

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN STORAGE CONTAINERS
AND TOOLBOXES, ORGANIZERS,
COMPONENT BOXES, AND COOLERS**

Inv. No. 337-TA-1409

**INITIAL DETERMINATION ON VIOLATION OF SECTION 337 AND
RECOMMENDATION ON REMEDY AND BOND**

Chief Administrative Law Judge Clark S. Cheney

(August 1, 2025)

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PUBLIC VERSION

Table of Contents

I.	Introduction.....	2
A.	Procedural History	2
B.	The Private Parties	5
1.	Complainants	5
2.	Respondent Klein Tools, Inc.	6
C.	The Asserted Patents	6
1.	U.S. Patent No. 11,794,952.....	7
2.	U.S. Patent No. 11,952,167.....	10
3.	U.S. Patent No. 11,365,026.....	15
D.	Products at Issue	17
1.	Accused Products.....	17
2.	Domestic Industry Products.....	18
II.	Statutory Authority.....	22
III.	Importation.....	23
IV.	Person of Ordinary Skill in the Art	23
V.	Claim Construction	24
A.	Disputed Claim Terms	25
1.	“face”	26
2.	“coupler extending from a [first/second/top] face”	32
3.	“sidewalls”	35
4.	“corner bumper defines an outer surface that extends past and faces away from each of the [first/second] front face and the [first/second/third/fourth] side face”	39
5.	“corner bumper extending outward”	46
6.	“width axis of the second container is approximately one-half the width axis of the first container”	49
B.	Additional Claim Term	54
1.	“corner bumper”	54
VI.	’952 Patent	54
A.	Infringement.....	54
1.	Claim 1.....	58
2.	Claim 3.....	77
3.	Claim 4.....	78

PUBLIC VERSION

4.	Claim 8.....	80
5.	Claim 9.....	81
6.	Claim 16.....	85
7.	'952 Patent Infringement Conclusions.....	85
B.	Technical Prong	86
1.	Claim 1.....	90
2.	Claim 3.....	111
3.	Claim 4.....	113
4.	Claim 8.....	115
5.	Claim 9.....	116
6.	Claim 16.....	121
7.	'952 Patent Technical Prong Conclusions	122
VII.	'167 Patent	123
A.	Milwaukee's Motion to Strike Klein's Noninfringement Arguments (1409-034).....	123
B.	Infringement.....	124
1.	Claim 1.....	127
2.	Claim 2.....	131
3.	Claim 5.....	132
4.	Claim 8.....	133
5.	Claim 13.....	134
6.	Claim 14.....	135
7.	Claim 15.....	137
8.	'167 Patent Infringement Conclusions.....	145
C.	Technical Prong	146
1.	Claim 1.....	148
2.	Claim 2.....	153
3.	Claim 5.....	154
4.	Claim 8.....	155
5.	Claim 13.....	156
6.	Claim 14.....	157
7.	Claim 15.....	159
8.	'167 Patent Technical Prong Conclusions	166
VIII.	'026 Patent	167
A.	Infringement.....	167

PUBLIC VERSION

1. Claim 1.....	169
2. Claim 2.....	172
3. Claim 3.....	173
4. Claim 4.....	174
5. Claim 8.....	175
6. '026 Patent Infringement Conclusions.....	176
B. Technical Prong	176
1. Claim 1.....	178
2. Claim 2.....	181
3. Claim 3.....	182
4. Claim 4.....	183
5. Claim 8.....	184
6. '026 Patent Technical Prong Conclusions	185
IX. Indirect Infringement	185
X. Economic Prong of the Domestic Industry Requirement	192
A. Milwaukee's Domestic Activities	193
B. Milwaukee's Domestic Investments	195
1. Plant and Equipment	198
2. Employment of Labor	202
3. Exploitation of the Asserted Patents	205
C. Critiques of Milwaukee's Investment Allocation	206
1. Milwaukee's ER&D Expenses.....	206
2. Milwaukee's Manufacturing Expenses	210
3. Nexus With Respect to Subprong (C) Expenditures	211
D. Significance of Milwaukee's Domestic Investments	211
1. Plant and Equipment	214
2. Employment of Labor	215
E. Summary	216
XI. Validity	216
A. All Asserted Claims Compared with the Auer System	218
1. Public Use	220
2. On Sale.....	227
3. Auer System and Bensman	230
4. Auer System, Bensman, and Lifshitz.....	237

PUBLIC VERSION

B.	'026 Patent Claims Compared with Burchia and Bensman.....	242
1.	Limitation 1[a][i]: “a rib”.....	243
2.	Limitation 1[a][i]: “a depressed surface of the first face”	246
3.	Limitation 1[a][iii]: “a toggle locking latch”	251
4.	Claim 4.....	253
5.	Claim 8.....	253
6.	Conclusion	256
C.	'952 Patent Claims Compared with Burchia, Bensman, and Lifshitz	256
1.	All Asserted '952 Patent Claims	257
2.	Claim 3.....	257
3.	Claim 4.....	259
4.	Claim 8.....	260
5.	Claim 16.....	262
6.	Conclusion	262
D.	'167 Patent Claims Compared with Burchia, Bensman, Lifshitz, and Lafrayette	262
1.	All Asserted '167 Patent Claims	263
2.	Claim 2.....	263
3.	Claim 5.....	264
4.	Claim 8.....	264
5.	Claim 14.....	265
6.	Claim 15.....	266
7.	Conclusion	267
E.	Objective Indicia of Non-obviousness.....	267
1.	Nexus	268
2.	Commercial Success	270
3.	Copying.....	274
4.	Industry Praise	276
5.	Long-Felt but Unmet Need / Failure of Others.....	277
6.	Conclusion	279
XII.	Conclusions of Law	279
XIII.	Recommended Determination on Remedy and Bond.....	280
A.	Limited Exclusion Order.....	280
B.	Cease and Desist Order	281
C.	Bond During Presidential Review	281

PUBLIC VERSION

XIV.	Initial Determination on Violation	286
XV.	Order	287

PUBLIC VERSION

Table of Abbreviations

CDX	Complainants' demonstrative exhibit
CIB	Complainants' post-hearing initial brief
COCCB	Complainants' opening claim construction brief
CPB	Complainants' pre-hearing brief
CPX	Complainants' physical exhibit
CRB	Complainants' post-hearing responsive brief
CRCCB	Complainants' responsive claim construction brief
CRRB	Complainants' post-hearing reply brief
CX	Complainants' exhibit
Decl.	Declaration
Dep.	Deposition
Tr.	Evidentiary hearing transcript
JDX	Joint demonstrative exhibit
JPX	Joint physical exhibit
JX	Joint exhibit
PTO	U.S. Patent and Trademark Office
R&D	Research and development
RDX	Respondent's demonstrative exhibit
RFA	Request for admission
RFP	Request for production
RIB	Respondent's post-hearing brief
ROCCB	Respondent's opening claim construction brief
RPB	Respondent's pre-hearing brief
RPX	Respondent's physical exhibit
RRB	Respondent's post-hearing responsive brief
RRCCB	Respondent's responsive claim construction brief
RRRB	Respondent's post-hearing reply brief
RX	Respondent's exhibit
Stip.	Stipulation

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**INITIAL DETERMINATION ON VIOLATION OF SECTION 337 AND
RECOMMENDATION ON REMEDY AND BOND**

Chief Administrative Law Judge Clark S. Cheney

(August 1, 2025)

Pursuant to the Notice of Investigation, 89 Fed. Reg. 58764 (July 19, 2024), and 19 C.F.R. §§ 210.10(b), 210.42(a)(1)(i), this is the final initial determination in the matter of *Certain Storage Containers and Toolboxes, Organizers, Component Boxes, and Coolers*, Investigation No. 337-TA-1409.

For the reasons stated herein, I have determined that a violation of section 337 of the Tariff Act of 1930, as amended, has occurred in the importation into the United States and sale within the United States after importation of certain interlockable storage containers and toolboxes, organizers, component boxes, and coolers based on infringement of U.S. Patent No. 11,365,026, U.S. Patent No. 11,794,952, and U.S. Patent No. 11,952,167.

