Q. And if you scroll on down to
5 paragraph 7 for me at Fox 173?

6 A. Are we going to talk about
7 in between? Okay. 173, got it.

8 Q. Okay. And if you look at
9 paragraph 7, the examiner states that
10 claims 23 to 25, 29, 33 to 37 and 41 are
11 rejected under 35 U.S.C. 103(a) as being
12 unpatentable over Patriquin '304 in view
13 of Robertson '490, correct?

14 A. Yeah, again, you're --
15 you're reading what's written here, yes.
16 That's correct, yeah.

17 Q. Are you familiar with
18 Patriquin '304?

19 A. That's one of the more
20 obscure ones, so I'd have to say for --
21 for me to say I'm familiar, we need to
22 look at it again, and I'm sure that when
23 I see it, I'll be familiar with it.

24 Q. Okay. And what about
25 Robertson '490, are you familiar with

1 that reference?

2 A. It would be the same answer.
3 I would need to see it.

4 Q. Okay.

5 MS. MILUNSKI: All right. Why
6 don't we go ahead and take a lunch
7 break.

8 MR. MCCAULEY: Thank you.

9 THE VIDEOGRAPHER: Off record,
10 12:16 p.m.

11 (Whereupon, a brief recess is
12 taken.)

13 THE VIDEOGRAPHER: On the
14 record, 12:52 p.m.

15 BY MS. MILUNSKI:

16 Q. Mr. Allinger, I'm going to
17 ask you to take a look at what has been
18 previously marked as Exhibit 63. See if
19 you're familiar with this patent.

20 A. You just put another one in.
21 Okay, I got it. Got it. Okay, I just
22 had to refresh. Oh, 63. Okay, I'm
23 looking at 63 and -- okay. And this is
24 the Patriquin that you asked me about
25 earlier. I'm loosely familiar with this

1 patent. I have not studied it recently.

2 Q. When is the last time you
3 studied it?

4 A. The last time I looked at it
5 was -- was, you know, back when we were
6 prosecuting the -- or developing the
7 invention because it was prior art that
8 was referenced and, you know, we looked
9 through everything. We definitely
10 concentrated most on the most relevant
11 art and the most modern art, which was
12 the Ohlins art.

13 Q. And do you have any --

14 (Cross talk.)

15 A. I see it here. I have it
16 called up. I'm looking at it, so please
17 ask.

18 BY MS. MILUNSKI:

19 Q. Okay. Do you have any
20 understanding of how Patriquin relates to
21 the submitted claims of the '223 patent?

22 MR. MCCAULEY: Objection, vague.

23 Go ahead.

24 A. The artwork in this patent
25 is showing a version -- some version of a

1 bottom out cup and a shock absorber and
2 that's how it relates to what we were
3 doing.

4 BY MS. MILUNSKI:

5 Q. And -- give me one second.
6 I'm going to mark another one.

7 A. You're adding another
8 exhibit? Okay. Looks like it. One
9 second. I'm going to --

10 Q. Previously marked as Exhibit
11 64.

12 A. I'm just seeing if I can
13 look at two at the same time. Okay. So
14 this is another correspondence in the
15 prosecution. I see it, 64.

16 Q. And as you sit here today,
17 do you have a recollection of having
18 reviewed this document in the past?

19 A. This would be the same
20 answer as before. That's part of the
21 prosecution so I don't remember
22 specifically because it was so long ago.

23 Q. And do you see that this is
24 a Response to Office Action Dated
25 December 15th of 2011, and it's related

1 to the application that gave rise to the
2 '223 patent?

3 A. I do, yes.

4 Q. Did you have any discussions
5 with counsel relating to this response?

6 A. I don't remember.

7 Q. Do you have any
8 understanding of the changes that were
9 made to the claims?

10 A. Not without spending a lot
11 of -- at least some time, you know, here,
12 looking through the whole thing. Not --
13 not off the top of my head, no. I would
14 have to study it.

15 Q. Okay. And then taking a
16 look at what's previously been marked as
17 Exhibit 65.

18 A. Is that the one we started
19 out looking at --

20 Q. Hold on.

21 A. -- or is that a new one?

22 Q. It's a new one.

23 A. Okay.

24 Q. But it's not wanting to --

25 A. Tell me --

1 (Cross talk.)

2 BY MS. MILUNSKI:

3 Q. It's not stamping for some
4 reason so I'm trying to get it to work
5 here. There we go.

6 A. Office action, okay. I've
7 got it, 65.

8 Q. Okay. And as you sit here
9 today, do you have a recollection of
10 having reviewed Exhibit 65 in the past?

11 A. I don't remember 65. It is
12 the -- it's the same answer. It's part
13 of the -- I see it's a correspondence. I
14 understand that. I don't remember
15 specifically looking at this document.

16 Q. In looking at page 2 of
17 Exhibit 65, it says that claims 23
18 through 41 are pending and those same
19 claims are rejected, correct?

20 A. Okay, looking at page 2, is
21 it paragraph -- which paragraph?

22 Q. So this is Fox 196 and under
23 Disposition of Claims, "Claims" 21 --
24 "23-41 are pending in the application."

25 Do you see that?

1 A. I do see that, yes --

2 (Cross talk.)

3 BY MS. MILUNSKI:

4 Q. And then, "Claims 23-41 are
5 rejected"?

6 A. I see that also.

7 Q. Okay. And then moving down
8 a couple pages to Fox 198, do you see
9 where it states that, "Claims 23-32 are
10 rejected under 35 U.S.C. 112, first
11 paragraph, as failing to comply with the
12 written description requirement"?

13 A. I see that sentence written
14 here, yes.

15 Q. Do you have any
16 understanding as to why the examiner made
17 that statement?

18 A. I don't remember. I don't
19 remember, Sarah. I'd have to -- I'd have
20 to like study through the whole -- or,
21 you know, the context to understand why.

22 Q. And then if you look at the
23 next page in paragraph 6, it says that,
24 "Claims 23-25, 29, 33-37 [and] 41 are
25 rejected under 35 U.S.C. 103(a) as being

1 unpatentable over Patriquin '304 in view
2 of Robertson '490," right?

3 A. I see you reading that. I
4 don't -- I want to add -- add one note
5 that, I mean, those claims -- I don't
6 know exactly what those claims are. I'm
7 sure -- I'm not positive, but I'm sure
8 that they're not exactly what we ended up
9 with because of this whole prosecution
10 process, but I do see that that's written
11 there and you -- you read it exactly like
12 it's written.

13 Q. Do you have an understanding
14 of how the claims changed between this
15 iteration of the prosecution history and
16 the final '223 claims?

17 A. No, not in detail without
18 studying through the whole context of
19 this -- of this prosecution and this
20 particular correspondence.

21 (Cross talk.)

22 A. I do know the final claims
23 that we have that we talked about
24 earlier, yeah, and I -- and I do
25 acknowledge that this is the process that

1 got us to those claims.

2 BY MS. MILUNSKI:

3 Q. But the attorneys that --
4 for Fox were the ones that were primarily
5 handling getting that shepherded over,
6 having those communications with the PTO?

7 A. The attorneys are the ones
8 that prosecute the -- or that develop the
9 patent, yeah, and we advise them and --
10 you know, when they ask, yeah.

11 Q. Do you remember any advice
12 that you provided regarding the claims --

13 (Cross talk.)

14 MR. MCCAULEY: Mr. Allinger,
15 please pause before you answer,
16 particularly when she's asking you
17 questions about attorney/client
18 communications. I simply would like
19 to remind you that that was a yes or
20 no question and not to reveal the
21 substance of any attorney/client
22 communications. Thank you.

23 A. Please ask the question
24 again.

25 MS. MILUNSKI: Okay.

1 (Whereupon, the question is read
2 back by the reporter.)

3 A. I do not.

4 BY MS. MILUNSKI:

5 Q. Okay. I'm going to show you
6 what's been previously marked as Exhibit
7 66 and ask you if you have a recollection
8 of having seen this document before?

9 A. This is another part of the
10 process and I don't remember.

11 Q. And this is titled Response
12 to Final Office Action Dated May 17, 2012
13 and Notice of Appeal Filed August 17,
14 2012, correct?

15 A. I see that written here,
16 yes.

17 Q. And you understand that this
18 was part of the application process that
19 gave rise to the '223 patent?

20 A. I do.

21 Q. And did you have any
22 discussions with counsel relating to this
23 response?

24 A. I don't -- I don't remember.

25 Q. Okay. If you could take a

1 look at what's previously been marked as
2 Exhibit 67.

3 A. I have it here.

4 Q. And as you sit here today,
5 do you have a recollection of having seen
6 this document before?

7 A. Again, I don't remember, but
8 I can see that it's part of the
9 prosecution process document.

10 Q. And you understand that 67
11 is an office communication in the
12 application that gave rise to the '223
13 patent?

14 A. Yes, I do.

15 Q. And if you look at the
16 second page of this document, it -- it
17 says that claims 42 to 60 are pending and
18 that those same claims are all rejected,
19 correct?

20 A. I see that written here,
21 yes.

22 Q. Okay. And then going down
23 to Fox 236, paragraph 3, does that state
24 that, "Claims 42-51 are rejected under 35
25 U.S.C. 112, first paragraph, as failing

1 to comply with the written description
2 requirement"?

3 A. I see that written and,
4 again, my -- my comment is that this is
5 part of the process to develop good
6 claims and I see that, you know, that
7 this is part of the back and forth. It
8 goes on when we're developing a patent
9 and an invention.

10 Q. But as you sit here today,
11 you're not sure what changes were made
12 between what the patent examiner is
13 discussing in this rejection and the
14 final claims; is that correct?

15 A. I don't remember. I don't
16 remember.

17 Q. Okay. Do you have any
18 understanding of how many times the U.S.
19 PTO rejected the proposed claims for the
20 '223 patent application before it was
21 accepted?

22 A. I don't know that number,
23 no. I -- I would be guessing. I do know
24 that when you prosecute a patent, this
25 is -- like I mentioned earlier, this is a

1 very common occurrence back and forth
2 and, you know, particularly with shock
3 absorbers, which tend to be -- other than
4 a bicycle, which tend to be some of the
5 most patented things there are and so
6 navigating all of that requires a lot of
7 work and a lot of back and forth to get a
8 real novel, you know, patent and an
9 invention actually done. So it doesn't
10 surprise me that there could be some back
11 and forth and there most likely is in
12 most cases especially when you're dealing
13 with shock absorbers.

14 Q. What --

15 (Cross talk.)

16 A. It's a technology that's
17 been highly --

18 BY MS. MILUNSKI:

19 Q. I certainly didn't mean to
20 cut you off, Mr. Allinger. You paused.
21 I thought you were done. Go ahead and
22 finish your answer and I'll ask my next
23 question.

24 A. That's fine. I was just
25 saying it's a technology that's certainly

1 been high patented since the beginning
2 over the years, you know, since patent
3 technology and you can see that by the
4 reference numbers, very low reference
5 numbers in some cases. So it's going to
6 require a lot of work to get through and
7 have clean claims.

8 Q. What do you understand was
9 the novelty that set the technology
10 described in the '223 patent apart from
11 all of this prior art that we've been
12 looking at today?

13 A. That the -- the bottom out
14 cup was adjustable, that the force
15 generated in that -- by the secondary
16 piston in the bottom out cup was actually
17 an adjustable feature, exterior, easily
18 adjusted without having to take the shock
19 apart.

20 Q. Are there other shock parts
21 that are adjustable -- have an adjustable
22 feature on the outside without having to
23 take the shock apart?

24 A. Certainly. You know,
25 there's -- there's all different kinds of

1 adjustments so that -- you know, we talk
2 about -- we've talked about rebound.
3 We've talked about compressions so on
4 both those -- in both those circuits, you
5 can have multiple ways to adjust it
6 externally. So if we start with rebound,
7 you could adjust through a metering
8 route, the flow across that -- across the
9 piston, which -- which changes the
10 rebound, which is how quickly the shock
11 extends. You could have a rebound shim
12 stack, which are valves that you could
13 preload externally and -- and that's been
14 practiced. I'm naming a few because
15 there are countless. You could adjust
16 compression, the initial compression
17 stroke -- not -- not the bottom out that
18 we're talking about here, but you can
19 adjust compression both high speed,
20 that's when the shock's moving quickly or
21 low speed, that's when the shock's moving
22 slowly -- I'm sorry -- or high speed is
23 when a shock is moving quickly and there
24 are different various means to do that
25 externally. You can also adjust the

1 compression by metering the flow of oil
2 that's displaced as the shock shaft
3 enters the shock and -- and that's -- I
4 mean, those are probably the most popular
5 ones, but there's many ways to adjust a
6 shock absorber externally.

7 Q. And all those externally
8 adjustable features on shocks were in the
9 art prior to the '223 patent; is that
10 correct?

11 A. The ones that I just
12 mentioned I believe are very commonly
13 practiced, yeah.

14 Q. And I know we looked at some
15 prior art that already had a bottom out
16 cup, right?

17 A. We just looked at some --
18 yeah, certainly the Ohlins does. We
19 talked about that, yep, yep.

20 Q. Okay. Take a look at what's
21 been previously marked as Exhibit 68.
22 Just let me know if you have a
23 recollection as you sit here today of
24 having seen this document before.

25 A. We have another part of the

1 prosecution history and I do not remember
2 this specific document.

3 Q. In any event, you understand
4 this is a response that was filed
5 relating to the application that gave
6 rise to the '223 patent?

7 A. I do understand that, yes.

8 Q. And do you recall having any
9 discussions with counsel relating to this
10 response?

11 A. I -- I don't remember.

12 Q. Okay. All right. You
13 can -- you can take that one down. I'm
14 going to redirect you now back to the
15 30(b)(6) Notice of Deposition, which was
16 previously marked as Exhibit 70 and ask
17 you to take a look at topic number 6.

18 A. Okay. We looked at this one
19 already, topic 6. Okay.

20 (Cross talk.)

21 BY MS. MILUNSKI:

22 Q. Yeah. And just let me know
23 what you did to prepare to testify
24 regarding this topic specifically.

25 A. Okay. So we're talking

1 about forks now, correct, accused forks?

2 Am I reading the right one?

3 Q. Correct.

4 A. Okay. So we're off the
5 bottom out cup right now and we're
6 talking about forks?

7 Q. Yes.

8 A. Okay. And the question was
9 what did I do to --

10 Q. Prepare to testify regarding
11 this topic specifically.

12 A. Well, we've looked -- we --
13 I've looked at those forks and the
14 technologies that they practice, yeah,
15 and how it pertains to this case. That
16 might be too general of an answer --
17 I'm -- that's my answer.

18 Q. Okay. So you looked at the
19 forks to prepare to testify about this
20 topic?

21 A. Yeah, we -- we looked at the
22 forks and the technology. They were --
23 yeah, yes, yeah.

24 Q. And the technology on the
25 fork that you specifically looked at was

1 the -- the push button?

2 A. Yeah, the means that the
3 forks were using to a bleeder -- a
4 bleeder, you know, the bleeder port or
5 the -- the equalization mechanism.

6 Q. And what are all the factual
7 bases for Fox's belief that the '331
8 patent has been commercially successful?

9 MR. MCCAULEY: Objection, calls
10 for a narrative.

11 Go ahead.

12 A. Yeah, so we talked a lot
13 about this at the preliminary injunction.

14 You know, when we introduced
15 the bleeder ports on the 40, we -- we
16 found it -- you know, that the rider
17 really -- really appreciated -- I'm just
18 trying to switch gears between bottom out
19 cup and fork now so bear with me.

20 The rider really appreciated
21 the ability to -- to equalize the fork to
22 atmospheric pressure and that allowed all
23 of the hard work that we do to make sure
24 that the fork is very low friction, you
25 know, premium damping control, the right

1 spring rate, the right chassis stiffness,
2 really to appreciate those because those
3 things have evolved over the years and
4 not like forks from very primitive to
5 very complex designs that both SRAM and
6 Fox make right now, right? And so that
7 was on the 40. And the downhill racers
8 loved it and the park riders loved it.
9 Now, a park rider would be someone who
10 goes to Whistler as an example and uses
11 their downhill bike for those kind of
12 downhill conditions, right?

13 And then after we released
14 it for the 40, and the 40's more of a
15 limited -- not limited, but the -- the
16 smaller volume production, the whole sort
17 of industry started to shift towards
18 bikes that were traditionally
19 cross-country bikes, were performing and
20 being asked to perform more like a
21 downhill bike. So they were starting to
22 show up at bike parks and we were getting
23 things like enduro and super enduro, you
24 know, as being terms down -- down country
25 bikes, trail bikes, and they were being

1 used a lot like downhill bikes. And we
2 were -- we took that venting system and
3 applied it to those forks, the 38 and the
4 36, and the customers just loved it and
5 we had great reviews that we've talked
6 about.

7 It became a -- you know,
8 sort of one of the top features that
9 were -- that were talked about in
10 reviews. It was sort of a must-have
11 after that and, you know, we all started
12 to understand how important it was to
13 really get the performance out of the
14 fork. And, you know, that's when we
15 realized, you know, we had something
16 and -- and we knew it was good. And I
17 think that answers your question
18 hopefully.

19 BY MS. MILUNSKI:

20 Q. Anything else?

21 MR. MCCAULEY: Objection, calls
22 for a narrative.

23 Go ahead.

24 A. So --

25 BY MS. MILUNSKI:

1 Q. I just want to make sure
2 you're done with your answer.

3 A. I'm done with my answer.

4 MR. MCCAULEY: Objection.

5 Go ahead.

6 THE WITNESS: I'm sorry.

7 BY MS. MILUNSKI:

8 Q. All right. And you touched
9 on this a bit, but what's the long-felt
10 need that you believe the '331 patent
11 addresses?

12 A. So there were -- there were
13 a few things that I'll bring up. One is
14 that we were starting to see -- I
15 mentioned those park riders, but I
16 also -- but there's also other riders
17 that just transport their bikes to
18 different elevations and different
19 temperature ranges, but also ride from
20 maybe -- let's just use some examples --
21 sea level to a thousand feet, sea level
22 to 500 feet, sea level to -- you name it,
23 right? And we -- we just started to see
24 that those -- those folks were -- I'm
25 losing my train of thought. Those folks

1 were using our device. Is that the
2 question you asked me? Sorry. Let me
3 read it again real quick.

4 Long-felt need. Right. So
5 they were using -- they weren't able to
6 get the performance. They felt like
7 their forks were -- were starting to bind
8 up, you know, because we had made all
9 these advances in performance that they
10 felt when the fork was at equilibrium,
11 but then when they would go to different
12 elevations or temperature ranges and they
13 would feel that something was missing.

14 There's -- there's some friction or
15 there's some additional compression feel
16 to the fork. It just doesn't feel right.

17 And so they were starting to
18 use zip ties or whatever they could
19 because they were surmising that there
20 was an imbalance in pressure, right? And
21 that imbalance in pressure was causing
22 the fork not to perform in a premium
23 manner. And so the bleeders gave you the
24 ability to instantly equalize and be sure
25 that you are running a fork that's

1 pressure balanced across that seal, that
2 upper seal, and that it performs like it
3 was intended, and it performs like you
4 remember performing when you got it, and
5 it performs the same as when you're at
6 the top of a mountain or you're halfway
7 up a mountain, and you have the ability
8 to check that performance constantly.
9 That's another thing that riders really
10 like to be able to do is that you want
11 to -- you have to have a psychological,
12 like I'm -- I'm getting the best I can
13 get so, therefore, I can perform at my
14 best. And it's just an easy way to check
15 that you're equalized.

16 It's kind like, you know
17 popping, your ears as you drive -- of a
18 hill in your car or something, right, you
19 want to be sure you're equalized, and
20 when you're equalized, you're getting the
21 best performance and you're eking out all
22 the performance that we've built in over
23 the years through coatings and
24 compression adjusters and chassis
25 stiffness and all of that.

1 Q. Now, when you say "check
2 that performance constantly," do you mean
3 pushing the button constantly?

4 A. No, like, I mean -- well,
5 constantly. So what does "constantly"
6 mean? I don't mean like you're riding
7 and you're hitting the button, but I do
8 mean as you change -- as you're riding
9 and you -- and you feel like you've
10 changed either in temperature, elevation
11 or you just want to make sure that you're
12 equalized, you can hit that button. So
13 you could hit it when you're stopped.
14 You don't want to try to hit it when
15 you're riding, but you can hit it when
16 you're stopped, and you can do it
17 multiple times during a ride if you
18 wanted to. It's possible, right? And it
19 gives you the peace of mind. You can
20 check it very easily.

21 Q. And you said that people
22 were using zip ties.

23 Can you hear me actually?
24 It says my internet connection is
25 unstable?

1 A. I can hear you just fine.

2 Q. Okay. All right.

3 Let me know if you don't.

4 A. Okay.

5 (Cross talk.)

6 A. Mouth is moving, nothing's
7 coming out, I'll say something.

8 BY MS. MILUNSKI:

9 Q. So you -- you had mentioned
10 zip ties in your answer, that people were
11 starting to use zip ties to restore
12 the -- the feel when they changed
13 elevations.

14 Is -- was that an
15 alternative solution to the problem that
16 the '331 patent addresses?

17 A. Only in that it equalized
18 the pressure, but it -- the problem with
19 a zip tie or a little twig or whatever
20 they were using was that you're crossing
21 some critical seals, right, and you're --
22 and you're potentially damaging them,
23 which then could lead to other problems.
24 You could have mud intrusion. You could
25 have oil leaving the fork in high

1 quantities. You could have water getting
2 in. So that -- that zip tie or whatever
3 people were using is just not a good way
4 to do it. It's a -- you know, it's a
5 potentially destructive way to do it to
6 your fork, right? You wouldn't want to
7 do that very often or ever.

8 Q. The zip tie certainly
9 does -- when it burps the fork, it
10 equalizes the pressure though; is that
11 correct?

12 A. If you can cross that seal
13 with a zip tie, yeah, you -- you will
14 equalize the -- the pressure, but, again,
15 you risk, you know, damaging your -- your
16 wiper seal or any of the internal parts
17 of that seal pack that are there.

18 Q. And you don't believe that a
19 zip tie is infringing on the '331 patent,
20 right?

21 A. No, I don't believe a zip
22 tie is infringing on the '331 patent.

23 Q. Okay. And has Fox licensed
24 the '331 patent to anyone?

25 A. Excuse me. No, we have not.

1 Q. So fair to say, then, that
2 Fox does not receive any royalties
3 relating to the '331 patent?

4 A. We haven't licensed it to
5 anyone, so I would assume we -- we
6 haven't received any royalties relating
7 to it. And the reason we haven't
8 licensed it is we're -- we're super proud
9 of it. You know, we think it's a great
10 feature and it's -- it's something that
11 was -- that kind of helps differentiate
12 us and gives us a sales advantage. So
13 licensing it would be taken very -- you
14 know, we would think hard -- long and
15 hard about that and I'm -- and we don't
16 license it.

17 Q. Has any third party ever
18 approached Fox and requested to license
19 the '331 patent technology?

20 A. No, no. Our main
21 competitors -- so our main competitors
22 would be SRAM RockShox, right? We
23 mentioned Ohlins is in the game now too.
24 But, again, I mean, if -- if SRAM
25 approached us, we wouldn't be sitting

1 here today maybe or we would have said
2 no, I don't know.

3 But we don't have a lot of
4 sort of major competitors other than some
5 smaller folks and we have not been
6 approached to license it, no.

7 Q. Okay. And other than the
8 claims Fox is making in this lawsuit,
9 does Fox believe that any other third
10 parties are infringing the '331 patent?

11 MR. MCCAULEY: You know, I'm
12 going to have to instruct him not to
13 answer. The only basis he would have
14 to answer that is attorney/client
15 privileged information.

16 BY MS. MILUNSKI:

17 Q. Well, Mr. Allinger, do you
18 believe that you have a basis for
19 answering that question outside of
20 something that your attorneys have told
21 you, just by your understanding of the
22 '331 patent and your review in your role
23 as -- I think it's vice president of SSG,
24 and staying apprised of the market; do
25 you have a basis to answer that question?

1 (Cross talk.)

2 MR. MCCAULEY: Do you understand
3 what she's asking?

4 THE WITNESS: I didn't say
5 anything.

6 Go ahead, Rob.

7 MR. MCCAULEY: Do you understand
8 that she's asking you whether you have
9 a basis to answer that question that's
10 based on something other than an
11 attorney/client privileged
12 communications?

13 A. Yeah, my answer was going to
14 be that I do not have a basis.

15 BY MS. MILUNSKI:

16 Q. Do you feel that you
17 understand the '331 patent, Mr. Allinger?

18 A. Yes, I feel I understand
19 that patent, yes.

20 Q. Okay. And you regularly
21 review other shocks that are out on the
22 market?

23 A. Other forks?

24 Q. Yes, I'm sorry, forks.

25 A. And the only reason I asked

1 you that was because we were talking
2 about shocks.

3 Okay. And you regularly
4 review other forks that are out in the
5 market. I -- I do regular -- regularly
6 review other forks, maybe a little less
7 than I do now because I'm not as involved
8 with the sales and watching that. So
9 Jared's team, the sales team is -- is
10 much more in tune with what's coming out
11 constantly and what's, you know -- what's
12 out in the world. They read Pinkbike
13 every day. I don't do that anymore,
14 right, so...

15 Q. And have you seen any
16 other -- whether you viewed them as
17 competitors or if they're just in the
18 market generally selling bicycle forks or
19 motorcycle forks, have you viewed any
20 with what you think appear to be pressure
21 relief valves?

22 MR. MCCAULEY: Objection, vague.
23 Go ahead.

24 A. I -- I don't believe so, no.
25 I -- I -- at this point -- I mean, if

1 you -- if we wanted to take a look at the
2 internet and look at everybody's current
3 offering because it's changing fast,
4 especially as we approach Sea Otter --

5 (Reporter clarification.)

6 A. Sea Otter, yeah, so S-E-A,
7 O-T-T-R -- O-T-T-E-R -- we'll probably
8 see new releases, maybe something's out
9 in the world, but at this point, no.

10 BY MS. MILUNSKI:

11 Q. Okay. And which of Fox's
12 forks currently utilize the claimed
13 invention in the '331 patent?

14 A. So I detailed that out in my
15 declaration and I think I'm going to
16 cover everything, but the 40, the 36 and
17 the 38 currently, yep.

18 Q. And does Fox's 32 fork
19 practice on the '331 patent?

20 A. It does not.

21 Q. And what about Fox's 32
22 taper cast?

23 A. It does not. And -- and the
24 reason -- you know, I guess we'll talk
25 about this at some point, but it's

1 similar to the reason we talked about in
2 the other discussion was that you have to
3 look at the use case and the 32 and the
4 32 taper cast are cross-country forks
5 and -- as you know in the bicycle world,
6 you have to develop something that's
7 light for -- you know, for light and --
8 and purpose built, right? And you have
9 tradeoffs. And so when you're trading
10 off for something closer to a downhill
11 bike, you might be thinking about weight
12 differently than you think about weight
13 when you're talking about a pure
14 cross-country bike like the bike that a
15 32 or a 32 taper cast would be on. So
16 you'd be -- you have to be adding
17 features to those forks in order to add
18 the bleeders and that's why they're not
19 on those forks currently.

20 Q. Sure. You know, not --
21 essentially what you're saying is that
22 not all bike riders really need a
23 pressure relief valve; is that fair?

24 A. Yeah, you know, I'm sorry, I
25 was reading -- it says not all --

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

3 BY MS. MILUNSKI:

4 Q. If you can just listen to my
5 question --

6 A. I was doing both that same
7 and I just saw water and I just -- I
8 didn't know what to make of it. Okay.

9 Q. So in other words, what
10 you're saying is that not all bike riders
11 have a need for a pressure relief valve;
12 is that fair?

13 A. What I'm saying is that you
14 have to look at the use case. So if the
15 use case is more oriented towards a --
16 towards like a cross-country scenario
17 where you don't want to trade off even
18 5 grams or 4 grams of weight, you have to
19 determine whether that rider is going to
20 value that feature on a short-travel,
21 lightweight cross-country fork going to
22 value that feature more than the -- than
23 the weight and the complexity.

24 Q. So not all bike riders would
25 value the PRV feature when weighed

1 against counter veiling, you know, the
2 weight of -- of -- that it could add to
3 the fork and that sort of thing, they
4 just wouldn't value that feature,
5 correct?

6 MR. MCCAULEY: Objection, asked
7 and answered.

8 A. So I answer that question?

9 BY MS. MILUNSKI:

10 Q. You can answer.

11 A. Okay. I can answer.

12 Yeah, that's the tradeoff
13 that we make -- we make to determine, you
14 know, when to use the feature and when
15 not to use the feature.

16 Q. And the -- the 34 fork that
17 Fox offers, that also does not include
18 the '331 technology; is that correct?

19 A. So the 34 fork is, you know,
20 in between, right, so now -- because we
21 have a 40 way over here as a downhill
22 fork and the 32 as a cross-country fork
23 and then you've got a 38, 36 and now we
24 have a 34. We've had a 34 for a few
25 years. So we were thinking a lot about

1 the usage on that fork especially as that
2 fork and those bicycles get used in a way
3 that's more similar to the 36 and 38.
4 Currently not practicing it on the 34.

5 Q. Okay. Thank you.

6 And you said not practicing
7 on the 34. You mean the 34 fork does not
8 currently practice on the technology
9 described in the '331 patent; am I
10 correct?

11 A. That's correct.

12 Q. And other than the 40
13 series, none of Fox's forks implemented
14 the technology described in the '331
15 patent until model year 2021; is that
16 correct?

17 A. Model year 20 -- calendar
18 20 -- yes, yes, that's correct. I just
19 say that because we always get -- we had
20 the model year, we had last time too,
21 right, model year and calendar year so I
22 want to be sure we get that right and
23 sometimes even I can get confused on
24 those topics so...

25 Q. And are you familiar with

1 the prosecution history of the '331
2 patent?

3 A. I think we would end up in
4 the same -- not as -- not as familiar,
5 I'm not an inventor on that one and so I
6 would be only -- no, I guess I'd have to
7 answer, no. I'm not super familiar with
8 the prosecution history of the '331
9 patent.

10 Q. Okay. And topic number 7
11 at -- that you've been designated to
12 testify about states, "The bases for
13 Fox's claim that the Accused Shocks" --
14 so we're back to the '223 -- "the Accused
15 Shocks infringed the '223 Patent,
16 including construction of claim terms in
17 the '223 Patent."

18 Do you see that?

19 A. Where are you reading from?
20 I'm -- I'm looking at 7 in Exhibit 70 and
21 it wasn't what you just were talking
22 about. Is that --

23 Q. Okay. Topic 7, "The bases
24 for Fox's claims that the Accused Shocks
25 infringed the '223 Patent, including

1 construction of claim terms in the '223
2 Patent."

3 A. Got it. Okay. Got it. I
4 was looking at number 7. I was on the
5 wrong page. It wasn't number 7.

6 Q. And what did you do to
7 prepare to testify regarding this topic
8 number 7?

9 A. "Bases for Fox's claim that
10 the Accused Shocks infringe" --

11 MR. MCCAULEY: Sarah --

12 (Cross talk.)