I. INTRODUCTION

A. Procedural History

On June 16, 2024, complainants Milwaukee Electric Tool Corporation (“Milwaukee Tool”) and Keter Home and Garden Products Ltd. (“Keter”) (collectively, “Milwaukee” or “Complainants”) filed a complaint alleging violations of section 337 based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain storage containers and toolboxes, organizers, components boxes, coolers and accessories used therewith. 89 Fed. Reg. 51901 (June 20, 2024); *see* EDIS Doc. IDs 823670, 823673, 823676, 823678, 823683 (public filings, confidential filings, and appendices).

On May 30, 2024, the Commission instituted Investigation No. 337-TA-1409 to determine:

[W]hether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1-5 and 7-11 of the '026 patent [U.S. Patent No. 11,365,026; claims 1-23 of the '952 patent [U.S. Patent No. 11,794,952]; and claims 1-9, 11, and 13-16 of the '167 patent [U.S. Patent No. 11,952,167], and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

89 Fed. Reg. 58764 (July 19, 2024) (“Notice of Investigation”).

The plain language description of the accused products in the complaint defines the scope of the investigation. 19 C.F.R. § 210.10(b)(1). The products are described as “interlockable storage containers and toolboxes, organizers, component boxes, and coolers.” Notice of Investigation.

PUBLIC VERSION

The Notice of Investigation named Klein Tools, Inc. (“Klein” or “Respondent”) as the sole respondent. *Id.* The Office of Unfair Import Investigations is not a party to this investigation. *Id.*

I set a 15-month target date of July 21, 2025, for this investigation, thereby making the final initial determination on violation of section 337 due no later than June 20, 2025. Order No. 4 (Aug. 21, 2024).

On September 25, 2024, the parties submitted an amended chart identifying proposed competing constructions for terms recited in asserted claims of U.S. Patent Nos. 11,365,026 (“the ’026 patent”); 11,794,952 (“the ’952 patent”); and 11,952,167 (“the ’167 patent”) (collectively, the “Asserted Patents”). *See* EDIS Doc. ID 833179. The parties subsequently briefed their positions regarding the terms in accordance with the procedural schedule.¹ On October 11, 2024, I conducted a hearing regarding the disputed claim terms.² This initial determination resolves the remaining claim construction disputes raised by the parties.

On November 22, 2024, the parties stipulated to certain facts relevant to the issue of importation. This stipulation has been entered into the evidentiary record as JX-0010C.

On January 24, 2025, I issued an initial determination terminating this investigation in part based on withdrawal of the complaint as to asserted claims 1-3, 5, 7, 9, and 11 of the ’026 patent,

¹ For convenience, the parties’ briefs will be referred to the by following designations:

Title	EDIS Doc. ID	Designation
Complainants’ Opening Claim Construction Brief	833268	COCCB
Respondent’s Opening Claim Construction Brief	833276	ROCCB
Complainants’ Responsive Claim Construction Brief	834143	CRCCB
Respondent’s Responsive Claim Construction Brief	834154	RRCCB

² The transcript of the hearing is available at EDIS Doc. ID 834685 and will be referred to as “Markman Tr.”.

PUBLIC VERSION

claims 1-2, 6-7, 9-15, and 17-23 of the '952 patent, and claims 1, 3-4, 7, 9, 13, and 16 of the '167 patent. Order No. 15 (Jan. 24, 2025), *unreviewed by Comm'n Notice* (Feb. 18, 2025).

On February 11, 2025, I issued an initial determination terminating this investigation in part based on withdrawal of the complaint as to asserted claim 6 of the '167 patent. Order No. 19 (Feb. 11, 2025), *unreviewed by Comm'n Notice* (Feb. 24, 2025).

On February 27, 2025, I issued an initial determination terminating the investigation in part based on withdrawal of the complaint as to asserted claim 10 of the '026 patent, claim 5 of the '952 patent, and claim 11 of the '167 patent. Order No. 20 (Feb. 27, 2025), *unreviewed by Comm'n Notice* (Mar. 13, 2025).

I held a prehearing conference on February 10, 2025, and convened an evidentiary hearing immediately thereafter. The evidentiary hearing ended on February 14, 2025. *See Hr'g Tr. at 1-1262.*³

On March 21, 2025, Milwaukee and Klein jointly moved to correct the Joint Final Exhibit List. Motion Docket No. 1409-033. The parties seek to remove the confidential designations from exhibits RPX-0076 and RPX-0022, which are public videos. Joint Motion 1409-033 is granted. An order relating to this motion is set forth in section XV below.

³ The transcript of the evidentiary hearing is available on EDIS. The following table identifies the EDIS Doc. ID for the confidential and public transcripts for each day of the hearing:

Hearing Day	Public Tr.	Conf. Tr.
2/10/2025	843261	843260
2/11/2025	843263	843262
2/12/2025	843414	843412
2/13/2025	843520	843519
2/14/2025	843701	843699

These documents are hereinafter collectively referred to as "Tr."

PUBLIC VERSION

On April 7, 2025, Milwaukee moved to strike portions of Klein’s Responsive Post-Hearing Brief alleged to “offer new arguments regarding non-infringement and the technical prong of the domestic industry requirement, including those set forth in pages 40-43” that “were not set forth during discovery or in Respondent’s prehearing brief.” Motion Docket No. 1409-034. Klein filed an opposition brief on April 17, 2025. This motion will be addressed in section VII.A below.⁴

On June 16, 2025, I extended the target date to November 19, 2025, thereby making this final initial determination due no later than July 18, 2025. Order No. 22 (June 16, 2025); *see also* 19 C.F.R. § 210.42(a)(1)(i).

On July 17, 2025, I extended the target date to December 1, 2025, thereby making this final initial determination due no later than August 1, 2025. Order No. 23 (July 17, 2025) (pending Commission review).

B. The Private Parties

1. Complainants

a) Milwaukee Electric Tool Corporation

Milwaukee Tool is a corporation organized and existing under the laws of the State of Delaware with a principal place of business at 13135 West Lisbon Road, Brookfield, Wisconsin, 53005. JX-0017C.0001. Milwaukee Tool is a manufacturer and worldwide marketer of power tools, hand tools, and storage products. Tr. (Vargo) at 63:6-25; CX-0105.0012-29. Milwaukee Tool’s storage products include its line of PACKOUT™ modular storage systems that provides customers with the ability to interchange and interlock various toolboxes, component boxes, tote bags, and other accessories in a configuration that fits the customers’ needs. CX-0105.0024-25; CX-1258.

⁴ Any motions that remain pending in this investigation are hereby denied as moot.

b) Keter Home and Garden Products Ltd.

Keter is an Israeli corporation with its principal place of business at 2 Sapir Street, Industrial Zone, Herzliya, Israel 4685206. JX-0017C.0001. Keter makes a variety of products, including resin-based outdoor products. JX-0090. Some of the PACKOUT products that Milwaukee relies on to prove satisfaction of the domestic industry requirement are manufactured by Keter. *See* Tr. (Vargo) at 71:7-15.

2. Respondent Klein Tools, Inc.

Klein is a corporation organized and existing under the laws of the State of Delaware with its headquarters and principal place of business at 450 Bond Street, Lincolnshire, Illinois 60069. CX-0049C; JX-0084. Klein manufactures and sells hand tools, modular storage containers, toolboxes, coolers, and accessories. Tr. (Klein) at 483:20-485:6; JX-0010C.

C. The Asserted Patents

Milwaukee continues to allege infringement of claims 4 and 8 of the '026 patent, claims 3, 4, 8, and 16 of the '952 patent, and claims 2, 5, 8, 14, and 15 of the '167 patent. CIB at 36, 81, 100. These three patents, which are collectively referred to as the "Asserted Patents," are generally directed to modular interlocking storage containers used in a variety of contexts. Tr. (Klopp) at 180:3-14. All three Asserted Patents share the same specification, figures, and inventors, and are related through continuation applications that claim priority to Provisional Application No. 62/330,334, filed on May 2, 2016. *Id.* The parties do not dispute that this is the priority date of the Asserted Patents. CIB at 5; RIB at 10. For convenience, citations to the specifications and figures of the Asserted Patents may be made to only one of the Asserted Patents but will apply equally to the two patents not explicitly cited. *See* Markman Tr. at 9:24-10:19. The patents are described below in order of emphasis by the parties.