13 MR. MCCAULEY: Wes, just a
14 minute.

15 Sarah, I'll remind you that we
16 specifically met and conferred about
17 this topic before today's deposition
18 and I informed you that other than
19 what's in the infringement
20 contentions, I don't think -- I don't
21 think our witness is going to have
22 anything to say that isn't privileged.
23 I mean, you said you wanted an
24 opportunity to inquire about that, but
25 I wanted to remind you that that --

1 that's the state of things going into
2 this.

3 MS. MILUNSKI: Yes, I
4 understand, Rob. I didn't ask him
5 anything that I believe is privileged
6 because I asked him how he prepared
7 for this topic.

8 BY MS. MILUNSKI:

9 Q. You can answer,
10 Mr. Allinger.

11 A. Okay. So -- so when we
12 suspect that something may infringe on
13 our IP -- I think we talked about this
14 before also -- there's a process that has
15 to go on because it's a -- it's -- it's
16 not just a, oh, they -- they infringed,
17 look.

18 You know, you have to
19 study -- as -- as we're going through
20 today, you have to -- the claims have to
21 be studied. The actual architecture has
22 to be studied and at Fox, when we think
23 there's potential for infringement, the
24 attorneys, like Rob, help us finish that,
25 right? And so that study happens

1 separately from me for sure, right?

2 And -- and so the basis for
3 infringement is that I see -- in my
4 knowledge, we notice that they had
5 bleeders and we suspected infringement
6 because we have a patent on bleed -- you
7 know, fork bleeding technology. That may
8 not answer your question. I'm trying.

9 BY MS. MILUNSKI:

10 Q. Okay. So you talked about
11 the process right there. And you said
12 that when we suspect that something may
13 infringe, you have to study the claims.
14 Are you talking about you, yourself or
15 someone within Fox or Fox's attorneys?

16 A. When I say "we"?

17 Q. Correct.

18 A. Okay. So "we" could be --
19 "we" could be anybody at Fox, right?
20 Someone could bring up, hey, look at
21 this, this looks interesting. And then
22 maybe bring it to me or Bill Brown or
23 their manager, whoever that is, and
24 then -- and then -- then we make the
25 call, right? Talk to Rob. Talk to, I

1 guess it would be David Haugen at the
2 time. Maybe now it's Michael.
3 There's -- there's reason to look at
4 this. We need someone to look at this
5 through -- through the lens of -- of
6 infringement and that's as far as we take
7 it because we know that that's a delicate
8 situation, right? We don't -- we don't
9 all want to start talking about it and,
10 you know, we don't send e-mails and we
11 don't, you know, call people and say, did
12 you see that thing or whatever? We just
13 say there's potential here and then --
14 and then it's -- it goes from there. It
15 gets studied by our legal staff or
16 outside counsel.

17 Q. And what are the accused
18 rear shocks sold by SRAM that Fox alleges
19 are infringing the '223 patent?

20 A. Okay. We're back to '223
21 shocks, shocks?

22 Q. Yes.

23 A. Okay. I believe I have a
24 complete list. I'm not -- there's only a
25 couple. I hope I get it right, but I

1 believe it's the Vivid and the Super
2 Deluxe. If there's other models of
3 those, I -- I don't know that exactly,
4 right? If there's like an S or an L or
5 an XC or something. Those two product
6 lines.

7 Q. And state all of the factual
8 bases -- the factual bases for why Fox
9 believes the accused shocks infringe on
10 the '223 patent.

11 MR. MCCAULEY: ^ INSTRUCT I'm
12 going to instruct him not to answer on
13 the basis of attorney/client
14 privilege.

15 MS. MILUNSKI: Well, I asked for
16 the factual basis.

17 MR. MCCAULEY: He can't answer
18 that without accessing and reviewing
19 attorney/client communications. You
20 have our infringement contentions.

21 BY MS. MILUNSKI:

22 Q. Well, Mr. Allinger, are
23 you -- do you believe an expert is
24 required to interpret the '223 patent and
25 determine whether a specific product

1 infringes one or more claims of the '223
2 patent?

3 A. I do think, yes -- yes, I do
4 think an expert is required to do that.

5 Q. Do you think that a lawyer
6 is required to be able to interpret the
7 '223 patent and determine whether a
8 specific product infringes on one or more
9 claims of the '223 patent?

10 MR. MCCAULEY: Objection to the
11 extent it calls for a legal
12 conclusion. Sarah, you have our
13 infringement contentions. He doesn't
14 have nonprivileged information to
15 respond to this line of inquiry. I
16 made that clear to you before today
17 started. I'm making it again now. I
18 don't know why you're wasting time on
19 this.

20 MS. MILUNSKI: Rob, I -- I don't
21 think you're listening to the question
22 that I asked. I simply asked -- I
23 didn't ask him to interpret it. I
24 said, do you believe that a lawyer is
25 required to interpret the '223 patent

1 and determine whether a specific
2 product infringes one or more claims
3 of the '223 patent.

4 MR. MCCAULEY: He told you how
5 Fox handles these things, but go
6 ahead --

7 (Cross talk.)

8 MS. MILUNSKI: Rob --

9 BY MS. MILUNSKI:

10 Q. You can answer,
11 Mr. Allinger.

12 A. Do I think a lawyer is
13 required? So from -- from the standpoint
14 of interpreting a patent, I think we've
15 talked about, you know, a patent should
16 be able to be interpreted by someone
17 skilled in the art, right?

18 When I referred to -- so
19 when I referred to experts, when you talk
20 about infringement, you have a little bit
21 of a higher bar, right? Now you're
22 trying to accuse someone of infringing,
23 right? So you definitely have to be
24 sure, right? And that's when you want --
25 would want to bring an expert in. From a

1 lawyer's perspective, you know, the only
2 way I could answer that is that, you
3 know, they have a different perspective
4 when it comes to, you know, how -- how --
5 how we might be here today, right? That
6 would be the only reason you would need a
7 lawyer. You don't need them to interpret
8 and teach, you know, what the -- what
9 the -- what the words are teaching,
10 right?

11 Q. Do you consider yourself a
12 person that's skilled in the art?

13 A. Yes, I do. I do. More so,
14 you know, many years ago when I was
15 actually doing a lot more of the actual
16 work, and now I'm supervising and/or, you
17 know, in charge of those groups and I
18 rely a lot on our smart young engineers,
19 right?

20 Q. Are you going to defer to
21 Fox's expert on his opinions regarding
22 infringement of the '223 patent?

23 A. I -- I think my answers
24 there is that we've provided all the
25 reasons why, you know -- why we think

1 there's infringement. I can't add
2 anything past that.

3 Q. And what are those reasons
4 that you think that have already been
5 stated?

6 A. Well, that's what I thought
7 we talked about earlier, which was this
8 was an attorney/client privileged
9 information.

10 Q. Well, if it's already been
11 shared with opposing counsel, it can't
12 possibly be privileged.

13 A. I'm just trying to be
14 careful. I mean, I don't -- I don't know
15 everything that's -- that's -- I'm not
16 sure of the question here. Are you -- we
17 going back to the earlier question that I
18 didn't answer or...

19 So -- so, you know, the
20 shocks that -- we're talking about
21 shocks, right? The shocks we talked
22 about have adjustable bottom out cups,
23 right? We have a patent on adjustable
24 bottom out cups. That's the best answer
25 I can give you when you -- when you ask

1 these questions, right? Just for bottom
2 out cup, yeah.

3 Q. So that's Fox's position as
4 to why it believes that the SRAM-accused
5 forks infringe the '223 patent?

6 (Cross talk.)

7 MR. MCCAULEY: You have the
8 infringement contentions.

9 MS. MILUNSKI: Yes.

10 MR. MCCAULEY: You're
11 misrepresenting the record and you're
12 confusing the witness.

13 MS. MILUNSKI: Well, Rob, I mean
14 you've instructed him not to answer
15 and then you're also telling me that
16 we already have the information, so
17 you're frankly confusing me right now.

18 MR. MCCAULEY: If you want to
19 have a conversation about this without
20 the witness present, I'm happy to have
21 it, but there's no mystery here,
22 Sarah. You have detailed infringement
23 contentions with claim charts. You
24 understand the bases for Fox's
25 accusations. They're all in there.

1 BY MS. MILUNSKI:

2 Q. Mr. Allinger, have you
3 reviewed the claim charts in Fox's
4 infringement contentions in this case
5 relating to the '223 patent?

6 A. No, I have not, not for --
7 not preparing for this deposition, I have
8 not.

9 Q. Okay. And looking at topic
10 number 8, which is the same topic, but
11 relating to the '331 patent, what did you
12 do to prepare to testify regarding this
13 topic specifically?

14 A. Okay. Are we going to have
15 the same exchange at the beginning of
16 this one with infringement contentions?

17 (Cross talk.)

18 BY MS. MILUNSKI:

19 Q. I'm just asking you to tell
20 me what you did to prepare to testify
21 regarding this topic.

22 A. Okay. So we're on forks.
23 It would have been -- I feel like we
24 talked about this. It's the same --
25 I've. We've --

1 MR. MCCAULEY: Say it again,
2 Wes. You have to answer her question
3 again. Go ahead.

4 A. We've looked at the forks.
5 We've looked at the technology that's
6 being used and, you know, that's how I
7 prepared for this.

8 BY MS. MILUNSKI:

9 Q. And is it correct that you
10 did not look at the infringement
11 contentions that Fox has prepared
12 relating to the '331 patent to prepare
13 for this topic?

14 A. I did not go through the --
15 I did not look through the infringement
16 contentions specifically for the -- in
17 preparation for this because I didn't --
18 I'm not going to be answering specific
19 questions from that contention. It's --
20 it's all there. It's all there and
21 it's -- again, it's something that --
22 that needs to be gone through very
23 methodically and carefully and it's all
24 laid out in that document.

25 Q. Have you reviewed that

1 document at any point in time?

2 A. Boy, this has been a long
3 case. I don't remember, Sarah.

4 (Reporter clarification.)

5 A. A long case, a long trial --
6 I mean, we've been --

7 BY MS. MILUNSKI:

8 Q. Do you believe an expert is
9 required to interpret the '331 patent and
10 determine whether a specific product
11 infringes one or more claims of the '331
12 patent?

13 A. I do think so. Whenever
14 we're talking infringement, again, that's
15 that higher bar, and I think it's
16 required of an expert.

17 Q. Are you going --

18 (Cross talk.)

19 A. I think it's required that
20 an expert goes through and -- and lays
21 the questions and -- that Sarah's asking
22 me. It's --

23 BY MS. MILUNSKI:

24 Q. Are you going to defer to
25 Fox's expert on his opinions regarding

1 the infringement of the '331 patent?

2 A. Yes.

3 Q. And we talked a little bit
4 about the process that you go through at
5 Fox when there's a suspicion of
6 infringement.

7 That -- the suspicion part
8 is before counsel gets involved, correct?

9 A. Yes.

10 Q. And when was the first time
11 you or someone at Fox had any suspicion
12 that any of SRAM's product offerings
13 could potentially infringe the '331
14 patent?

15 A. Okay. We're talking forks,
16 right? So -- and I'm going to -- I'm not
17 going to guess, but I want to use
18 facts -- so when you saw the initial
19 release from SRAM of their media
20 material, commercial material, I believe
21 it was the Flight Attendant fork, we saw
22 in the pictures that it had bleeders, but
23 we weren't sure until we were able to get
24 ahold of it and evaluate it some months
25 later, and I know I gave really better

1 dates in my declaration, but that's --
2 that's -- that's the answer to that
3 question. That's when we first suspected
4 it. It was around the time of the -- we
5 suspected it around the time of the
6 flight attendant. We didn't know.

7 Q. Okay. All right. Looking
8 at topics 9 and 10 relating to, "The
9 bases for Fox's claim that Fox has been
10 damaged by SRAM's sales of...Accused
11 Shocks," for number 9, and "Accused
12 Forks" for number 10, what did you do to
13 prepare to testify regarding those two
14 topics specifically?

15 A. For the -- for the damage
16 topics, I went back and -- and really
17 thought through -- because we've talked
18 about all this recently, Sarah, right, at
19 the -- in Denver at the preliminary
20 injunction, we talked a lot about damage.
21 So it was a lot of what I -- I did was
22 just reacquainting myself with the
23 readiness for that meeting in order to
24 probably answer the same questions again
25 today.

1 Q. Did you do anything
2 additional in light of the accused shocks
3 since we didn't talk about the accused
4 shocks in relation to the PI hearing
5 previously?

6 A. Okay. So -- plaintiff --
7 no, I did not. I -- I didn't do anything
8 on damage for shocks. The -- the
9 damages, you know, they're hard to
10 measure, right, and we -- you know, we
11 have a technology, we're not selling
12 against it when it comes to shocks, but
13 we do have a reputation and we have
14 patented technology that's being copied.
15 That's -- that's my -- that's my take on
16 the shock question.

17 Q. And so I'm going to
18 continue --

19 A. I have to add one more thing
20 to that. I'm sorry. When you're
21 selling -- when you're selling against --
22 like we talked about this in relation to
23 forks and we're switching back and forth
24 so I really apologize for having to add
25 after I answer. But, you know, when

1 we're talking about any kind of selling,
2 we're both selling to -- to a common
3 customer, right? And when you talk about
4 damages in relation to shocks, we've
5 talked about reputation. It's not, you
6 know, I'm not -- I'm not reiterating
7 that. I'm talking about damage in
8 relation to selling against a competitor,
9 right? So we have to sell against
10 features and we have to win that -- win
11 that spec -- spec position every year
12 with our customers. So when we're down a
13 feature and, ironically, the feature is
14 our patented feature, we're definitely at
15 a disadvantage when it comes to selling
16 against SRAM in this example, right? And
17 SRAM has good shocks, Fox has good shocks
18 and we work -- you know, we sell to the
19 same customer as I stated so we want
20 every advantage we can get. And when our
21 number one competitor takes a technology
22 and that we have to compete against,
23 that's a tough situation to be in.

24 Q. Well, Fox owns the
25 technology that's described in the '223

1 patent, right?

2 A. That's right.

3 Q. Is there anything
4 stopping --

5 A. Let me finish. I'm sorry.
6 That's my fault for stopping. So by
7 owning that technology, we have the -- we
8 have the ability to decide when that
9 technology gets introduced and used until
10 someone thinks of something better. And
11 so, you know, having that, I want to call
12 it, technology bank behind us so that --
13 that technology word -- what's a better
14 word -- that -- that technology fortress
15 that we have, right, gives us an
16 advantage and whether we choose to use it
17 or not, I don't see as the -- as the
18 issue when it comes to this, right? We
19 have to sell against something that we
20 invented and we don't like that, right?
21 And it's hard, harder to win spec
22 position when you have to sell against
23 technologies that you are actually in
24 control of that you've -- you're chosen
25 to use or not use. That's our

1 prerogative. We own this technology.

2 Q. And if you believe that that
3 feature was driving sales, would you add
4 it to your own shock offerings?

5 A. We would -- we would do
6 the -- the math I talked about earlier,
7 which is we would look at the application
8 and whether we have a solution that's
9 better, lighter, more effective per
10 application, then we would decide to
11 apply it. If we didn't own this
12 technology and we were selling against a
13 competitor who had it, that would be a
14 disadvantage.

15 Q. That's not the scenario
16 we're in though; is it?

17 A. No, I was -- I was --
18 unfortunately, I added that editorial.
19 Sorry.

20 Q. All right. Well, what types
21 of damages generally are -- is Fox
22 seeking relating -- right now just to
23 relating to the '223 patent?

24 MR. MCCAULEY: I don't know if
25 he can answer that without revealing

1 attorney/client privilege. You have
2 an interrogatory response on that.