PUBLIC VERSION

1. U.S. Patent No. 11,794,952

The '952 patent, titled "Utility Assembly and Coupling Mechanism," issued on October 24, 2023, and names Yaron Brunner, Grant T. Squires, Christopher S. Hoppe, and Steven W. Hyma as inventors. JX-0002 at cover page (the '952 patent). The '952 patent issued from U.S. Patent Application No. 18/051,749, which was filed on November 1, 2022, and claims priority to Provisional Application No. 62/330,334, filed on May 2, 2016. *Id.* The '952 patent expires on April 30, 2037. *Id.*

Milwaukee Tool and Keter jointly own the '952 patent by assignment. JX-0002; JX-0008; CX-1312.

Milwaukee asserts claims 3, 4, 8, and 16 of the '952 patent against Klein. CIB at 36. To prove satisfaction of the technical prong of the domestic industry requirement, Milwaukee relies on claims 3, 4, 8, and 16 of the '952 patent. CIB at 9. Claims 3, 4, and 8 each depend from independent claim 1. Claim 16 depends from independent claim 9.

The claims currently at issue in this investigation are provided below. The parties have agreed to refer to each individual claim limitation using a common numbering system. This numbering system is indicated with brackets. In addition, disputed claim terms that were briefed by the parties for construction are identified with ***bolded italic*** typeface:

1. [Pre] A container assembly comprising:

[a] a first container comprising:

[a.i] a first ***coupler extending from a top face*** of the first container, the first coupler comprising two ***sidewalls***, a back wall, and a rib, the back wall located between the two ***sidewalls***, the two ***sidewalls*** and the back wall projecting above a depressed surface of the top ***face***, and the rib extending away from the back wall in a first direction;

[a.ii] a first lid pivotally attached to the first container; and

PUBLIC VERSION

[a.iii] a first toggle locking latch configured to latch the first lid of the first container in a closed position; and

[b] a second container comprising:

[b.i] a second coupler extending from the second container, the second coupler comprising a tongue extending in a direction parallel to a bottom **face** of the second container, the tongue extends in a second direction opposite the first direction, the tongue of the second container is engageable with the rib of the first container such that the tongue engages between the rib and the depressed surface;

[b.ii] a second lid pivotally attached to the second container;

[b.iii] a second toggle locking latch configured to latch the second lid of the second container in a closed position;

[b.iv] a front **face**;

[b.v] a first side **face**;

[b.vi] an opposing second side **face**;

[b.vii] a first corner bumper coupled to the second container between the front **face** and the first side **face**, the first corner bumper defining a first outer surface that faces away from each of the front **face** and the first side **face**; and

[b.viii] a second corner bumper coupled to the second container between the front **face** and the second side **face**, and the second corner bumper defining a second outer surface that faces away from each of the front **face** and the second side **face**;

[b.ix] wherein the first and second couplers of the first and second containers engage each other when the first and second containers are slid with respect to each other along a sliding path defined by the rib and the tongue;

[c] a locking latch arresting location defined by one of the first container or the second container; and

[d] a locking latch coupled to the other of the first container or the second container, the locking latch positionable in a locked position engaging the locking latch arresting location thereby limiting sliding displacement of the first container with respect to the second container.

PUBLIC VERSION

3. The container assembly of claim 1, wherein the locking latch is spring biased to engage with the locking latch arresting location.

4. The container assembly of claim 1, wherein a width of the second container is half of a width of the first container, and the second container is located on top of the first container.

8. The container assembly of claim 1, wherein the first container further comprises a pair of rear wheels and a telescoping handle extending upwards from a rear wall of the first container.

9. [Pre] A container assembly comprising:

[a] a first container comprising:

[a.i] a first ***coupler extending from a top face*** of the first container, the first coupler comprising two ***sidewalls***, a back wall, and a rib, the back wall located between the two ***sidewalls***, the two ***sidewalls*** and the back wall projecting above a depressed surface of the top ***face***, and the rib extending away from the back wall in a first direction;

[a.ii] a first lid pivotally attached to the first container; and

[a.iii] a first toggle locking latch configured to latch the first lid of the first container in a closed position; and

[b] a second container comprising:

[b.i] a second coupler extending from the second container, the second coupler comprising a tongue extending in a direction parallel to a bottom ***face*** of the second container, the tongue extends in a second direction opposite the first direction, the tongue of the second container is engageable with the rib of the first container such that the tongue engages between the rib and the depressed surface, wherein the second coupler of the second container extends from the bottom ***face*** of the second container such that the tongue is offset from at least a portion of the bottom ***face*** of the second container and wherein the rib engages between the tongue and the bottom ***face*** of the second container;

[b.ii] a second lid pivotally attached to the second container; and

[b.iii] a second toggle locking latch configured to latch the second lid of the second container in a closed position;

PUBLIC VERSION

[b.iv] wherein the first and second couplers of the first and second containers engage each other when the first and second containers are slid with respect to each other along a sliding path defined by the rib and the tongue;

[c] a locking latch arresting location defined by one of the first container or the second container; and

[d] a locking latch coupled to the other of the first container or the second container, the locking latch positionable in a locked position engaging the locking latch arresting location thereby limiting sliding displacement of the first container with respect to the second container.

16. The container assembly of claim 9, wherein the first container further comprises a pair of rear wheels and a telescoping handle extending upwards from a rear wall of the first container.

'952 patent at claims 1, 3, 4, 8, 9, and 16.

2. U.S. Patent No. 11,952,167

The '167 patent, titled "Utility Assembly and Coupling Mechanism," issued on April 9, 2024, and names Yaron Brunner, Grant T. Squires, Christopher S. Hoppe, and Steven W. Hyma as inventors. JX-0003 at cover page (the '167 patent). The '167 patent issued from U.S. Patent Application No. 18/330,972, which was filed on June 7, 2023, and claims priority to Provisional Application No. 62/330,334, filed on May 2, 2016. *Id.* The '952 patent expires on April 30, 2037. *Id.*

Milwaukee Tool and Keter jointly own the '167 patent by assignment. JX-0003; JX-0009; CX-1312.

Milwaukee asserts claims 2, 5, 8, 14, and 15 of the '167 patent against Klein. CIB at 81. To prove satisfaction of the technical prong of the domestic industry requirement, Milwaukee relies on claims 2, 5, 8, 14, and 15 of the '167 patent. CIB at 65. Claims 2, 5, and 8 each depend from independent claim 1. Claim 14 depends from claim 13, which depends from independent claim 1. Claim 15 is an independent claim.

PUBLIC VERSION

The claims currently at issue in this investigation are provided below. The parties have agreed to refer to each individual claim limitation using a common numbering system. This numbering system is indicated with brackets. In addition, disputed claim terms that were briefed by the parties for construction are identified with ***bolded italic*** typeface:

1. [Pre] A container assembly comprising:

[a] a first container comprising:

[a.i] a first lid pivotally attached to the first container;

[a.ii] a first female coupler at a top ***face*** of the first lid;

[a.iii] a first front ***face***, a first side ***face***, an second side ***face*** opposite the first side ***face***, the first front ***face***, the first side ***face***, and the second side ***face*** collectively partially defining a storage compartment;

[a.iv] a first corner extending between the first front ***face*** and the first side ***face***, and a second corner extending between the first front ***face*** and the second side ***face***;

[a.v] a first ***corner bumper extending outward*** from the first corner; and

[a.vi] a second ***corner bumper extending outward*** from the second corner;

[a.vii] wherein the first ***corner bumper defines an outer surface that extends past and faces away from each of the first front face and the first side face***, and wherein the second ***corner bumper defines an outer surface that extends past and faces away from each of the first front face and the second side face***; and

[a.viii] a first locking latch arresting location; and

[b] a second container comprising:

[b.i] a male coupler extending from a bottom ***face*** of the second container, the male coupler configured to slidingly engage with the first female coupler of the first container, wherein the first female coupler and male coupler engage each other when the first and second containers are slid with respect to each other;

PUBLIC VERSION

[b.ii] a second lid pivotally attached to the second container; and

[b.iii] a locking latch positionable in a locked position engaging the first locking latch arresting location thereby limiting sliding displacement of the first container with respect to the second container;

[c] wherein the first female coupler comprises two **sidewalls**, a back wall, and a first rib, the back wall located between the two **sidewalls**, the two **sidewalls** and the back wall projecting above a depressed surface of the top **face** of the first lid, and the first rib extending away from the back wall in a first direction towards the first front **face** of the first container;

[d] wherein the second container comprises a second female coupler at a top **face** of the second lid, the second female coupler comprising two **sidewalls**, a back wall, and a second rib, the back wall located between the two **sidewalls**, the two **sidewalls** and the back wall projecting above a depressed surface of the top **face** of the second lid, and the second rib extending away from the back wall towards a front **face** of the second container and the first front **face** of the first container; and

[e] wherein the first container defines a width axis parallel to the first front **face** of the first container and the second container defines a width axis parallel to the first front **face** of the first container, wherein the width axis of the second container is approximately one-half the width axis of the first container.