3 MS. MILUNSKI: And I believe
4 that Mr. Allinger signed that
5 interrogatory response; is that true?

6 MR. MCCAULEY: He did verify it,
7 I believe.

8 BY MS. MILUNSKI:

9 Q. So can you answer the
10 question, Mr. Allinger?

11 A. Let's look at it. If I
12 remember interrogatory responses, they're
13 filled with information. I'm vouching
14 for the information at the end, but I
15 didn't necessarily -- I mean, no one can
16 know everything, right, so if we want to
17 talk about that response as it relates to
18 that interrogatory, we ought to take a
19 look at it and then we can learn together
20 exactly accurate information.

21 Q. So are you telling me that
22 you're not prepared to tell me what types
23 of damages Fox is claiming relating to
24 the '223 patent without referring to that
25 interrogatory answer?

1 A. Well, how do we define
2 damages? So damages -- I've answered the
3 question in terms of reputation, trying
4 to earn spec. It's hard to measure,
5 right, that's -- that's -- that's an
6 answer when you're trying to win spec
7 because it's one of many features. So
8 the damage that I've answered, that I've
9 talked about today are in terms of
10 ownership of invention and the ability to
11 sell against a competitor feature to
12 feature. When it comes to the shocks,
13 that's number 9.

14 Q. Are you contending that Fox
15 has lost spec to SRAM's accused shocks?

16 A. It's very possible that we
17 have, right? I'm not pointing to
18 anything exact. Like I said, it's hard
19 to measure, but, again, when a competitor
20 has a feature that you don't have -- and
21 I know we'll talk about this in forks
22 too -- you have to try to, you know, it's
23 just like buying a car. You look at the
24 all the features and you decide what's
25 better for you in the use case, you know.

1 You're buying a truck or a car?

2 So in -- in this case,
3 you're buying a shock for your bike if
4 you're a product manager and you're
5 looking at all the features and we have
6 to sell against our own patented
7 technology in the case of shocks and --
8 and so, you know, that's -- that's
9 more -- that's -- that's a challenge that
10 we would not have to take if the feature
11 wasn't used, you know -- our patented
12 feature wasn't actually copied and used.

13 Q. Well, what evidence do you
14 have that Fox has lost spec to the
15 accused shocks?

16 A. So all that is, again,
17 extremely hard to measure, right? We --
18 we count spec positions. We think about
19 spec positions, but there are so many
20 variables we go into if you're on a bike
21 for a certain customer or if you're not
22 on a bike for a certain customer.

23 So your question dealt with
24 actual evidence and I'm just telling you
25 that it's hard to measure -- it's hard to

1 quantify damage in this case for shocks,
2 but, again, with, you know, SRAM and Fox
3 are very, very close competitors and when
4 it comes to trying to win new business
5 every year, you know, feature to feature,
6 it's tough, again, as I've said when
7 you're competing against your own
8 licensed technology whether you use it or
9 not, right? It's yours. You own it.
10 Your competitor shouldn't get to use it.

11 Q. And you talked a couple of
12 times about competing against SRAM
13 feature to feature. You have to do that
14 every year with your customers, right?

15 A. Yeah, that's part of it.
16 It's certainly part of it, yes.

17 Q. And certainly the -- the
18 bottom out cup is not the only feature
19 that's on SRAM's shocks; is that correct?

20 A. The bottom out cup is one
21 of -- of -- one of many features on a
22 shock, yeah. A handful of key features.
23 But if you can think about a shock, we've
24 looked at pictures, right? There's a lot
25 of features, right? There's -- there's a

1 few that make the biggest difference and
2 the way you handle bottom out and the way
3 you talk about it and the way you market
4 your technology all makes a difference,
5 right?

6 Q. Right. And are you familiar
7 with RockShox TouchDown technology?

8 A. I am not, no.

9 Q. It's position-sensitive
10 damping system?

11 A. I am -- I am not familiar
12 with it.

13 Q. Okay. Are you familiar with
14 the RC2T damper?

15 A. Is it a product from SRAM?

16 Q. Well, are you aware --

17 A. I mean, if that's from our
18 past, because it says RC, I -- I need to
19 know a little background. I'm not -- I'm
20 not sure that -- we've used a lot of
21 nomenclature like RC and Podium and those
22 things. I just want to be sure because
23 our competitors use RC a lot of times,
24 right? And I just want to be sure that's
25 our thing that you're talking about or is

1 it yours or is it Ohlins, you know, or is
2 it --

3 (Cross talk.)

4 A. I just said that the letters
5 RC refer -- often refer to rebound and
6 compression and they're often used by
7 shock manufacturers in the titles of
8 their shocks.

9 THE COURT REPORTER: I'm going
10 to need a break soon.

11 MR. MCCAULEY: Yeah, I was going
12 to say we've been going over an hour
13 now. So, Sarah, when you get to an
14 appropriate point, I think the court
15 reporter and everybody would
16 appreciate a break.

17 MS. MILUNSKI: Yep. Let's go
18 ahead and take a break.

19 MR. MCCAULEY: Thank you. Ten
20 minutes?

21 MS. MILUNSKI: Works for me.

22 THE WITNESS: Belle, I'm sorry
23 if I'm talking too fast.

24 THE VIDEOGRAPHER: Off record at
25 1:59 p.m.

1 (Whereupon, a brief recess is
2 taken.)

3 THE VIDEOGRAPHER: On record,
4 2:15 p.m.

5 BY MS. MILUNSKI:

6 Q. All right, Mr. Allinger,
7 picking up where we left off, let me back
8 up a little bit. You told me at your
9 last deposition that one of your
10 responsibilities at Fox is to remain
11 aware of the market in competition for
12 sales of mountain bike suspension
13 products, right?

14 A. Yes, yes.

15 Q. And that would include being
16 aware of new features on -- on SRAM's
17 suspension products; is that correct?

18 A. Yes, that's correct.

19 Q. And you studied the accused
20 products at issue in this case, right?

21 A. I mean, study -- study is a
22 loose word. I did look very closely at
23 the things that we were most concerned
24 about, right, and most interested, which
25 are bleeder valves and bottom out cups.

1 Q. So did you ignore the other
2 technologies that were on SRAM's forks
3 and shocks?

4 A. I wouldn't say I -- I
5 ignored any of those technologies, no.

6 Q. You would agree that some of
7 those other technologies can be important
8 drivers of sales and speccing; wouldn't
9 you?

10 A. Yes. Are we talk -- for
11 both shocks and forks, there's always a
12 set of technologies or features that are
13 important and there's more than one of
14 those, right, in either case.

15 Q. Right. Damping is an
16 important feature on both shocks and
17 forks, right?

18 A. Yeah, damping would
19 definitely be, as I mentioned at the
20 preliminary injunction, one of the top,
21 you know, few features that's important.
22 You know, I say "few," handful, right?
23 When you look at a review from a media
24 person or -- yeah, from the media, it's
25 usually there's a top ten feature list,

1 right, five to ten features that are
2 really pivotal.

3 Q. And spring technology,
4 whether it's coil or air spring, that's
5 another key feature on either shocks or
6 forks, right?

7 A. Yes, certainly. I mean,
8 that's the way that -- many times that's
9 the way product lines are differentiated,
10 whether they're an air-sprung or a
11 coil-sprung product.

12 Q. And are you familiar with
13 RockShox DebonAir air spring technology?

14 A. Yeah, RockShox has had the
15 DebonAir for a while, yeah, I -- I would
16 say I'm -- you know, as a -- as a -- as a
17 competitor who likes to watch what the
18 competition is doing, I mean, I'm at that
19 level of familiarity. I haven't ridden a
20 bunch of those shocks or -- that have
21 that technology, but I do -- I do know
22 what you mean when you say DebonAir,
23 yeah.

24 Q. And are you familiar with
25 the changes that SRAM makes throughout

1 its different product line offerings each
2 year?

3 A. Most of them. I mean, I
4 keep up to -- up-to-date with it as much
5 as possible. Again, I'm not a
6 salesperson that goes out and sells to
7 OEs anymore or involved in that as much
8 as I used to be. So I'm probably not as
9 good at knowing exactly -- even from --
10 you know, even from a year ago. Someone
11 like Jared, you know, would be, you know,
12 right, right up to speed, and his team,
13 with exactly, you know, the latest
14 breaking technology from our competitors,
15 yeah.

16 Q. And would you agree that the
17 adjustable hydraulic bottom out cup only
18 impacts the last 20 percent of travel?

19 A. It would be hard to put an
20 exact number on it, but it's definitely
21 something that, you know, depending on
22 the length of the bottom out cup, it's
23 how much of the travel is effected,
24 right? So, you know, we've seen -- we've
25 seen some prior art and -- designers have

1 to make a choice, right, how soon will
2 that secondary piston be in the bottom
3 out cup and starting to have an effect?
4 And it certainly would be, you know, in
5 the realm of percentages that you're
6 talking about. But it could be as high
7 as, you know, a bicycle -- you've heard
8 the word "sag" before, you know how much
9 a bike sags into its suspension.

10 So if you're -- if you're on
11 a bicycle or a motorcycle and you run
12 more sag, you generally run -- you
13 generally are setting yourself up for a
14 very plush ride, or if you run less sag.
15 And so the amount of sag you have might
16 dictate how much bottom out cup
17 engagement you want and when you want it
18 in travel. So those are some of the
19 things that designers have to think about
20 when they -- when they design a bottom
21 out cup.

22 Q. Well, you'd agree that it
23 only impacts the ending portion of
24 travel; is that fair?

25 A. I would say anything after

1 50 percent, right? You could -- that
2 sort of range from 50 to 100 percent of
3 travel is fair game. As you get closer
4 to the number you gave, I think you'd
5 have a higher percentage likelihood that
6 a design would be in that realm, yep.

7 Q. And you'd agree that the
8 hydraulic bottom out cup feature is just
9 one of many features on the shocks
10 offered by SRAM, right?

11 A. Yes. Yeah, I think, you
12 know, when I look at the -- we talked
13 about that a little bit earlier for --
14 for shocks -- and for -- for forks, but
15 we're talking shocks here, that, you
16 know, we've got compression, rebound
17 adjustments, high speed, low speed and in
18 this case, you could add in the bottom
19 out cup, so it would be -- it would be
20 one of the top 5 to 8 features of a
21 shock.

22 THE WITNESS: Am I talking too
23 fast or is this a better pace? Still
24 a little fast; isn't it? You're
25 smiling. It's still a little fast.

1 Okay. I'll slow down.

2 BY MS. MILUNSKI:

3 Q. Okay. And you talked about
4 Fox's reputation.

5 What, if any, factual
6 evidence do you have for a claim that
7 Fox's reputation has been damaged?

8 A. Are you talking about '223
9 or '331 or either one?

10 (Cross talk.)

11 BY MS. MILUNSKI:

12 Q. Well, are you claiming
13 reputational damages based on one patent
14 over the other or in regards to both?

15 A. I was just asking the
16 question. So if I had a specific answer,
17 I could give it to you. I've talked
18 about reputation as an innovator, and
19 I've talked about our portfolio of IP
20 that we feel very strongly about and that
21 we consider -- that we consider when to
22 use it and how to implement it as our
23 prerogative owning that IP. So that --
24 you know, that -- those were my sort of
25 previous notions when I was talking about

1 damages, which I think is your question,
2 but maybe you could ask another way.

3 Q. Has -- has Fox performed any
4 surveys to measure any reputational
5 harms?

6 A. Have we performed any
7 surveys ourself? No. We have anecdotal
8 evidence from our salespeople when they
9 talk to our customers, but we also rely,
10 you know, quite heavily on surveys that
11 are done out in the world through, you
12 know, companies like Vital MTB. We've
13 talked about that in the past in some of
14 the other either depositions -- some of
15 the testimony related to that, I'm sure,
16 where, you know, between Fox and -- and
17 SRAM, their leadership in either the
18 shock or fork segments every year gets
19 measured, right? And either we're --
20 either we're gaining reputation against
21 SRAM or SRAM's gaining reputation against
22 us, and these curves kind of intersect or
23 whatever they do, right?

24 And so we use a lot of that
25 to do a lot of -- a lot of our thinking,

1 and when you start to add the kind of
2 features that we're talking about in both
3 cases, you start to, you know, give --
4 give credence to the -- to the competitor
5 and give the ability of the competitors
6 start to gain more momentum, and we have
7 seen momentum shifts over the last couple
8 years between our companies that are not
9 favorable to us, to Fox.

10 Q. Well, are you going to
11 testify that you believe that the only
12 two new technologies that SRAM has come
13 out with in the last couple of years is
14 bleeder valves and the adjustable
15 hydraulic bottom out cup?

16 A. No, I won't -- I'm not going
17 to testify to that, no, certainly not.

18 Q. Right, because they've come
19 out of with tons of new technologies for
20 both its fork and shock offerings in the
21 last few years that have nothing to do
22 with the two patents at issue in this
23 case, right?

24 A. They certainly have come out
25 with features that have nothing to do

1 with the two patents in this case and
2 have done heavily -- heavy amount of
3 marketing around those features, yes,
4 absolutely.

5 Q. Such as for the forks, the
6 ButterCups, right?

7 A. Yes, we talked about
8 ButterCups quite extensively. It's an
9 interesting feature. My -- my opinion on
10 that feature is that it started out being
11 a much more interesting feature than it
12 has ended up being and I would add that
13 when it comes to key features that in the
14 case of the fork, if we're going to talk
15 about forks, that the bleeder valves are
16 definitely -- definitely staying in the
17 top ten features. I don't know -- I
18 think the ButterCups, I'm sure, are still
19 there, but I'm not sure they're going to
20 be there much longer so --

21 Q. And --

22 (Cross talk.)

23 A. They've introduced a lot of
24 technologies, but they have to have
25 staying power and they have to be

1 meaningful.

2 BY MS. MILUNSKI:

3 Q. And is this the survey of
4 Wes Allinger or have you actually
5 conducted any sort of objective research
6 to show that other people agree with your
7 opinions?

8 A. My editorial on the
9 ButterCups is my editorial.

10 Q. Okay. And have you spoken
11 with or polled OEMs or other consumers
12 regarding Fox's reputation?

13 A. We haven't taken polls per
14 se where we ask specific questions and
15 take data and make a chart, but we
16 certainly -- you know, I hear it through
17 the sales team that, you know, there's --
18 there's just the ongoing discussions,
19 right?

20 So if you can imagine
21 yourself going to one of the OEs and
22 saying, here's my offering, and they're
23 saying, well, we just looked at the SRAM
24 offering or, you know, did you guys
25 notice SRAM has this or that? It's that

1 kind of an anecdotal level when it comes
2 to reputation. That's the best -- those
3 are the best facts I can offer you. I
4 don't have anything written down or any
5 surveys.

6 Q. And in that anecdotal
7 evidence, has an OEM specifically pointed
8 to either the bleeder valve or the
9 adjustable hydraulic bottom out as the
10 reason why they picked SRAM over a Fox
11 fork or shock?

12 A. I would say, you know,
13 matching kind of what we talked about at
14 the preliminary injunction that there --
15 right when the -- it's kind of the
16 bleeder valves were starting to be known
17 to be on the -- on the RockShox product
18 and marketed to our OEs, that we did --
19 we did feel like we were under extreme --
20 a lot more pressure and we lost some key
21 specs to [REDACTED] and we did talk about
22 those, those are in the record. You
23 know, that's -- that's the best evidence
24 I have of that. Yes, yeah.

25 Q. And -- and the [REDACTED],

1 that was specific to the fork offerings,
2 not the shock offerings, correct?

3 A. I mentioned that, yeah, for
4 the forks -- yeah, I -- yes, I mentioned
5 that earlier, it was for the forks,
6 that's correct.

7 Q. In some of that spec that
8 you had testified losing with [REDACTED]
9 you actually -- Fox gained that spec --
10 some of those spec positions back, right?

11 A. I don't know for sure. I --
12 I -- I believe that what will -- what we
13 will find out or what -- what you're
14 getting to -- again, we have key
15 features, right? So during the sales
16 process, you know, if we have to compete
17 on price, I mean, it's very possible that
18 SRAM dropped their price to get those
19 forks back. I don't know the answer to
20 the reason why.

21 Q. That SRAM dropped their
22 price or that Fox -- I'm not following
23 that --

24 (Cross talk.)

25 BY MS. MILUNSKI:

1 Q. Wait a second. Wait a
2 second, Mr. Allinger. My question was,
3 did Fox regain some of [REDACTED] [REDACTED] [REDACTED]
4 spec that you had testified previously it
5 had lost?

6 A. Yeah, that's my mistake.
7 That's my mistake. I thought you -- I
8 thought you asked the question a
9 different way. That's my mistake.

10 Did we gain back the spec?
11 I am not positive how many of those specs
12 we gained back. And, again, I was trying
13 to think of the value equation, right?
14 Was there a price change to do that?
15 Were there other features that were
16 deemed more important? I don't know the
17 answer or the reason why.

18 Q. I just want to clarify. I
19 didn't ask you how many. I asked did you
20 gain some of it back.

21 A. I don't -- I don't know
22 exactly. I can't answer your question
23 exactly.

24 Q. And do you have any evidence
25 that Fox has lost spec positions to

1 SRAM's shocks relating to -- directly to
2 the hydraulic bottom out cup?

3 A. Not relating directly, not
4 relating directly. I would --

5 Q. Okay.

6 A. -- I would say that, you
7 know, again, it's -- it's part of the
8 negotiation process. It's part of -- and
9 we talked about reputation, loss. I
10 mean, all those things factor into spec
11 gain and spec loss. It's -- it's just
12 tough -- it's tough to quantify, Sarah,
13 right? Spec wins and losses are tough to
14 quantify. When we -- when we compete
15 against RockShox these days, against SRAM
16 these days, you know, we have to compete
17 against a company that sells drive
18 trains, suspension, brakes, everything,
19 right? So if you think about the ability
20 to bundle that up and gain spec back,
21 lose spec, you know, offer cost
22 reductions, offer packages, you know,
23 that's -- that's why it's difficult to
24 actually quantify and point to something,
25 right, because you don't know the

1 underlying factors that cause those
2 decisions.

3 Q. Right. Because there are a
4 number of different factors that go into
5 that decision including SRAM's ability to
6 package numerous other products and offer
7 them to OEMs, right?

8 A. Yeah, that's what I stated.
9 They definitely -- you can definitely do
10 that. When we talked about spec loss and
11 reputation loss, you know, that's taking
12 a step back, right? That's looking at --
13 at these surveys or timing of -- of
14 release of features that are -- coincide
15 with negotiations. That's why it gets
16 complicated to talk about it, yeah.

17 Q. And the reputation that
18 you're talking about as well, that's not
19 limited to shocks or forks either; is it?
20 Does that also include innovation and the
21 drive train, chainring, wheels, seat
22 posts, all the other aspects of a
23 bicycle? All of those other aspects and
24 innovations in that area could also
25 impact both SRAM's and Fox's reputation

1 for innovation, correct?

2 A. Yeah, when I talked -- when
3 I talked about -- not -- the way I think
4 of it is -- is that if SRAM, for example,
5 has innovations in drive train, right,
6 and they get copied, then they're going
7 to be like, look, you can't copy our
8 innovations, right? You can't copy our
9 IP and then we'll -- we'll be doing
10 something like this.

11 And we think -- I think of
12 it the same way with Fox, right? Our
13 ability to do any of the things that we
14 do and protect them and have that sales
15 advantage is very important.

16 Q. And since we last talked at
17 your deposition, I know you identified
18 [REDACTED] an OEM who you believe you
19 lost forks spec to, to RockShox.

20 Have you become aware of any
21 other loss spec that you associate --
22 strike that.

23 Since your last deposition,
24 are you aware of any other fork OEM spec
25 loss other [REDACTED] [REDACTED] [REDACTED]?

1 A. Hopefully you asked Jared
2 that question because that's who I would
3 have to ask and I did not ask him
4 specifically about that topic.

5 Q. Okay. But there's none, as
6 you sit here today, that you're aware of?

7 A. None that I am aware of
8 sitting here today, but that doesn't mean
9 that we didn't.

10 Q. What's your best estimate of
11 the cost to Fox associated with the PRV
12 feature?

13 A. When you talk about the PRV
14 feature, could you please just --

15 Q. I'm sorry, the bleeder valve
16 feature.

17 A. Okay.

18 MR. MCCAULEY: Objection, vague,
19 and calls for speculation.

20 Go ahead.

21 A. I think you need to -- when
22 you said "PRV," my brain just -- I was
23 thinking about that so please state the
24 question again.

25 BY MS. MILUNSKI:

1 Q. What's your best estimate of
2 the cost to Fox associated with the
3 bleeder valve feature?

4 MR. MCCAULEY: Same objections.

5 A. When you say "cost," I'm not
6 sure I understand what you mean, like the
7 cost to develop it or the cost -- I'm
8 not -- I'm not sure what "cost" means in
9 that context.

10 BY MS. MILUNSKI:

11 Q. Well, what does "cost" mean
12 to you?

13 A. How much I have to spend to
14 do something.

15 Q. Okay.

16 A. Or buy something.

17 Q. So what's the best -- your
18 best estimate of the cost to Fox to do,
19 buy or manufacture the bleeder valve
20 feature?

21 MR. MCCAULEY: Same objections.

22 A. And I'm answering the
23 question?

24 BY MS. MILUNSKI:

25 Q. Yes.

1 A. So to develop a bleeder
2 valve feature, and I'm thinking back to
3 previous testimony, you know, I think
4 it's going to be -- it's going to be hard
5 for me to give you a number, first of
6 all, so -- but to develop the feature, we
7 have to take engineering resources and
8 put them on that -- on the case, right,
9 to figure out the solution. We have to
10 make prototypes. We have to go out in
11 the field and test the solution.

12 In the case of the bleeders,
13 we need to make sure that the -- the fork
14 can be transported, you know, so there's
15 a lot of testing that goes on to
16 validate. And then we have a test lab
17 and any time we introduce a new feature,
18 we have to run through a whole gamut of
19 testing, which is expensive and
20 destructive to figure out if everything
21 is working as we intended. And then we
22 have to market the feature, so we have to
23 spend money on collateral to talk about
24 the feature.

25 But in terms of giving you a

1 defined cost for the feature, I -- I
2 would -- it would take me -- I am not
3 prepared to give you a number there. I
4 would be guessing at best, and I would
5 have to go through and look at every one
6 of those cases and figure out what the
7 cost is. And I think that --
8 hopefully -- and I believe that's very
9 consistent with my previous testimony.

10 Q. Fox sells base models of its
11 forks like the Rhythm series level of
12 forks with plugs instead of air bleed
13 buttons, right?

14 A. Yeah, the Rhythm forks have
15 a screw-type system on them and, again,
16 when you look at the feature -- the
17 Rhythm is a lower price point fork,
18 right? So you need to decide if you want
19 to invest extra money into that fork
20 because you have to pass that along to
21 the end customer or to the OE, right? So
22 you have to determine if the fork and the
23 user -- the end user is going to
24 appreciate the feature and do the
25 whole -- and do all the math to decide

(Cross talk.)

A. No, just one -- I'm just --
I'm taking the forks that -- slow down.

I'm taking the forks that
don't currently have bleeders, like the
Rhythm, right, and saying -- don't have
push button bleeders, and saying that
that screw could be upgraded. So let's
take the Rhythm as an example, [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] And then, you know,
I can't give you exact numbers, but I
mean, SRAM knows how many forks they sell
into these markets and RockShox and SRAM
are the two big competitors in the market
and I'm certain that within percentages
we sell similar amounts so...

BY MS. MILUNSKI:

Q. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5

[REDACTED]

6

[REDACTED]

7

Q. And in terms of overall

8

volume across various OEMs, what's the

9

volume proportion between Rhythm versus

10

Factory?

11

A. Again, I think -- I think

12

that's a best question for Jared to

13

answer. I hope you asked him that

14

question. I would only -- I can't answer

15

that. I'd only be guessing. I mean, I

16

don't think I can come close enough to

17

give you a number that -- that I can

18

stand behind.

19

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

[REDACTED]

2

[REDACTED]

3

Q. Okay.

4

A. I can't give you percentage,
5 but I would be fairly certain that that
6 is true.

7

Q. Do you have any idea how
8 many of the bleeder valve upgrade push
9 button kits you've sold into the United
10 States?

11

A. I don't know.

12

Q. No idea?

13

A. No, if you -- if you -- no.
14 And if you keep in mind that that's an
15 aftermarket kit, so in general, those
16 kits would be sold through a channel like
17 a dealer or a distributor. So those
18 could go to a distributor and sit there
19 and sell and we would have no idea if
20 they've actually sold to an end customer
21 or not, and I don't know the numbers that
22 have gone out to distributors.

23

Q. Does Fox track that
24 information?

25

A. I'm not sure if we do. I'd

1 have to check.

2 Q. You don't know if Fox knows
3 how many upgrade kits they've sold?

4 A. I'm -- when I -- when I said
5 I'm not sure if I know if they sold them
6 to dealers or if they sold them to
7 distributors or if the distributors still
8 have them in inventory. That's what I
9 don't know. That's what I'm not sure we
10 track, yeah.

11 Q. Fox certainly tracks its
12 sales of those upgrade kits wherever they
13 go to, though, right?

14 A. I would assume that
15 information could be -- could be tracked.

16 Q. Do you know why there's a
17 reason that information hasn't been
18 produced in this litigation?

19 A. I do not know.

20 Q. Have any OEM customers
21 indicated they want those upgrade kits to
22 replace the screw-type system?

23 A. I don't know the answer to
24 that question.

25 [REDACTED]



Veritext Legal Solutions
www.veritext.com 888-391-3376
FOX Exhibit 2009 - Page 272 of 355
SRAM v. FOX Factory - IPR2024-00216

1 A. The data we have would be
2 just our knowledge of how -- how that
3 feature gets used. So like do we have a
4 survey, how many times do you hit the
5 bleeder during your ride or those sort of
6 things? No, no. Do we -- like do we
7 realize that the feature's important and
8 talked about in media reviews and talked
9 about online and those sort of things?
10 Yes. And, certainly, something that's
11 talked about that much is important. And
12 you know, I think it goes without saying
13 that SRAM's put this feature on all of
14 their high-end forks, and so if it wasn't
15 used and it wasn't important, I don't
16 understand -- it doesn't make sense to
17 me. It -- there's an acknowledgment
18 on -- on SRAM's side that this is an
19 important feature.

20 [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

1 MS. MILUNSKI: Okay. How long
2 have we been going? Did you need
3 another break, Belle, because I'm
4 about to get into kind of a new
5 segment?

6 THE COURT REPORTER: A break
7 would be good.

8 MS. MILUNSKI: Okay. Let's go
9 ahead and take one.

10 THE WITNESS: Okay, thanks.

11 THE VIDEOGRAPHER: Off record
12 2:47 p.m.

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

15 THE VIDEOGRAPHER: We're back on
16 record 3:00 p.m.

17 BY MS. MILUNSKI:

18 Q. Mr. Allinger, before I move
19 on to the next set of questions, we had
20 talked about what types of damages Fox
21 believes it has incurred and we started
22 with talking about the shocks.

23 Do you believe that there
24 are other categories of damages relating
25 to the '331 patent that are different

[REDACTED]

1 than the damages we've already discussed
2 relating to the '223 patent?

3 A. So you said -- both of your
4 patents were '331, right? Did you say
5 '331/'331 or did you say '331/'223?

6 Q. I said -- I mentioned both
7 because what I'm wanting to understand is
8 whether you believe that we need to talk
9 about additional damages that you -- that
10 Fox believes it has suffered in relation
11 to the '331 patent that are different
12 than what we've already discussed about
13 the '223 patent?

14 A. Yeah, I -- I think
15 there's -- there's probably some damage
16 models and some experts working on those
17 damage models, but I'm not prepared to
18 talk about anything more when it comes to
19 damages.

20 Q. Okay.

21 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
2 [REDACTED]
3 Q. Okay. Well, that brings us
4 to our next subject, which I've marked as
5 Exhibit -- I've actually put a few new
6 exhibits in during the break. The first
7 one is Exhibit 115.

8 (Exhibit 115, Settlement and
9 License Agreement, marked for
10 identification.)

11 BY MS. MILUNSKI:

12 Q. And if you just let me know
13 once you're there.

14 MS. MILUNSKI: And for the
15 record, Exhibit 115 is Bates labeled
16 Fox 578 through 594.

17 A. I've got it, yeah.

18 BY MS. MILUNSKI:

19 Q. And do you recognize this
20 document?

21 A. I do.

22 MR. MCCAULEY: I'm sorry, I need
23 a second. What was the exhibit
24 number? I'm having a technical thing
25 here. 117?

1 MS. MILUNSKI: 115.

2 MR. MCCAULEY: 115. Okay.

3 Thank you.

4 BY MS. MILUNSKI:

5 Q. Do you recognize this
6 document, Mr. Allinger?

7 A. I do.

8 Q. And this is a settlement and
9 license agreement between [REDACTED] [REDACTED] [REDACTED]
10 dated December 22, 2021, correct?

11 A. Yes, that -- that's correct.

12 Q. Were you involved in
13 negotiating this agreement?

14 A. Yes, I was.

15 (Cross talk.)

16 A. I wasn't the primary, but I
17 was involved. Sorry to interrupt you.

18 THE WITNESS: I'm sorry, Belle,
19 for interrupting.

20 BY MS. MILUNSKI:

21 Q. And did this involve
22 cross-licensing certain technology?

23 (Reporter clarification.)

24 MS. MILUNSKI: No problem.

25 MR. MCCAULEY: Objection, the

document speaks for itself.

Go ahead, Mr. Allinger.

A. Yes, it does. And -- and the way that I interpret cross-licensing, it absolutely does. I think that's pretty standard interpretations so I agree.

BY MS. MILUNSKI:

Q. And which specific technology did it involve?

[REDACTED]

Q. And this did not involve either the '331 or the '223 patent, correct?

A. Yes, that's correct.

Q. [REDACTED]

1 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
2 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
3 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
4 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
5 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
6 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
7 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
8 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
9 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
10 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
11 [REDACTED] [REDACTED]

10 Yeah, and those numbers
11 were -- were very much discussed back and
12 forth over -- over the course of a year
13 and a half.

14 Q. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]

19 Q. [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]

23 Q. And if you want to click
24 over, you should be able to navigate
25 through these a little bit more easily.

1 Well, actually, I take that back. Well,
2 actually, you could press the arrow over,
3 but I'm going over to 116 now.

4 (Exhibit 116, Settlement and
5 Cross-License Agreement, marked for
6 identification.)

7 A. Oh, I could do that and it
8 did work.

9 BY MS. MILUNSKI:

10 Q. Okay. Good.

11 Do you recognize what's been
12 marked as Exhibit 116, which is Bates
13 labeled Fox 1837 to 46?

14 A. Okay. I'm looking at
15 settlement cross-license [REDACTED] [REDACTED] is
16 that correct?

17 Q. Yes.

18 A. All right. I'm just reading
19 it over so...

20 Are you going to ask me
21 specific technology questions or general
22 questions about a license agreement?

23 Q. Well, let me ask you first
24 if you -- if you've seen this document
25 before?

1 A. I have. I'm just qualifying
2 my statement that I would -- I need to
3 study a few things on this one to be
4 sure -- if you're -- if you're going to
5 ask me anything extremely specific on
6 some of these patent numbers and the
7 technology.

8 Q. And this is a license
9 agreement [REDACTED] [REDACTED] [REDACTED] [REDACTED]
10 [REDACTED] and Fox dated April 24, 2012,
11 correct?