2. [Pre] The container assembly of claim 1, the first container comprising:

[a] a first rear wall opposite the first front **face**;

[b] a pair of rear wheels extending past the first rear wall; and

[c] a telescoping handle extending upwards from the first rear wall of the first container.

5. [Pre] The container assembly of claim 1, the second container comprising:

[a] a second front **face**, a third side **face**, and a fourth side **face** opposite the third side **face**;

[b] a third corner extending between the second front **face** and the third side **face**;

PUBLIC VERSION

[c] a fourth corner extending between the second front **face** and the fourth side **face**;

[d] a third **corner bumper extending outward** from the third corner, wherein the third **corner bumper defines an outer surface that extends past and faces away from each of the second front face and the third side face**; and

[e] a fourth **corner bumper extending outward** from the fourth corner, wherein the fourth **corner bumper defines an outer surface that extends past and faces away from each of the second front face and the fourth side face**.

8. The container assembly of claim 1, the first container comprising a first toggle locking latch configured to latch the first lid of the first container in a closed position, and a second toggle locking latch configured to latch the first lid of the first container in a closed position, and the second container comprising a third toggle locking latch configured to latch the second lid of the second container in a closed position, and a fourth toggle locking latch configured to latch the second lid of the second container in a closed position.

13. The container assembly of claim 1, wherein the first locking latch arresting location is a recess defined in an upward facing surface of the top face of the first lid.

14. The container assembly of claim 13, wherein the recess comprises a front wall, a rear wall and a bottom wall extending between the front wall and the rear wall, wherein a lower **face** of the locking latch faces the bottom wall of the recess when the locking latch is in the locked position.

15. A container assembly comprising:

[a] a first container comprising:

[a.i] a first lid pivotally attached to the first container;

[a.ii] a first female coupler at a top **face** of the first lid;

[a.iii] a first front **face**, a first side **face**, an second side **face** opposite the first side **face**, the first front **face**, the first side **face**, and the second side **face** collectively partially defining a storage compartment;

[a.iv] a first corner extending between the first front **face** and the first side **face**, and a second corner extending between the first front **face** and the second side **face**;

PUBLIC VERSION

[a.v] a first **corner bumper extending outward** from the first corner; and

[a.vi] a second **corner bumper extending outward** from the second corner;

[a.vii] wherein the first **corner bumper defines an outer surface that extends past and faces away from each of the first front face and the first side face**, and wherein the second **corner bumper defines an outer surface that extends past and faces away from each of the first front face and the second side face**; and

[a.viii] a first locking latch arresting location; and

[b] a second container comprising:

[b.i] a male coupler extending from a bottom **face** of the second container, the male coupler configured to slidably engage with the first female coupler of the first container, wherein the first female coupler and male coupler engage each other when the first and second containers are slid with respect to each other;

[b.ii] a second lid pivotally attached to the second container; and

[b.iii] a locking latch positionable in a locked position engaging the first locking latch arresting location thereby limiting sliding displacement of the first container with respect to the second container;

[c] the first container comprising a plurality of female couplers including the first female coupler, the plurality of female couplers at the top **face** of the first lid, the first container comprising a second locking latch arresting location; and

[d] the container assembly comprising a third container comprising:

[d.i] a second male coupler extending from a bottom **face** of the third container, the second male coupler configured to slidably engage with one of the plurality of female couplers of the first container, wherein the second male coupler and the at least one of the plurality of female couplers engage each other when the first and second containers are slid with respect to each other;

[d.ii] a third lid pivotally attached to the third container;

[d.iii] a third female coupler at a top **face** of the third lid, the third female coupler comprising two **sidewalls**, a back wall, and a first

PUBLIC VERSION

rib, the back wall located between the two ***sidewalls***, the two ***sidewalls*** and the back wall projecting above a depressed surface of the top ***face*** of the third lid, and the first rib extending away from the back wall towards a front ***face*** of the third container and the front ***face*** of the first container; and

[d.iv] a second locking latch positionable in a locked position engaging the second locking latch arresting location thereby limiting sliding displacement of the third container with respect to the first container.

'167 patent at claims 1, 2, 5, 8, 14, and 15.

3. U.S. Patent No. 11,365,026

The '026 patent, titled "Utility Assembly and Coupling Mechanism," issued on June 21, 2022, and names Yaron Brunner, Grant T. Squires, Christopher S. Hoppe, and Steven W. Hyma as inventors. JX-0001 at cover page (the '026 patent). The '026 patent issued from U.S. Patent Application No. 17/536,521, which was filed on November 29, 2021, and claims priority to Provisional Application No. 62/330,334, filed on May 2, 2016. *Id.* The '026 patent expires on April 30, 2037. *Id.*

Milwaukee Tool and Keter jointly own the '026 patent by assignment. JX-0001; JX-0007; CX-1312.

Milwaukee asserts claims 4 and 8 of the '026 patent against Klein. CIB at 100. To prove satisfaction of the technical prong of the domestic industry requirement, Milwaukee relies on claims 4 and 8 of the '026 patent. CIB at 95. Claim 4 depends from claims 1, 2, and 3. Claim 8 depends from independent claim 1.

For convenience, the claims currently at issue in this investigation are provided below. The parties have agreed to refer to each individual claim limitation using a common numbering system. This numbering system is indicated with brackets. In addition, disputed claim terms that were briefed by the parties for construction are identified with ***bolded italic*** typeface:

PUBLIC VERSION

1. [Pre] A container assembly comprising:

[a] a first container comprising:

[a.i] a first ***coupler extending from a first face*** of the first container, the first coupler comprising two ***sidewalls***, a back wall, and a rib, the back wall located between the two ***sidewalls***, the two ***sidewalls*** and the back wall projecting from a depressed surface of the first ***face***, and the rib extending from the back wall in a first direction;

[a.ii] a lid pivotally attached to the first container; and

[a.iii] a toggle locking latch configured to latch the lid of the first container in a closed position;

[b] a second container comprising:

[b.i] a second ***coupler extending from a second face*** of the second container, the second coupler comprising a tongue offset from the second ***face***, the tongue extends in a second direction opposite the first direction, the tongue of the second container is engageable with the rib of the first container;

[b.ii] a lid pivotally attached to the second container; and

[b.iii] a toggle locking latch configured to latch the lid of the second container in a closed position;

[b.iv] wherein the first and second couplers of the first and second containers engage each other when the first and second containers are slid with respect to each other along a sliding path defined by the rib and the tongue;

[c] a locking latch arresting location defined by one of the first container or the second container; and

[d] a locking latch coupled to the other of the first container or the second container, the locking latch positionable in a locked position engaging the locking latch arresting location thereby limiting sliding displacement of the first container with respect to the second container.

2. The container assembly of claim 1, wherein the sliding path is perpendicular to the locking latch.

3. The container assembly of claim 2, wherein the locking latch comprises a rear surface, wherein the sliding path is perpendicular to the rear surface.

4. The container assembly of claim 3, wherein the locking latch is spring biased to engage with the locking latch arresting location.

8. The container assembly of claim 1, wherein a width of the second container is half of a width of the first container, and the second container is located on top of the first container.

'026 patent at claims 1-4, 8.

D. Products at Issue

The products at issue in this investigation are interlockable storage containers and toolboxes, organizers, component boxes, and coolers.

1. Accused Products

Milwaukee accuses ten component items from Klein's MODbox System product line of infringing the Asserted Patents. CIB at 6 (citing CDX-0003C.0014). These ten components, which are collectively referred to as the "Accused Products," are listed below, along with their Stock Keeping Unit ("SKU") identifier and the exhibit number of the corresponding physical sample entered into evidence:

Accused Product	Stock Keeping Unit	Exhibit No.
MODbox Rolling Toolbox	SKU 54802MB	JPX-0002
MODbox Medium Toolbox	SKU 54803MB	JPX-0003
MODbox Small Toolbox	SKU 54804MB	JPX-0001
MODbox Short Component Box, Full Width	SKU 54807MB	JPX-0005
MODbox Tall Component Box, Full Width	SKU 54806MB	JPX-0004
MODbox Tall Component Box, Half Width	SKU 54808MB	JPX-0006
MODbox Short Component Box, Half Width	SKU 54809MB	JPX-0007
MODbox Tool Bag, Tote, and Backpack Component Box	SKU 54812MB	JPX-0008
MODbox Cooler, 17qt	SKU 62204MB	JPX-0010
MODbox Hybrid Toolbox	SKU 54824MB	JPX-0009

CIB at xi, 6. The Accused Products are illustrated in the following demonstrative slide prepared by Milwaukee's technical expert Dr. Richard Klopp:

The Accused Products: Respondent's MODbox System				
				
Rolling Toolbox 54802MB (JPX-0002)	Medium Toolbox 54803MB (JPX-0003)	Small Toolbox 54804MB (JPX-0001)	Full Width Tall Component Box 54806MB (JPX-0004)	Full Width Short Component Box 54807MB (JPX-0005)
				
Half Width Tall Component Box 54808MB (JPX-0006)	Half Width Short Component Box 54809MB (JPX-0007)	Backpack Component Box 54812MB (JPX-0008)	Cooler 62204MB (JPX-0010)	Hybrid Toolbox 54824MB (JPX-0009)
CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER		JPX-0001-10; CX-0145-154		CDX-0003C.14

CDX-0003C.0014.

2. Domestic Industry Products

Milwaukee relies on fifteen items from its PACKOUT System product line to show satisfaction of the domestic industry requirement. CIB at 5 (citing CDX-0003C.0012). These fifteen items, which are collectively referred to as the “Domestic Industry Products,” are listed below, along with the exhibit number of the corresponding physical sample entered into evidence:

- Rolling Toolbox (JPX-0020)
- Rolling Modular Tool Chest (JPX-0019)
- XL Toolbox (JPX-0025)
- Large Toolbox (JPX-0015)
- Toolbox (JPX-0022)
- Tool Case (JPX-0021)
- Compact Toolbox (JPX-0013)

PUBLIC VERSION

- XL Cooler (JPX-0024)
- Compact Cooler (JPX-0011)
- Vacuum (JPX-0023)
- Deep Organizer (JPX-0014)
- Organizer (JPX-0018)
- Low-Profile Organizer (JPX-0017)
- Compact Organizer (JPX-0012)
- Low-Profile Compact Organizer (JPX-0016)

CIB at 5, 6. The Domestic Industry Products are illustrated in the following demonstrative slide prepared by Milwaukee's technical expert Dr. Klopp:



CDX-0003C.0012.

Some of the Domestic Industry Products have multiple SKUs. The SKUs associated with each Domestic Industry Product are listed in the following slide prepared by Dr. Klopp:

PUBLIC VERSION

The DI Products: Complainants' Packout System		
	DI Product	SKU(s)
1	Rolling Toolbox (JPX-0020)	48-22-8426, 48-22-0141, 48-22-0142, 48-22-0140
2	Rolling Modular Tool Chest (JPX-0019)	48-22-8428
3	XL Toolbox (JPX-0025)	48-22-8429
4	Large Toolbox (JPX-0015)	48-22-8425, 48-22-0141, 48-22-0142, 48-22-0140
5	Toolbox (JPX-0022)	48-22-8424, 48-22-0141, 48-22-0142, 48-22-0140
6	Tool Case (JPX-0021)	48-22-8450
7	Compact Toolbox (JPX-0013)	48-22-8422
8	XL Cooler (JPX-0024)	48-22-8462
9	Compact Cooler (JPX-0011)	48-22-8460
10	Vacuum (JPX-0023)	0970-20
11	Deep Organizer (JPX-0014)	48-22-8432
12	Organizer (JPX-0018)	48-22-8430, 48-73-8430, 48-73-8430C, 49-66-6806
13	Low-Profile Organizer (JPX-0017)	48-22-8431, 49-66-6805, 48-22-9486, 48-22-9487
14	Compact Organizer (JPX-0012)	48-22-8436, 49-66-6800, 49-66-6801, 48-22-9481, 48-22-9482, 48-32-4082
15	Low-Profile Compact Organizer (JPX-0016)	48-22-8431, 49-66-6805, 48-22-9486, 48-22-9487
"Kit" and "Set" products that include the listed DI Product		
CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER		CDX-0003C.13

CDX-0003C.0013; *see also* CIB at 6 (citing Tr. (Klopp) at 186:23-187:11; Tr. (Vargo) at 71:23-72:25, 88:14-91:4).⁵

As can be seen in the above slide, some SKUs associated with each Domestic Industry Product appear in regular typeface and others are listed in italic typeface. An SKU in regular typeface is what Milwaukee refers to internally as a “core” PACKOUT product, which is a product a user is most likely to acquire as an introduction to the PACKOUT System. Tr. (Vargo) at 71:23-72:8; *see* CDX-0001C.0009; CDX-0003C.0013. According to Matthew Vargo, Milwaukee’s vice president of product marketing for its storage business unit, “if [potential customers] walk into a store, typically if they are looking at modular storage, they are going to

⁵ There appear to be typographic errors in the first SKUs listed on Dr. Klopp’s slide (CDX-003C.0013) for the Compact Organizer (JPX-0012) and Low-Profile Compact Organizer (JPX-0016). Examination of the physical exhibits submitted by the parties shows embossed SKUs of 48-22-8435 for JPX-0012 and 48-22-8436 for JPX-0016. Moreover, a slide presented by Milwaukee vice president Matthew Vargo lists the correct SKUs for these [REDACTED] organizer products. CDX-0001C.0009.

PUBLIC VERSION

select an organizer, a toolbox, potentially a cooler, one of these products is where they will start their journey in Packout. And we view it as core.” Tr. (Vargo) at 72:9-13.

SKUs listed in italic typeface in the slide above indicate that those products are packaged as part of a “kit.” Mr. Vargo testified:

So what these products are is because of the success of the Packout system and because of its ubiquity across job sites and tool cribs and [work] shops across the United States, if a user buys a shockwave impact socket set from Milwaukee, they expect to purchase it inside of a Packout organizer product. So the kits . . . are examples of what we have taken one of those core products, packed in a socket set, packed in a first aid kit inside of the Packout product and sell it under a different model number.

Tr. (Vargo) at 72:16-25; *see* CDX-0001C.0009.

Of particular significance are the PACKOUT products with SKU numbers 48-22-8435 and 48-22-8436. Tr. (Vargo) at 88:14-91:7; *see also* CDX-0001C.0015-16. These products, the Compact Organizer (JPX-0012) and Low-Profile Compact Organizer (JPX-0016), are manufactured by Keter in Israel and sold in the United States as standalone products. *Id.* Milwaukee manufactures kit versions of the Compact Organizer and Low-Profile Compact Organizer in its facility in Cookeville, Tennessee. *Id.* The organizers in these kit versions contain other items at the time of retail sale, such as socket sets or first aid kits. Tr. (Vargo) at 72:16-25. Milwaukee tracks the organizers in these kit versions internally with model numbers 50-22-8435 (Compact Organizer) and 50-22-8436 (Low-Profile Compact Organizer), and the domestically made organizers themselves are not sold as standalone products. Tr. (Vargo) at 88:14-91:7. The standalone version of the organizer can be distinguished from the kit version of the organizer by looking at the SKU marked on the underside of the organizer—the standalone versions have the SKUs 48-22-8435 and 48-22-8436 embossed (raised), and the kit versions have the same SKUs 48-22-8435 and 48-22-8436 debossed (depressed). *Id.*; *compare* JPX-00012 (standalone Compact

Organizer), and JPX-00016 (standalone Low-Profile Compact Organizer), with CPX-0105 (kit Compact Organizer), and CPX-0106 (kit Low-Profile Compact Organizer). The internal SKUs 50-22-8435 and 50-22-8436 do not physically appear on the products that they represent.

II. STATUTORY AUTHORITY

The Commission has statutory authority to investigate an alleged violation of section 337(a)(1)(B) based on the importation into the United States, sale for importation, or sale after importation of articles that infringe a valid and enforceable United States patent. 19 U.S.C. § 1337(a)(1)(B)(i). Here, Milwaukee's complaint states that Klein violated section 337 through the importation into the United States, the sale for importation, or the sale within the United States after importation of certain articles that infringe the '026, '952, and '167 patents. *See* Notice of Investigation. The Commission thus has statutory authority to conduct this investigation.