12 A. That's right, yes. I see
13 that.

14 Q. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
15 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
16 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
17 [REDACTED] [REDACTED] [REDACTED]

18 Q. And were you involved in
19 negotiating this agreement that's been
20 marked as Exhibit 116?

21 A. No, I was not.

22 Q. Did this also involve
23 cross-licensing of certain technology?

24 A. Well, under grant of rights,
25 we talk about [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

1 ■■■■ so I think that
2 answers your question, yes.

3 Q. You said yes?

4 A. Yes.

5 Q. And are you familiar with
6 the specific technologies that this
7 agreement addresses?

8 A. I think I am, but I need to
9 look at some of the documents just to
10 make sure I -- I bring my -- my brain
11 right up to speed with -- with, you know,
12 get myself into -- into gear on this one.
13 I -- I think I am, but I -- I'm not -- I
14 just want to be sure, you know. So if
15 you want to ask me some specific
16 technology questions, let's take a look
17 at the -- at the patents or you could
18 just -- yeah, I think that's what we need
19 to do.

20 Q. Well, let me ask you this:
21 Does -- does this agreement that's been
22 marked as 116, does it involve either the
23 '331 patent or the '223 patent?

24 A. That's what I'm not sure of.

25 Q. Well, take your time to

1 review the agreement, please.

2 A. [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]

5 Q. Well, do you believe that
6 those are the same as the '331 or '223
7 patents?

8 A. That's what I'm trying to --
9 I'm trying to make sure I answer your
10 question completely if it involved it in
11 any way. [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] I just want to
13 take a look at those patents to be sure
14 I'm giving an accurate answer.

15 Q. Do you believe that the '331
16 or the '223 patent incorporated
17 technology that was described in any of
18 these [REDACTED] [REDACTED] that were covered in
19 this settlement and cross-license
20 agreement?

21 A. If you want me to answer
22 that question, I need a little more time
23 just to read through here.

24 Is that okay?

25 Q. Yes.

██████████ ███████████ ███████████ ███████████ ███████████ ███████████ ███████████

1 Q. And then --

2 (Cross talk.)

3 A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] That's what I remember, that
7 number.

8 BY MS. MILUNSKI:

9 Q. [REDACTED]

[REDACTED]

[REDACTED]

12 A. Not that I know of.

13 Q. And how did this licensing
14 agreement come about? [REDACTED]

[REDACTED]

16 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

9 Q. So flip on over now to
10 Exhibit 117.

11 (Exhibit 117, Settlement and
12 License Agreement dated December 15,
13 2005, marked for identification.)

14 A. The arrow, yes, it worked.
15 BY MS. MILUNSKI:

16 Q. And this has been Bates
17 labeled as Fox 1091 through 1111.

18 And do you recognize this
19 document?

20 A. I don't recognize the
21 document. I'm happy to read it over and
22 understand -- and try to understand what
23 it's -- exactly is. This was 2005.

24 Q. And just for the record,
25 this is a settlement and license

1 agreement between [REDACTED] [REDACTED] [REDACTED] dated
2 December 15th of 2005, correct?

3 A. Yeah. Yes.

4 Q. And I take it you were not
5 involved in negotiating this agreement;
6 is that correct?

7 A. I'm making sure I can give
8 you that answer. Let me read the
9 definitions real quickly. I was not
10 involved in this negotiation.

11 Q. And did this also involve
12 cross-licensing of certain technology?

13 A. The only way I can answer
14 that is to read through it quickly. [REDACTED]

17 Q. And this agreement that's
18 been marked as 117 did not involve either
19 the '331 or the '223 patent, correct?

20 A. 2005, that's correct.

21 Q. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

1 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

2 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

3 [REDACTED] [REDACTED]

4 A. Are you reading from
5 something or are you summarizing?

6 THE WITNESS: Go ahead, Rob.

7 MR. MCCAULEY: I'm just looking
8 forward to reading the text.

9 THE WITNESS: You said
10 something, I thought, anyway.

11 A. Where are you reading from,
12 Sarah? I'm sorry.

13 BY MS. MILUNSKI:

14 Q. Take a look at section 5.2.

15 A. Thanks. Keep in mind I did
16 not participate in this negotiation. And
17 I was in the powersports group during
18 this time period, so I'm going to need to
19 make sure my -- my brain's in the right
20 spot, but here in 5. -- you read from
21 5.4, correct?

22 Q. 2.

23 A. Okay, got it.

24 Q. "Royalty Rates."

25 A. Okay. Let me read it real

1 quick. Okay. Yep, that's what you read,
2 I see.

3 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

9 A. Where are you reading from?

10 Q. Let's see. That's 4.3.

11 A. 4.3.

12 Q. And 4.2.

13 A. I see -- I see what you read
14 and [REDACTED]
[REDACTED]
[REDACTED]

17 MR. MCCAULEY: Objection, the
18 document speaks for itself.

19 Go ahead, Mr. Allinger.

20 A. It appears that way, yeah, I
21 mean, looking at the verbiage, yes.

22 BY MS. MILUNSKI:

23 Q. And this licensing agreement
24 was reached as part of a settlement of
25 litigation, correct?

1 A. Yeah, I don't know for sure
2 about the litigation part, having not
3 been directly involved, but it seems like
4 there was some sort of dispute and this
5 was the settlement, yeah.

6 Q. Okay. Click on over to
7 Exhibit 118 that's been Bates labeled Fox
8 1113 to 19.

9 (Exhibit 118, License Agreement,
10 marked for identification.)

11 A. Yes, got it.

12 BY MS. MILUNSKI:

13 Q. Do you recognize this
14 document?

15 A. I do.

16 Q. And this is a license
17 agreement between [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] correct?

20 A. That's correct.

21 Q. Were you involved in
22 negotiating this agreement?

23 A. It would be very ancillary,
24 but I was -- I was in the bike group at
25 the time. I wouldn't say I was involved

1 in negotiating it or writing it up, but I
2 certainly -- I certainly was involved and
3 knew this was happening.

4 Q. And are you familiar with
5 the technology that was involved?

6 A. I want to make sure that
7 I -- let me just read it real quick here.

8 When we looked -- do you
9 have -- do you have this patent available
10 that was licensed? Then I could say -- I
11 would be a lot more confident. I know
12 we -- we -- I realize this and I remember
13 we [REDACTED] [REDACTED] [REDACTED], but
14 I'm not sure which technology exactly.
15 If we're going to talk specifically about
16 it, I should look at the patent.

17 Q. Do you know if the '434
18 patent was part of the subject of the
19 litigation with the last SRAM litigation
20 that you were involved in?

21 A. The one involving
22 narrow-wide; is that the question? Is
23 that the litigation you're referring to?

24 Q. Well, there were two sets of
25 litigation; wasn't there? [REDACTED] [REDACTED] [REDACTED]

1 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] and the
2 first license agreement that we looked at
3 dealt with both sets, correct?

4 A. Right. I think this -- I
5 would love to look at that patent, but my
6 recollection here is that [REDACTED] -- we
7 licensed something to [REDACTED] [REDACTED] that --
8 that they were infringing on. We
9 notified them and we negotiated a
10 settlement and short of that, if you want
11 specifics, I -- I just want to understand
12 what we licensed them exactly.

13 Q. Okay.

14 A. Because I'm drawing a blank
15 right now. I'm drawing a blank right now
16 on exactly what we licensed them, but I'm
17 sure I can remember if you show me the
18 patent.

19 Q. Okay. Would you agree that
20 this license agreement does not cover
21 either the '331 or the '223 patent?

22 A. Yes. I'd say that's highly
23 likely.

24 Q. Well, do you see any
25 reference to either of those patents

1 talk about the '434 --

2 Q. At your last deposition, you
3 told me that spring performance was one
4 of the top three drivers of sales for
5 forks along with weight and stiffness.
6 Do you recall that?

7 A. I do.

8 Q. Did the '434 patent affect
9 what you would categorize as spring
10 performance?

11 MR. MCCAULEY: Objection, calls
12 for speculation. He's asked to see
13 that patent several times now. Can't
14 you just show it to him or let him
15 look it up? He's sitting at a
16 computer.

17 A. Or tell me the title of it.
18 I'm just trying to remember. I'm sitting
19 here drawing a blank [REDACTED] [REDACTED] [REDACTED] [REDACTED]

20 [REDACTED] [REDACTED] That's all. Maybe if -- if I
21 can think about it for a moment, maybe
22 I'll be able to think of it, but I would
23 love to look at it.

24 BY MS. MILUNSKI:

25 Q. Now --

(Cross talk.)

A. Would we like to take a break and I can look at it?

BY MS. MILUNSKI:

Q. Hold on, Mr. Allinger.

When I asked you earlier, going back to Exhibit 115, what the technology involved, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] Do you remember that?

A. I suppose I remember that, but remember when we were talking about this, I was reading basically from the patent -- or from the -- from the agreement and that's what the agreement said, right? And so that's all I was doing there.

Q. Okay. And if you go back to 115, do you see that what's defined as Fox bypass channel patent means U.S. -- United States Patent No. 6,135,434?

A. Okay, this is helpful. Okay. Let me -- so -- okay. So you're implying that the '434 is bypass channels

1 and that should be enough for me to say
2 that the [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
3 [REDACTED] didn't include 223 or '331?

4 Q. Well, does that refresh your
5 recollection on what technology is
6 described in Exhibit No. 118?

7 (Whereupon, a brief discussion
8 is held off the record.)

9 A. It helps, but I would still
10 like to see it. It -- it appears as
11 though '434 doesn't involve the '223 or
12 the '331. If you want to dig deeper, I
13 need to see the patent.

14 BY MS. MILUNSKI:

15 Q. Well, does that refresh your
16 recollection about what the '434 patent
17 does address?

18 MR. MCCAULEY: Vague.

19 A. It helps.

20 MR. MCCAULEY: Objection, vague.

21 Go ahead.

22 A. I mean, is there something
23 specific that we want to talk about with
24 that patent or with this technology or is
25 it -- is it around this license that

1 you're interested?

2 BY MS. MILUNSKI:

3 Q. So do you recall the
4 previous litigation between SRAM and Fox
5 that involved, among other things, Fox's
6 '434 patent relating to an air spring
7 bypass channel?

8 A. Yes, yes, I do recall that.
9 I would love to look at that patent if we
10 are going to talk about specifics on that
11 patent.

12 Q. Well, I'm just asking you
13 generally, does the '434 patent affect
14 what you would categorize as spring
15 performance?

16 MR. MCCAULEY: Sarah, if you
17 don't show him the patent, I'm just
18 going to ask you to move on. This is
19 ridiculous, or let him take a break
20 and pull it up.

21 A. Yeah, just let me look at
22 it. That would be great.

23 MR. MCCAULEY: I don't know why
24 you're playing memory and mind games
25 and hide the balls on this. Just let

him see the patent.

MS. MILUNSKI: Rob --

MR. MCCAULEY: This is abusive.

BY MS. MILUNSKI:

Q. Are you able to answer the question, Mr. Allinger, or not?

MR. MCCAULEY: He's asked you several times to see the patent.

MS. MILUNSKI: Rob, I did not ask you. I asked the witness.

A. Your question was is air springs -- ask me your two questions, please, or your question.

BY MS. MILUNSKI:

Q. Did the '434 patent affect what you would categorize as spring performance?

MR. MCCAULEY: Objection, lacks foundation, calls for speculation, asked and answered, abusive.

Go ahead.

A. I -- I would say -- yes, it does.

BY MS. MILUNSKI:

1 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

2 A. I don't know the answer to
3 that.

4 Q. And this licensing agreement
5 was reached as part of a settlement of
6 litigation, correct?

7 A. It could have been a
8 situation where we weren't litigating,
9 but we were talking again, kind of like
10 the [REDACTED] [REDACTED] It could have been
11 some threat of litigation and I -- but I
12 don't remember.

13 Q. Well, let's take a look at
14 section 1.3 of Exhibit 118 and see if
15 that refreshes your recollection.

16 A. So someone issued a lawsuit.
17 It sounds like this was a settlement as a
18 result of that.

19 Remember, again, those
20 things can get issued and then, you know,
21 we don't actually ever do this sort of
22 thing that we're doing here, which I
23 don't -- which I know that I wasn't asked
24 to do in this case so we didn't do that.
25 So we settled quickly if there was a

1 lawsuit presented.

2 Q. And when you say "do this,"
3 you mean no one took your deposition in
4 that case?

5 A. Right, right. We didn't
6 have to -- yeah, exactly, exactly.

7 Q. Okay. But certainly you
8 could see that a lawsuit was filed by Fox
9 Factory, Inc., and Fox Factory Holding
10 Corp. in the United States District Court
11 for the Northern District of California,
12 correct?

13 A. I see that, yes.

14 Q. And this license agreement
15 was reached as part of a settlement for
16 that lawsuit?

17 A. I believe that to be true.

18 Q. Okay. Click on over now to
19 Exhibit 119, Bates labeled Fox 1142 to
20 47.

21 A. Okay. I've got it.

22 (Exhibit 119, License Agreement
23 dated August 2012, marked for
24 identification.)

25 BY MS. MILUNSKI:

1 Q. And do you recognize this as
2 a license agreement [REDACTED] [REDACTED] [REDACTED]

3 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
4 A. I do.

5 Q. [REDACTED] [REDACTED] [REDACTED] [REDACTED]
6 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
7 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
8 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
9 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

10 Q. And were you involved in
11 negotiating this agreement?

12 A. I was not involved in
13 negotiating this agreement.

14 Q. And does this agreement
15 involve either the '331 or the '223
16 patent?

17 A. I don't believe this one did
18 either.

19 Q. And do you know what total
20 royalty [REDACTED] [REDACTED] [REDACTED] [REDACTED]

21 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
22 A. I do not.

23 Q. And do you have any idea how
24 this licensing agreement came about?

25 A. My -- yeah, it would be --

1 it would be the same scenario. [REDACTED]

2 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
3 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
4 [REDACTED] [REDACTED] [REDACTED] [REDACTED] One -- one

5 either contacted the other or the other
6 contacted the other, and I'm not sure of
7 how that happened in 2012.

8 Q. Were you involved in those
9 informal discussions [REDACTED] [REDACTED]?

10 A. Not on this topic, I was
11 not.

12 Q. Okay. We've got one more of
13 these --

14 A. Okay.

15 Q. -- Exhibit 120 and it's
16 Bates labeled Fox 1809 to 24.

17 (Exhibit 120, Patent License
18 Agreement dated November 9, 2007,
19 marked for identification.)

20 A. Okay. This is 120. Okay.
21 I'm looking at it.

22 BY MS. MILUNSKI:

23 Q. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

A. I do.

Q. And were you involved in negotiating this agreement?

A. I was not.

Q. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

It's referring to a technology and an inventor's name and that really helps. And I am --

Q. And what --

(Cross talk.)

A. Go ahead.

BY MS. MILUNSKI:

Q. Sorry. Are you finished with your answer?

A. I am.

Q. Okay. And what specific technology [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

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

1 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 2 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 3 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 4 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 5 [REDACTED] [REDACTED] [REDACTED]

6 Q. And those are two both very
 7 important technologies to suspension
 8 products, correct?

9 A. Yes.

10 Q. Fundamental technologies?

11 A. [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 12 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 13 [REDACTED] [REDACTED]

14 Q. So you think -- okay.

15 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 16 [REDACTED] [REDACTED] [REDACTED]

17 A. I don't. I don't.

18 Q. [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 19 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 20 [REDACTED]

21 A. Where are you -- where are
 22 you reading that one, which paragraph?

23 Q. 2.1.

24 A. 2.1, okay.

25 Q. (c).

1 A. Yeah. So I can tell you
2 what I remember. I don't remember that
3 specifically and I don't -- and I can't
4 answer your question because I don't
5 know.