The parties have stipulated that at least one of each of the Accused Products has been imported into the United States. JX-0010C ¶ 3. In addition, no party disputes the Commission's statutory authority to issue a remedy against imported Accused Products in accordance with 19 U.S.C. § 1337 if there is a violation of that statute. I find that the Commission has statutory authority over the imported Accused Products in accordance with 19 U.S.C. § 1337. *See Sealed Air Corp. v. Int'l Trade Comm'n*, 645 F.2d 976, 985-86 (C.C.P.A. 1981); 19 U.S.C. § 1337.

All parties have actively participated in this investigation and no party has contested the Commission's statutory authority over the parties. *See* CIB at 7. I find that the Commission has statutory authority over the parties in accordance with the Commission's governing statutes. *See, e.g.*, 19 U.S.C. §§ 1333, 1337(e)-(f).

III. IMPORTATION

The parties have stipulated that the Accused Products have been imported into the United States. JX-0010 ¶ 3. In view of the record evidence, I find that the importation requirement of section 337 has been satisfied with respect to the Accused Products. See 19 U.S.C. § 1337(a)(1)(B)(i).

IV. PERSON OF ORDINARY SKILL IN THE ART

The ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (*en banc*).

Milwaukee contends that a person of ordinary skill in the art would have possessed at least a bachelor's degree in mechanical engineering, industrial engineering, industrial design, or a similar discipline with at least 1-2 years of professional engineering and/or industrial design work experience. CIB at 8 (citing Tr. (Klopp) at 184:17-185:9). Such a person would also be considered of ordinary skill if they had some combination of more formal education and less professional experience, or vice versa. *Id.*

Klein contends that a person of ordinary skill in the art “would have possessed at least a bachelor's degree in mechanical engineering, or a similar discipline with at least 1-2 years of professional engineering work experience,” or, alternatively, would have “some combination of (1) more formal education (i.e., an advanced degree in mechanical engineering, or a similar discipline) and less professional experience, or (2) less formal education and more professional experience.” RIB at 9-10 (citing Tr. (Cameron) at 674:25-675:16).

No party contends that the different proposals will lead to different outcomes with respect to any issue before me. For example, Milwaukee does not contest that that the claims of the

PUBLIC VERSION

Asserted Patents may be analyzed by the perspective of an ordinary artisan as defined by Klein. See Markman Tr. at 173:22-176:7. Similarly, Klein represents that whether one parties' definition of an ordinary artisan is adopted over the other would not materially affect the validity analysis in this investigation. RIB at 10.

In view of the parties' positions, I adopt Milwaukee's proposed definition of a person of ordinary skill in the art. Milwaukee's proposed definition explicitly encompasses bachelor's degrees in industrial engineering and industrial design, which is consistent with the industrial design and concept engineering backgrounds of witnesses of record in the field. See RX-1121C (Brunner Dep.) at 16:2-17:20; JX-0011C (Hoppe Dep.) at 27:14-28:1; RX-1194C (Hyma Dep.) at 32:12-23; RX-1129C (Squiers Dep.) at 17:18-18:7.

V. CLAIM CONSTRUCTION

"An infringement analysis entails two steps. The first step is determining the meaning and scope of the patent claims asserted to be infringed. The second step is comparing the properly construed claims to the device accused of infringing." *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995) (*en banc*) (cleaned up), *aff'd*, 517 U.S. 370 (1996). Claim construction resolves legal disputes between the parties regarding claim scope. See *Eon Corp. IP Holdings v. Silver Spring Networks*, 815 F.3d 1314, 1319 (Fed. Cir. 2016).

Evidence intrinsic to the application, prosecution, and issuance of a patent is the most significant source of the legally operative meaning of disputed claim language. See *Bell Atl. Network Servs., Inc. v. Covad Commc'ns Grp., Inc.*, 262 F.3d 1258, 1267 (Fed. Cir. 2001). The intrinsic evidence includes the patent claims, the specification, and the prosecution history. See *Phillips*, 415 F.3d at 1314; *see also Markman*, 52 F.3d at 979.

PUBLIC VERSION

“[T]he claims themselves provide substantial guidance as to the meaning of particular claim terms.” *Phillips*, 415 F.3d at 1314; see *Interactive Gift Express, Inc. v. CompuServe Inc.*, 256 F.3d 1323, 1331 (Fed. Cir. 2001) (“In construing claims, the analytical focus must begin and remain centered on the language of the claims themselves, for it is that language that the patentee chose to use to particularly point out and distinctly claim the subject matter which the patentee regards as his invention.” (cleaned up)). The context in which a term is used in an asserted claim can be “highly instructive.” *Phillips*, 415 F.3d at 1314. Additionally, other claims in the same patent, asserted or unasserted, may also provide guidance as to the meaning of a claim term. *Id.*

The specification “is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.” *Phillips*, 415 F.3d at 1315 (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). “[T]he specification may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess. In such cases, the inventor’s lexicography governs.” *Phillips*, 415 F.3d at 1316. “In other cases, the specification may reveal an intentional disclaimer, or disavowal, of claim scope by the inventor.” *Id.* As a general rule, however, the particular examples or embodiments discussed in the specification are not to be read into the claims as limitations. *Id.* at 1323. In the end, “[t]he construction that stays true to the claim language and most naturally aligns with the patent’s description of the invention will be . . . the correct construction.” *Id.* at 1316 (quoting *Renishaw PLC v. Marposs Societa’ per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998)).

A. Disputed Claim Terms

This section addresses the construction of six disputed terms previously briefed by the parties and argued at the *Markman* hearing.

PUBLIC VERSION

1. “face”

The term “face” appears in claims 1 and 9 of the ’952 patent; claims 1, 2, 5, 13, 14, and 15 of the ’167 patent; and claim 1 of the ’026 patent. The table below contains the constructions of this term proposed by the parties in their briefs.

Complainants’ Proposal	Respondent’s Proposal
No Construction Necessary; Plain and Ordinary Meaning	“outermost surface”

Klein takes the position that “face,” as used in the Asserted Patents, means the “outermost surface” of the referenced container, inclusive of any “depressed” surfaces of the outermost surface. *See* ROCCB at 4-5. Milwaukee disagrees with Klein’s proposed construction and argues that the term “face” “is a basic term that does not need to be construed.” COCCB at 6.

Claim construction begins with the language of the claims. The asserted claims recite containers having various “faces.” For example, claim 1 of the ’167 patent recites a “container comprising” at least four faces: (1) a “top face,” (2) a “front face,” (3) a “first side face,” and (4) a “second side face opposite the first side face.” ’167 patent at claim 1. Similarly, claim 1 of the ’952 patent also recites a “container comprising” at least four faces: (1) a “bottom face,” (2) a “front face,” (3) a “first side face,” and (4) “an opposing second side face.” ’167 patent at claim 1. In contrast, claim 1 of the ’026 patent only requires a single face for each recited container: “a first face of the first container” and “a second face of the second container.” ’026 patent at claim 1.

The parties agree that in all of these instances, the term “face” should be construed consistently. *See* COCCB at 6-10; ROCCB at 4.

The patent specification and figures describe and illustrate what is meant by a “face” in the claimed invention. For example, Figures 1B and 1C (excerpts reproduced below) illustrate a lid labeled L constituting a top face of the container and a bottom face of the container labeled 54:

Asserted Patents, Figure 1B (excerpt)

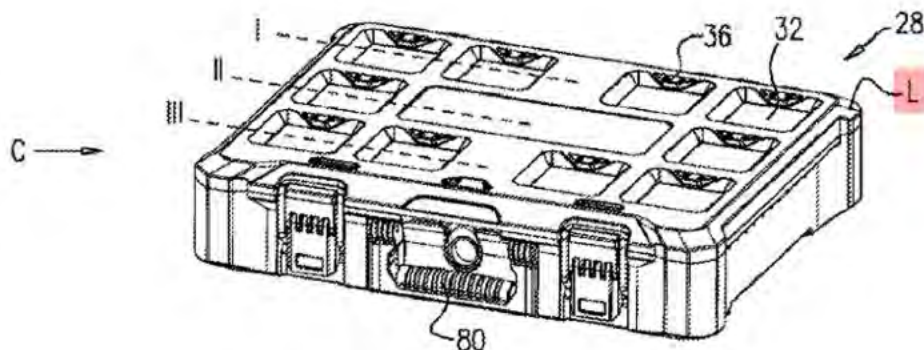


FIG. 1B

Asserted Patents, Figure 1C (excerpt)

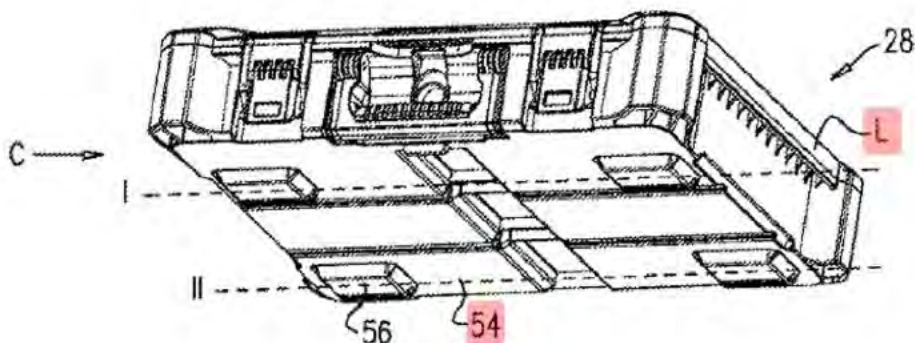


FIG. 1C

'026 patent at Figures 1B and 1C (excerpted and annotated). The patent specification describes these faces as follows:

Each of the containers is configured with *a lid L constituting a top face of the respective container*, said lids being pivotally attached and securely articulated to the respective container through a toggle locking latch 29.

...

Furthermore, *the top face, namely lid L of the containers*, is configured with at least one locking latch arresting location in the form of a recess 50

PUBLIC VERSION

disposed at a front portion of 45 the respective top face and configured with a slanted rear wall portion 52 and a right angled front wall portion 53.

...

A bottom face 54 of each container 22, 24, 26 and 28 is configured with several projecting portions 56, extending in register with the depressed locking locations 32, and it is so seen that the at least two projecting portions 56 are disposed behind one another along the imaginary lines I, II and III (though not necessarily aligned).

'026 patent at 16:25-52 (emphasis added).

The specification also makes clear that faces can be “configured with” non-planar features. For example, in one embodiment “[e]ach top face (see FIG. 1B) is configured with several depressed locking locations 32,” while “bottom face 54 . . . is configured with several projecting portions 56.” *Id.*

The specification also describes embodiments having “side faces” or a “front face” that can be configured with a carrying handle. See '026 patent at 6:56-57 (“side faces of the container modules can be configured with a carrying handle”), 17:46-29 (“a front face thereof with a tiltable carrying handle 80”). The specification further describes a release latch “disposed at front face.” *Id.* at 10:19-23 (“a release latch . . . can be disposed at a front face of the respective second utility module”).

The claims themselves reinforce that a “face” is not necessarily an ideal plane. For example, limitation 1[a][i] in claim 1 of the '026 patent describes “a depressed surface of the first face,” which indicates not all parts of a face lie in the same plane. See '026 patent at claim 1. Even Klein recognizes that “the claims and the embodiment include ‘faces’ that are multi-planar.” RRCCB at 3.

With the intrinsic evidence in mind, I turn to the dispute presented by the parties implicating the meaning of the term “face.” Milwaukee represented at the claim construction

PUBLIC VERSION

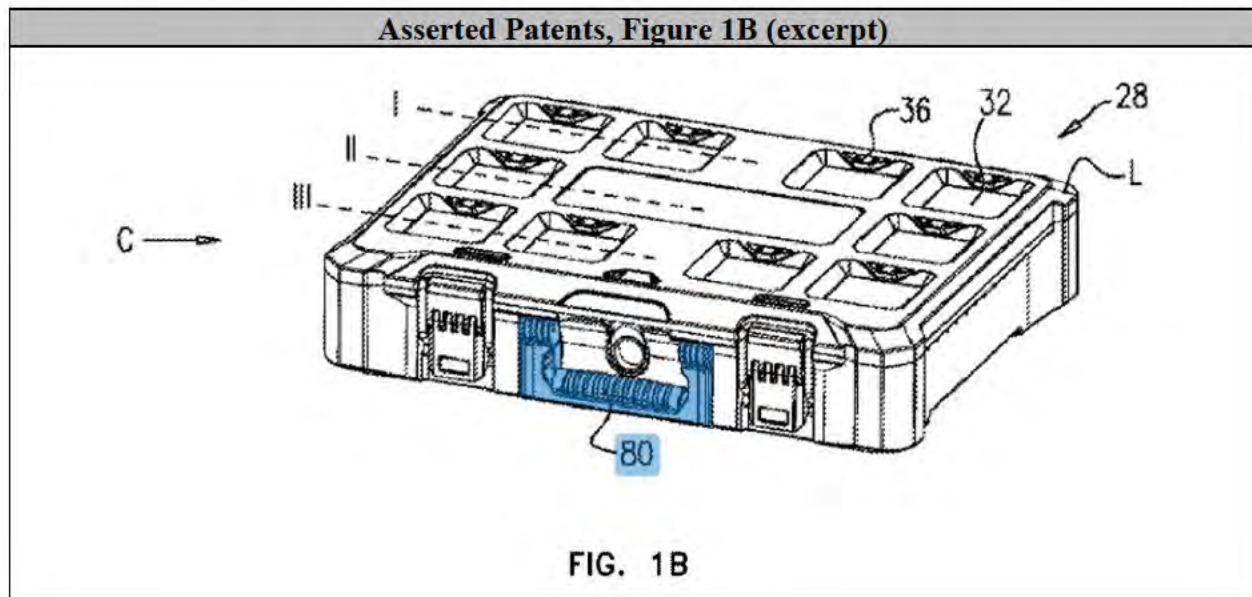
hearing that, for purposes of the infringement and technical prong analyses in this investigation, the parties did not dispute that the Accused Products and Domestic Industry Products all satisfy the “face” limitation recited in the asserted patent claims. Markman Tr. at 16:20-17:11. Klein generally agreed that the parties do not dispute whether the various products at issue in the investigation have the variously claimed faces. Markman Tr. at 17:18-18:9. Klein clarified that the parties dispute whether certain other claim limitations, which are recited in the claims with respect to the claimed “face,” are satisfied. *Id.* The disputed limitations include terms such as a “coupler extending from a [first/second/top] face” and a “corner bumper . . . that extends past and faces away from each of the [first/second] front face and the [first/second/third/fourth] side face.” Markman Tr. at 17:18-18:9; *see, e.g.*, ’952 patent at claims 1, 9; ’167 patent at claim 1; ’026 patent at claim 1.

Klein argued at the claim construction hearing that its proposed construction should be adopted because “the surface that is the face has to be something that’s visible when you’re looking at the container” and “[i]t is the collection of those outer surfaces that constitute the face.” Markman Tr. at 21:21-23, 22:8-9. This amounts to a non-infringement position for Klein, because if a feature like a corner bumper is visible when looking at the container, the corner bumper would be part of the face, not a feature “that extends past” the face, as required by some claims. *See, e.g.*, RRB at 26-27.

In response to Klein’s position that a face must be an “outermost” surface, Milwaukee represented at the claim construction hearing that it does not contend that something inside the container is the claimed “face.” *See* Markman Tr. at 33:17-22.

I find Klein’s proposed construction limiting a face to an “outermost surface” is unduly narrow and is contradicted by the intrinsic evidence. The specification describes parts of a “face”

that are not the “outermost surface.” For example, the surface behind the tiltable handle 80 highlighted in blue in Figure 1B below is part of the front face but, depending on the position of the handle, may not be the outermost surface on that side of the container and may not be visible:



'026 patent at Figure 1B (excerpted and annotated); *see also id.* at 7:28-30 (the “top face . . . can be configured with a carrying handle, said carrying handle displaceable between a stowed position and a carrying position”).