6 What I remember from this is
7 that the inventor [REDACTED] and he's
8 mentioned in 1.1 and at 1.2 somewhere
9 we -- [REDACTED]

10 [REDACTED] They were the holders of
11 some technologies and this agreement was
12 a licensing agreement to use those
13 technologies. That's what I remember for
14 that.

15 Q. And do you understand that
16 this license agreement also covered
17 numerous in-progress patent applications
18 as well?

19 A. I didn't know that
20 specifically. I don't know if that's a
21 good answer. I understand because I know
22 the inventor. I understand why maybe
23 that's in there, but I didn't know that
24 specifically and I don't know what's
25 transpired since.

1 Q. Sure. Well, take a look
2 down at page 14 of 16, which is labeled,
3 "Exhibit A to Patent License Agreement."

4 A. 14 of 16.

5 Q. Yes.

6 A. Okay. All the way down at
7 the bottom, okay. Okay. I'm there. So
8 here's a list. That's what I'm looking
9 at?

10 Q. Yes.

11 A. Okay.

12 Q. Does this indicate to you
13 that the license agreement covered
14 in-progress patent applications?

15 A. It does because there's
16 filing dates and there is not -- I think
17 it's implied because there's no patent
18 number issue date in some of those boxes,
19 right?

20 Q. And in Status, it says,
21 "In-process"?

22 A. Yeah, yes.

23 Q. And looking also at Exhibit
24 A, does this refresh your recollection as
25 to what the [REDACTED] patent covers?

1 A. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] And that's about as specific as
8 I can get there. I do remember that.

9 [REDACTED] [REDACTED] [REDACTED] [REDACTED] -- see,
10 the inventor kept adding patents to his
11 portfolio and different versions of that
12 same sort of technology. You can see
13 under the title, a lot of them have like
14 a similar name. So I don't know exactly
15 what [REDACTED] is, but I can see it says,

16 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED], and so I think it's an
19 evolution and it's an -- an attempt to
20 make sure that that technology has been
21 patented as much as possible so that it
22 would be hard to, you know, copy it or
23 to -- to come up with a better solution.
24 And I know that's the way this inventor
25 thought about things. That's why there's

Q. Okay. Do you have any other information about how this licensing

1 agreement came about?

2 A. No.

3 Q. Okay. I'm going to ask you
4 now about topics 11 and 12 regarding
5 product marking, and --

6 A. So can I go to -- so I need
7 to go to 70 and look at 11 and 12; is
8 that what -- what we're covering?

9 Q. If you would like to
10 reference Exhibit 70, that's just fine.

11 A. Okay. I'm looking at it.

12 Q. Okay. Is Fox contending
13 that it marked the Podium RC3 shock with
14 the '223 patent?

15 A. You know, that was a long
16 time ago and our marking practices
17 were -- we're not contending that that
18 was marked.

19 Q. And prior to filing its
20 amended complaint, did Fox provide SRAM
21 any notice that it believed SRAM was
22 infringing the '223 patent?

23 A. I don't believe so.

24 Q. Okay. As to the '331
25 patent, is Fox contending that its marked

1 its forks sufficient to provide notice of
2 the '331 patent?

3 A. Yes, Fox marked its forks in
4 a couple different ways -- well, two
5 ways. The way that everybody used to do
6 it, which was we put numbers on forks of
7 patents, right? And then we transitioned
8 over to doing it the new way that
9 everybody does it, which is establishing
10 a website that cites those patents. And
11 we transitioned the details from saying
12 the exact numbers to pointing to the
13 website and that happened 2019, December
14 2019, something like that. That's when
15 that effort started.

16 (Cross talk.)

17 BY MS. MILUNSKI:

18 Q. So --

19 A. If I remember right. I'm
20 sorry. I shouldn't even -- zip.

21 Q. Every time I think that
22 you're done, I start to ask a question
23 and there's more so I'm -- I'm not trying
24 to talk over you or cut you off. I
25 honestly think that you're done.

1 So -- okay. So you said
2 that transition happened in 2019. Now,
3 prior to 2019, the only fork that
4 practiced on the '331 patent was the 40,
5 right?

6 A. That's correct.

7 Q. Do you have any evidence to
8 show that Fox had details as I think you
9 referred to them on the 40 fork
10 referencing the '331 patent?

11 A. I don't personally have any
12 evidence, no, or I don't have evidence of
13 that.

14 Q. And Fox hasn't produced any
15 evidence in this litigation either; have
16 they?

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

19 Q. And so then in 2019, you --
20 you talked about this transition. And so
21 now the only marking or disclosure that
22 Fox has disclosing the '331 patent is a
23 website?

24 A. Yeah, there's a decal on the
25 fork that points you to the website and

1 that's the way that the industry works
2 now and that's why we moved in that
3 direction.

4 Q. Okay. Do you know where
5 that decal is on the fork?

6 A. I'm pretty sure it's down on
7 the lower leg down at the bottom where
8 most of the decals are, but our art
9 department often moves things around on
10 us so you need -- you need to -- I would
11 need to double check to be a hundred
12 percent sure, but that's where we put our
13 decals.

14 Q. Have you produced any
15 evidence of those decals as part of this
16 litigation?

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

19 Q. Okay. I'm going to mark as
20 Exhibit 121 some photos of Fox's 40 fork
21 that I pulled from Fox's website and ask
22 you if you recognize them.

23 (Exhibit 121, Photographs,
24 marked for identification.)

25 A. Okay. I've -- I've got that

1 Exhibit 121, yeah.

2 Q. Yes.

3 A. Okay. I'm looking at it.

4 Q. And I'll represent to you
5 that I pulled these very recently. Do
6 these look like the current offerings for
7 Fox's 40 fork?

8 A. Yeah. These are -- I mean,
9 these are actually renderings so these
10 are computer-generated images that are --
11 that look great, by the way. But they're
12 often used in our marketing materials so
13 these aren't the -- the forks. All
14 right? Because you're not looking at a
15 physical thing. You're looking at
16 computer-generated images. Yes.

17 (Cross talk.)

18 A. This represents --

19 BY MS. MILUNSKI:

20 Q. So were you finished with
21 your answer?

22 A. Yes.

23 Q. Okay. I do notice some --
24 some stickers on -- on these forks,
25 correct?

1 A. Yeah, down at the bottom of
2 the lower leg, there's a -- again, it's
3 a -- it's a representation of the sticker
4 in a computer rendering.

5 Q. And there's also a computer
6 rendering, I guess, of -- is it -- is it
7 Kashima coating, is that etched on or is
8 that a decal?

9 A. Kashima coating that --
10 those words are put on as part of the
11 Kashima process. It is not a decal. It
12 is not an etching, but it's pad print --
13 pad print procedure that's done during
14 the Kashima coat process.

15 Q. And do you see anywhere on
16 any of these renderings the number
17 9,739,331?

18 A. It's -- it's not represented
19 here. Again, this is a -- this is a
20 rendering. It's not the actually unit.
21 I do not see it and you can tell that
22 it's a rendering if you just even look at
23 the steerer tube in your first picture --
24 steerer, S-T-E-E-R-E-R, that you can see
25 it's not real in that picture. So the

1 marketing groups decided how to render
2 this fork and show it and they've
3 decided, you know, what things to put in
4 and what things to leave out, but it is
5 not an actual fork, but it would have
6 every decal and every warning label on
7 it.

8 Q. Has Fox produced any
9 pictures of its actual production forks
10 in this lawsuit that shows that it did
11 mark with the '331 patent on any of its
12 fork offerings?

13 A. I don't know the answer to
14 that question.

15 Q. Certainly, you think -- do
16 you believe that a decal with a reference
17 to Patent No. 9,739,331 would fit on the
18 fork, right?

19 A. Yes.

20 Q. And it wouldn't be cost
21 prohibitive to add it; would it?

22 A. No.

23 Q. And prior to filing its
24 amended complaint, did Fox provide SRAM
25 with any notice that it believed SRAM was

1 infringing the '331 patent?

2 A. Not that I'm aware of.

3 MR. MCCAULEY: Sarah, you said
4 amended complaint in your question.

5 Is that what you meant?

6 BY MS. MILUNSKI:

7 Q. So either the amended
8 complaint or the complaint. Did you
9 provide notice prior to the complaint to
10 SRAM that you believed that SRAM was
11 infringing the '331 patent?

12 A. We talked about that earlier
13 and I believe I just answered it, that it
14 was during some complicated times between
15 our two companies and we did not notify
16 prior.

17 Q. Okay. Did you review --

18 A. Sarah, I need to -- I'm
19 thinking -- I'm thinking about that and I
20 can't be sure that there wasn't some
21 discussion because I'm not privy to all
22 those discussions between, say, Brian and
23 Toby at our company. So if there was
24 some notification, I wouldn't necessarily
25 have known. I could -- I could be

1 answering that and I could be wrong.

2 Q. Well, as you sit here today,
3 are you aware of any specific
4 notification that was provided to SRAM
5 prior to the filing of the complaint that
6 Fox believed that SRAM infringed the '331
7 patent?

8 A. I'm not aware of any -- of
9 any specific notification, but I'm -- but
10 I'm qualifying my statement to say that
11 if there was -- you know, there could
12 have easily have been because there was a
13 lot of dialogue, like I was mentioning
14 before, at that time between our counsel
15 and -- and Brian and I just don't know
16 if -- if it was mentioned and then
17 followed up on, you know. I don't know
18 the answer to that.

19 Q. Right. And I'm just asking
20 for what you're aware of.

21 A. Yeah, I'm telling you.
22 That's what I'm aware of. I'm trying to
23 qualify it.

24 Q. Okay.

25 A. So you know.

1 Q. And in preparation for your
2 deposition today, did you review Fox's
3 answers to SRAM's interrogatories that
4 you verified?

5 A. I looked over the irrog --
6 irrog -- I looked it over. I -- if we
7 want to talk specifically about it, we
8 should call it up because I probably
9 can't remember every detail, but all the
10 details in there were verified and I'm
11 confident of that.

12 Q. How does -- how does Fox
13 monitor market share?

14 A. So market share is -- is
15 always a hard question. We get
16 questioned about it and we think about it
17 a lot. You can only estimate it. And so
18 you have to look at your customer base.
19 You have to look at all the customers,
20 the different bike models. You have to
21 do some guessing around, you know, if we
22 sold this many, how many others would
23 there be by either looking at websites or
24 looking at the spec content and then
25 making estimates about what competitors

1 like SRAM might sell into that same
2 market. So it's very much a -- you --
3 you know, and it's important information
4 and it's information that I think we
5 have, you know, the opportunity to make
6 good guesses on, just like your folks do,
7 but there's no definitive way for us to
8 identify market share in an absolute
9 sense.

10 Q. Do you generate any -- and
11 by "you," I mean does Fox generate any
12 documents in its efforts to monitor
13 market share?

14 A. Those market share documents
15 would be limited to, you know, the --
16 what we report to the street kind of
17 thing, right? Otherwise, you know, in a
18 10-K or something, you know, like that,
19 for example, because they're not
20 definitive numbers, you know, or -- we're
21 just kind of thinking about, you know,
22 where we're at and where we stand and
23 talking in general terms.

24 Q. So any market share analysis
25 that Fox performs would be reflected in

1 its 10-K statements?

2 A. I gave -- I gave 10-K as an
3 example. I'm not an expert on all the
4 different kinds of ways that we report
5 that, but if we did exhaustive searches
6 that we felt confident enough about the
7 numbers to publish, it would show up as
8 public information to our investors.

9 Q. Do you revisit market share
10 on any sort of regular basis?

11 A. It's not like a defined
12 regular basis. We might think about it
13 if we -- we feel like it's changed
14 substantially. I don't feel it's changed
15 substantially recently. We do monitor
16 spec positions, but that's kind of the --
17 those are the salespeople working with
18 their customers to try to identify what
19 candidate bikes would be best to be on.

20 Q. And in response to our
21 request for production number 34, which
22 asked for all documents relating --
23 related to each indirect infringement
24 identified in your response to
25 interrogatories 7, 8, 11 and 12, Fox

1 responded it will timely produce
2 documents upon which it intends to rely
3 to prove SRAM's indirect infringement.

4 Are you aware of what
5 documents Fox has produced demonstrating
6 indirect infringement?

7 A. What I can say about
8 documents are that we -- "we" being the
9 Fox team, produced all the documents we
10 were asked to produce and we gave those
11 to Finnegan.

12 Q. What documents do you
13 believe would be responsive to that
14 request for production?

15 A. Well, if you're asking did
16 we -- I don't know the answer to your
17 question and I'm -- and I'm not sure what
18 documents -- when we give them to
19 Finnegan, then they decide what you guys
20 get, and my understanding -- and I know
21 there were documents that we had to -- to
22 get, but I don't remember them all, and
23 then those get passed on to you. So I
24 would assume that if you asked for those
25 kinds of documents, you -- and we could

1 produce them, we would have.

2 Q. As you sit here, are you
3 aware of any documents that would be
4 responsive to demonstrating what Fox will
5 rely on to prove indirect infringement?

6 A. So infringement, I believe
7 we talked about that there's -- there's
8 information about infringement that was
9 prepared by experts and I believe that
10 would be the documentation that you would
11 be looking at --

12 (Cross talk.)

13 A. -- looking at or referring
14 to.

15 BY MS. MILUNSKI:

16 Q. Does Fox have samples of its
17 bicycle fork and shock offerings at its
18 corporate headquarters in Georgia?

19 A. At its corporate
20 headquarters in Georgia? So Georgia is
21 mainly corporate and the activities that
22 happen in Georgia are very much not
23 related to bike. Those are powersports,
24 off-road truck, up-fitting, those are
25 the -- those are the products that are

1 engineered and produced in Georgia. The
2 bicycle side of the business is very much
3 a California/Taiwan kind of business, and
4 that's where we have our samples. I
5 doubt that in Georgia they have samples
6 of our bicycle product.

7 Q. Do Fox's warehouses in
8 Georgia have -- house any bicycle
9 suspension parts?

10 A. Our distributors for
11 bikes -- our internal warehouses for
12 bicycle are in Burnaby, that's in
13 Vancouver, Canada, British Columbia, in
14 Taiwan, and in Reno, Nevada, not in
15 Georgia.

16 Q. And sorry, there was one of
17 these exhibits I had skipped over before.
18 So if you could go and take a look at
19 what's previously been marked as Exhibit
20 50.

21 MR. MCCAULEY: Five, zero?

22 MS. MILUNSKI: Yes.

23 A. Okay. I have it.

24 BY MS. MILUNSKI:

25 Q. And do you recognize that

1 that's the declaration regarding your
2 patent application for the '223 patent?

3 A. Yes.

4 Q. And on the first page of
5 Exhibit 50, do you see about midway down
6 it says, "I declare," and then there's a,
7 "(2), I believe the inventor(s) named
8 below to be the original and first
9 inventor(s) of the subject matter which
10 is claimed and for which a patent is
11 sought on the invention entitled: Methods
12 and Apparatus For Position Sensitive
13 Suspension Damping {sic}", right?

14 A. I see where you're reading
15 from, yes.

16 Q. And same page, it says, "I
17 hereby state that I have reviewed and
18 understand the contents of the above
19 identified specification, including the
20 claims, as amended by any amendment
21 specifically referred to above," correct?

22 A. Yes.

23 Q. And -- and you agreed to
24 that, correct?

25 A. I -- I agree that you've

1 read it perfectly and it's written there,
2 yes. And those are the intents of --
3 it's correct.

4 Q. Okay. And scrolling back
5 down to the last page of the document, do
6 you see your signature under "Wesley E."?

7 A. I do.

8 Q. And so those statements that
9 I read, you agreed to those by signing
10 your name there, correct?

11 A. Yes.

12 Q. And you also acknowledged
13 the duty to disclose information which is
14 material to patentability as defined in
15 37 CFR 1.56, correct?

16 A. As to patentability --
17 declaration -- yeah, I signed this
18 document, yes.

19 Q. Okay. Let's go ahead and
20 take a break. I think I'm pretty close.

21 A. Okay.

22 THE VIDEOGRAPHER: Off record,
23 4:11 p.m.

24 (Whereupon, a brief recess is
25 taken.)

1 THE VIDEOGRAPHER: On record,

2 4:30 p.m.

3 BY MS. MILUNSKI:

4 Q. All right, Mr. Allinger, I
5 just wanted to find some photos of
6 something that wasn't computer generated
7 of the 40 fork, so I'm going to introduce
8 what I've marked as Exhibit 122.

9 (Exhibit 122, Photos from
10 Mountain Bike Magazine website, marked
11 for identification.)

12 BY MS. MILUNSKI:

13 Q. And I'll represent that I
14 pulled this off of Mountain Bike
15 Magazine's website, took a screenshot of
16 the top of the page and then pulled some
17 of their photos they took. Are you
18 familiar with Mountain Bike Magazine?

19 A. Yes.

20 Q. And sometimes they review
21 Fox's products as well as other
22 suspension products, right?

23 A. Yes.

24 Q. Do you know who Ian Collins
25 is specifically?

1 A. No, not specifically.

2 Q. Okay. Sorry.

3 At any rate, you'd agree
4 these aren't computer-generated photos?

5 A. Yes.

6 Q. I'll tell you I looked for
7 pictures with mud on them.

8 A. Yeah.

9 Q. And if you scroll through
10 these, you can see noncomputer-generated
11 mud; is that fair?

12 A. Fair enough.

13 Q. And if you look at his
14 article, this was issued in 2021 and
15 we're talking about a 40 fork, so they
16 definitely had the pressure relief valves
17 on these forks at that time, right?

18 A. Yeah, and I see them there.
19 I think I see them there, yes, yeah.

20 Q. Okay. And I tried to get
21 different shots of the -- the fork.

22 Do you see on here on any of
23 these photos any reference to the '331
24 patent or to a Fox website?

25 A. I don't, Sarah, but the

1 interesting thing is I don't see a lot of
2 the other decals that I know are usually
3 on our fork. So I'm saying I don't see
4 it, but I am saying that most likely --
5 like, if you look at the 3 of 4 that
6 shows the brake caliper down lower --
7 excuse me, on the backside of the fork,
8 we've got some -- some decaling. And
9 since this was an editor's fork, it could
10 have -- it could have gotten some
11 either -- I don't want to say special
12 treatment, but it could be -- like those
13 decals could have been taken off in order
14 for it to look cooler. You know what I
15 mean? So...

16 Q. Do you have any personal
17 knowledge about whether any decals were
18 removed from this fork?

19 A. I do not, no, I do not.

20 Q. Okay.

21 MS. MILUNSKI: All right, Mr. --

22 (Cross talk.)

23 A. I just said nice job finding
24 all these pictures.

25 BY MS. MILUNSKI:

1 Q. Thank you very much.

2 On that note, I think I'm
3 done. I don't know if Mr. McCauley's
4 going to have any questions for you, but
5 I appreciate your time today.

6 A. Thank you.

7 EXAMINATION

8 BY MR. MCCAULEY:

9 Q. Mr. Allinger, I just have a
10 few questions for you.

11 In preparing for today's
12 deposition, did you ever look at one of
13 the new SRAM BoXXer forks?

14 A. Yes.

15 Q. And did anything draw your
16 attention about it in connection with the
17 '331 patent?

18 A. The fork that we looked at,
19 the BoXXer fork that we looked at was
20 the -- I believe the newest version that
21 had the knurled bleeder valves.

22 (Reporter clarification.)

23 THE WITNESS: Knurled -- K-N --

24 THE COURT REPORTER: U-R-L-E-D?

25 THE WITNESS: Yeah, yeah, yeah.

1 Knurled. That's a word. That's --
2 that's an engineering --

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

5 A. It had the screw knurled
6 bleeder valves.

7 BY MR. MCCAULEY:

8 Q. Are those what you
9 characterized today as screw-type bleeder
10 valves --

11 (Cross talk.)

12 A. That's a version, Rob, of a
13 screw-type bleeder valve that has the
14 knurl, which makes it even easier to turn
15 with your fingers.

16 BY MR. MCCAULEY:

17 Q. Did you notice anything else
18 about that knurled screw-type bleeder
19 valve on the latest BoXXer fork in
20 connection with it being allowed to
21 release air?

22 A. It had -- it had an O-ring
23 face seal, right, so you only have to
24 crack those -- when I say "crack," I mean
25 just turn that screw-type bleeder valve a

1 little to release that pressure so it
2 releases the surface pressure of the
3 O-ring against its sealing surface.

4 (Cross talk.)

5 BY MR. MCCAULEY:

6 Q. I'm sorry.

7 A. I -- I'm going to keep
8 talking for a moment. I also noticed
9 that the threads had -- had a machining
10 mark through them, which, again, is a --
11 is a really nice way to expedite air flow
12 through that device out into the
13 atmosphere or vice versa.

14 Q. You're aware that SRAM
15 sometimes refers to those as plugs?

16 A. Yes, I've heard -- I think I
17 heard Sarah even today say plug
18 several -- at least once.

19 Q. Do you agree with that
20 characterization of those knurled
21 screw-type bleeder valves that you just
22 described?

23 A. When I think of the word
24 "plug," I think of something that's
25 pushed in and plugged, right, and it's

1 not something that you unplug and plug
2 and unplug, you know. So those are
3 bleeder valves. Those are screw-type
4 bleeder valves.

5 Q. And does -- do Fox Rhythm
6 forks, for instance, have what you would
7 call screw-type bleeder valves on them?

8 A. Yes.

9 Q. You're aware that SRAM has
10 what they call a signature line or series
11 of forks, right?

12 A. They're higher-end models,
13 yeah, yes, I am.

14 Q. And those are the forks that
15 Fox competes against for OEM sales
16 typically; is that right?

17 A. We compete against those
18 forks for OE sales, yes.

19 Q. Okay. And are you aware
20 that there are two SID forks that are
21 both cross-country forks, S-I-D?

22 A. I'm aware of the SID series
23 of forks as being cross-country forks,
24 that's their lightweight -- typically
25 lightweight air technology fork.

1 Q. And I believe you testified
2 earlier today that for cross-country
3 applications, weight is very critical for
4 most riders, right?

5 A. Yes.

6 Q. And that's why Fox's
7 cross-country forks don't have the
8 bleeder valve technology on them, at
9 least not yet, right?

10 A. That's right. Yeah, we
11 talked about that value equation with
12 weight and performance.

13 Q. And the same's true of the
14 SID forks, right?

15 A. The SID is typically a
16 cross-country fork so the same is true,
17 yes.

18 Q. And there's no bleeder
19 valves on the SID forks, to your
20 knowledge, right?

21 A. Not to my knowledge.

22 MS. MILUNSKI: Object to form.

23 BY MR. MCCAULEY:

24 Q. But the other forks in
25 SRAM's signature series, the Zeb, the

1 Pike, the Lyrik, and the -- the BoXXER,
2 they all have bleeder valves on them,
3 right?

4 MS. MILUNSKI: Object -- object
5 to the form.

6 BY MR. MCCAULEY:

7 Q. You can answer.

8 A. Yes, they do. They have the
9 screw-type bleeder valves currently.

10 Q. Now, I'm going to ask you a
11 different question.

12 To your knowledge, do SRAM's
13 Lyrik, Pike, Zeb and BoXXer forks include
14 bleeder valves?

15 MS. MILUNSKI: Object to the
16 form.

17 A. Yes, they have screw-type
18 bleeder valves and in the past, several
19 of those models had push button bleeder
20 valves.

21 BY MR. MCCAULEY:

22 Q. Do you believe that -- well,
23 let me ask you this: If those Pike,
24 Lyrik, Zeb and BoXXer forks, all of which
25 have bleeder valves, did not have bleeder

1 valves, do you believe that the
2 competition that Fox has with SRAM for
3 sales of forks to OEMs would be different
4 or the results of that competition would
5 be different?

6 MS. MILUNSKI: Object to the
7 form.

8 BY MR. MCCAULEY:

9 Q. You can answer.

10 A. Well, as we talked about,
11 the -- the bleeder valves are at a
12 minimum one of the top features in a
13 fork, at least in the top 8, you know, 5
14 to 8 top features. And so certain --
15 certainly selling against a fork that
16 has -- that doesn't have those features
17 would be difficult, as we can see by some
18 of the media that, you know, folks are
19 expecting that feature now. It's one of
20 the expected features in a fork, at least
21 at the premium end. It's the feature
22 like we talked about earlier in our
23 discussion that allows all of the -- the
24 damping and spring performance and
25 chassis performance to really be the

1 best. It's that's pre -- it adds that --
2 it allows for that premium feel.

3 Q. So if those SRAM signature
4 series forks did not have bleeder valves,
5 how do you believe that would impact the
6 competition between Fox and SRAM for
7 sales of the high-end forks to the brand
8 bike companies?

9 MS. MILUNSKI: Object to the
10 form.

11 A. If we did -- if -- if SRAM
12 didn't have that feature, certainly we've
13 talked about the feature-to-feature
14 comparisons, it would -- you know what?
15 It would be a disadvantage to not have
16 one of the key features, of course.

17 BY MR. MCCAULEY:

18 Q. So it would be a
19 disadvantage to SRAM, right?

20 A. That's right.

21 Q. So do you believe that Fox
22 would be selling more forks to those
23 customers and SRAM would be selling fewer
24 if SRAM did not have those bleeder
25 valves?

1 MS. MILUNSKI: Object to the
2 form.

3 A. I do -- I do think that --
4 that they would, yeah. I think that --
5 it would be like having an extra, you
6 know, compression feature or air spring
7 feature that we consider to be in those
8 top feature sets and it's come -- it's
9 come -- it's been come to -- it has come
10 to have been expected, right? It's an
11 expected feature on a premium fork now.
12 We're seeing it on all the signature
13 series forks. We put it on all of our
14 forks and so the customer expects it.
15 The media writes about it. Racers race
16 it.

17 MR. MCCAULEY: Thank you,
18 Mr. Allinger. I don't have any
19 further questions.

20 We'd like to have an opportunity
21 to review and sign the transcript and
22 we will designate this as highly
23 confidential attorneys' eyes only
24 under the Protective Order until we've
25 had an opportunity to review the

1 entire transcript.

2 MS. MILUNSKI: That's fine, but
3 I do have additional questions now
4 that you've asked yours, Rob.

5 MR. MCCAULEY: Sure.

6 EXAMINATION

7 BY MS. MILUNSKI:

8 Q. What -- what does "valve"
9 mean to you, Mr. Allinger?

10 A. So "valve" is something
11 that, you know, to a shock absorber
12 designer, a valve is something that comes
13 in between -- is in -- is in a fluid flow
14 path, right? It can be open, shut,
15 halfway open, it meters -- it meters
16 flow.

17 THE COURT REPORTER: Can I go
18 off the record for a moment.

19 MS. MILUNSKI: Sure.

20 THE VIDEOGRAPHER: Off record,
21 4:42.

22 (Whereupon, a brief recess is
23 taken.)

24 THE VIDEOGRAPHER: On record
25 4:44 p.m.

1 BY MS. MILUNSKI:

2 Q. Mr. Allinger, did -- is Fox
3 claiming that it invented the valve in
4 the '331 patent?

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

7 A. No, we're not claiming that
8 we invented the valve.

9 BY MS. MILUNSKI:

10 Q. Okay. And you talked about
11 your personal belief about how the
12 results of competition would be different
13 if SRAM didn't have what you've called a
14 bleeder valve on its forks.

15 You just testified that to
16 Mr. McCauley, correct?

17 A. That's correct.

18 Q. And -- and we walked through
19 previously about actual evidence of that
20 and I believe you testified that
21 you've -- an OEM has never told you that
22 they would not purchase or make a
23 purchasing decision based on the presence
24 or absence of a bleeder valve.

25 Is my recollection correct?

1 A. I didn't say they would not
2 make a purchasing decision.

3 What I did say was that
4 during the negotiation that happens every
5 year, that having a feature set that's
6 lacking one key feature would put
7 whatever party that is at a disadvantage.
8 That was the testimony.

9 Q. And has an OEM ever
10 identified the bleeder valve as a key
11 feature that the absence of which would
12 dictate its purchasing decision?

13 A. Perfect -- perfect Jared
14 question, but my answer would be, not
15 being a salesman and not talking to those
16 OEs directly in a sales environment,
17 that -- I would refer to just the media
18 coverage and the general acceptance of
19 the feature. Whenever there's a review
20 of forks, it's always listed, you know,
21 in the key features portion of the
22 review, right at the beginning.

23 Q. Well, reviewers are not OEs,
24 correct?

25 A. That's correct.

1 Q. And so what I'm focused on
2 is the people that are actually making
3 the purchases.

4 Has any OEM, to your
5 knowledge, said to you or to anyone else
6 that you have learned of at Fox in
7 preparation for your deposition today,
8 stated that the absence of a pressure
9 relief valve would make them decide to
10 spec some other fork?

11 A. So you mentioned that the
12 media is not the OEs, but the media has a
13 huge influence, they are huge influencers
14 on what gets specced and what doesn't get
15 specced. Saying that, I don't have
16 direct information that an OE has said
17 that to anyone, but I'm not a
18 salesperson. That's why you should ask
19 Jared that question.

20 MS. MILUNSKI: Okay. I think
21 that's all the questions I have for
22 you, Mr. Allinger.

23 MR. MCCAULEY: Thank you. We
24 don't have any more.

25 Belle, I would just -- I'll go

1 ahead and reiterate because I'm
2 sometimes you all look at the end of
3 the transcript -- we'd like to review
4 and sign and -- and it's been marked
5 highly confidential attorneys' eyes
6 only. Thank you.

7 THE VIDEOGRAPHER: All right.
8 Off record, 4:47 p.m. This concludes
9 today's testimony given by Wesley
10 Allinger. Thanks everybody.

11 MR. MCCAULEY: Thank you.

12 THE COURT REPORTER: When do
13 you need your final transcript?

14 MR. MCCAULEY: Let's say three
15 days.

16 (Time noted: 4:48 p.m.)
17
18
19
20
21
22
23
24
25

CERTIFICATION

I, BELLE VIVIENNE, a Nationally
Certified Realtime Reporter, do hereby
certify:

That the witness whose testimony
as herein set forth, was duly sworn by
me; and that the within transcript is a
true record of the testimony given by
said witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I
am in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 8th day of
March 2024.

Belle Vivienne

BELLE VIVIENNE, CRR, CCR, RPR

* * *

Veritext Legal Solutions
1100 Superior Ave
Suite 1820
Cleveland, Ohio 44114
Phone: 216-523-1313

March 8, 2024

To: Mr. McCauley

Case Name: Fox Factory, Inc., v. SRAM, LLC

Veritext Reference Number: 6476883

Witness: Wesley Allinger Deposition Date: 3/7/2024

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown above, or email to production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,
Production Department

NO NOTARY REQUIRED IN CA

Veritext Legal Solutions

www.veritext.com

888-391-3376

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 6476883

CASE NAME: Fox Factory, Inc., v. SRAM, LLC

DATE OF DEPOSITION: 3/7/2024

WITNESS' NAME: Wesley Allinger

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have made no changes to the testimony as transcribed by the court reporter.

Date

Wesley Allinger

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;

They signed the foregoing Sworn Statement; and

Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal
this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 6476883
CASE NAME: Fox Factory, Inc., v. SRAM, LLC
DATE OF DEPOSITION: 3/7/2024
WITNESS' NAME: Wesley Allinger

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).

I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

Date Wesley Allinger

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They have listed all of their corrections in the appended Errata Sheet;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.