The patents have other examples, including the underside 40 of a rib 36 and a portion of a depressed locking location that is under rib 36. To explain, the specification states that in one embodiment a “top face” “is configured with several depressed locking locations 32,” shown in green in Figure 1B below. '026 patent at 16:38-32. Thus, locking locations can be part of a face. Additionally, “[e]ach such depressed locking location is in turn configured with a laterally projecting locking rib 36,” which is shown in red below:

Asserted Patents, Figure 1B (excerpt)

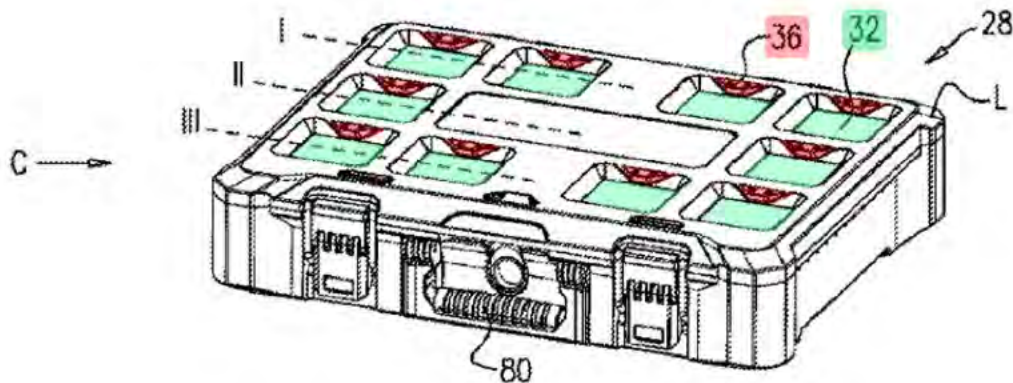


FIG. 1B

'026 patent at Figure 1B (excerpted and annotated). Because a rib can be part of a locking location, and because a locking location can be part of a face, then ribs can be part of a face.

The patent teaches that rib 36, which is part of the top face, has “a bottom surface 40.” *Id.* at 16:36-41. A cross-sectional view of rib 36 shows that, although the rib is part of the top face, the underside 40 of the rib, highlighted in red below, is not the outermost surface of the face:

Asserted Patents, Figure 3A (excerpt)

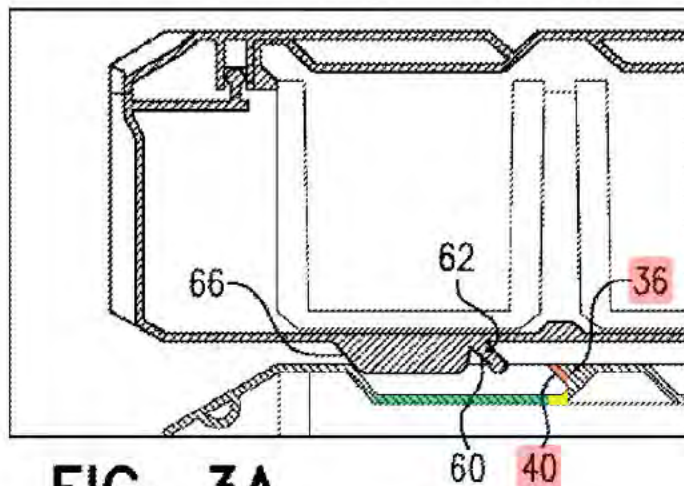


FIG. 3A

'026 patent at Figure 3A (excerpted and annotated). Additionally, as can be seen, beneath rib 36 is a portion of the depressed locking location and back wall, shown in yellow, that is also not the outermost surface of the top face.

Klein's construction would exclude the embodiments illustrated above. Klein cites no lexicography or clear disavowal of claim scope in the intrinsic record that would justify its narrow construction. *Apple Inc. v. Wi-LAN Inc.*, 25 F.4th 960, 967 (Fed. Cir. 2022) ("We depart from the plain and ordinary meaning of claim terms based on the specification in only two instances: lexicography and disavowal.") (quoting *Hill-Rom Servs., Inc. v. Stryker Corp.*, 755 F.3d 1367, 1371 (Fed. Cir. 2014)). Accordingly, Klein's construction is rejected.

Rejecting Klein's construction resolves the dispute between the parties. The term "face" will be afforded its plain and ordinary meaning in this investigation. The implications of this construction with respect to other claim terms will be discussed herein as necessary.

2. "coupler extending from a [first/second/top] face"

The term "coupler extending from a top face" is recited in claims 1 and 9 of the '952 patent. The terms "coupler extending from a first face" and "coupler extending from a second face" are recited in claim 1 of the '026 patent. The parties agreed that these terms should be construed in the same manner for both patents. COCCB at 10, 15; ROCCB at 9-10. For ease of discussion below, these three terms will collectively be referred to in the singular.

Complainants' Proposal	Respondent's Proposal
No Construction Necessary; Plain and Ordinary Meaning	"extending in a direction normal to an upper surface of the [first/second/top] face"

Milwaukee argues that this term does not need construction, and that the words should be afforded their plain and ordinary meaning to a person of ordinary skill in the art. COCCB at 10-12.

PUBLIC VERSION

Klein proposes that this term be construed to mean “extending in a direction normal to an upper surface of the [first/second/top] face.” ROCCB at 9-16.

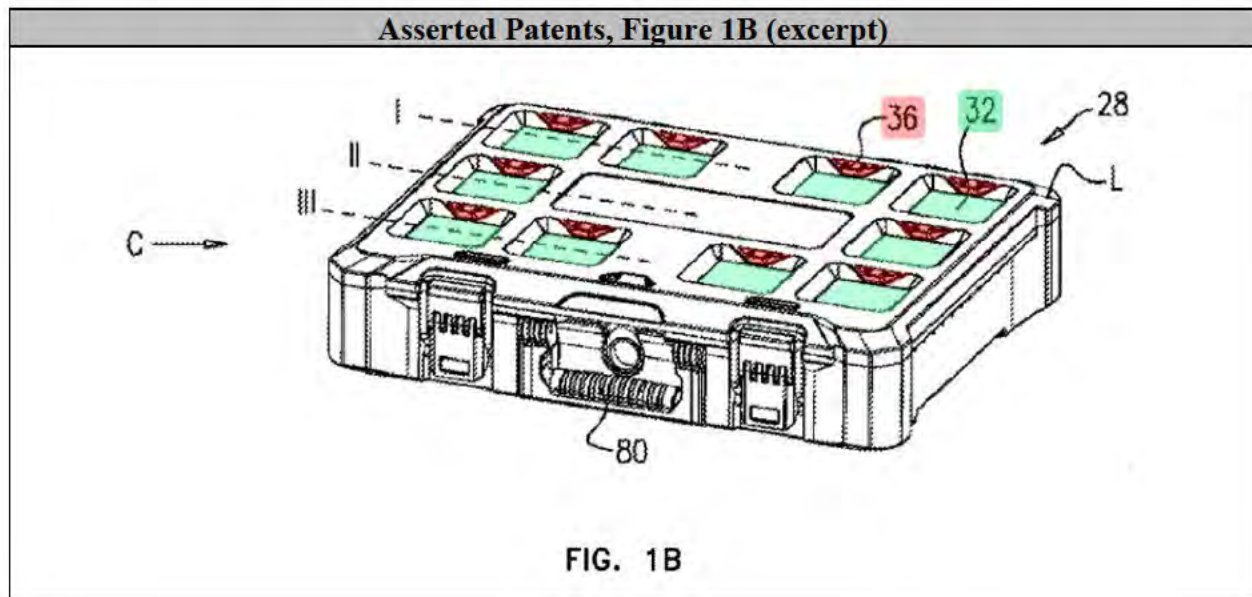
Klein’s proposed construction does not address the word “coupler,” which is present in the disputed claim term “coupler extending from a [first/second/top] face.” Accordingly, I conclude that Klein does not argue that the meaning of the term “coupler” is in dispute. Klein’s proposal therefore boils down to limiting the word “from” to mean “in a direction normal to an upper surface of.”

When questioned at the claim construction hearing as to what is meant by “in a direction normal to,” Klein clarified that that phrase was meant to convey the concept of extending outward from the face. *See* Markman Tr. at 49:4-51:25. This clarification indicates that Klein’s proposed construction is unworkable in the context of claim 1 of the ’026 patent, which recites a “second face” of the container. The second face of the container in claim 1 of the ’026 patent corresponds to the bottom side of the container, and thus the “upper surface” of the bottom side of the container arguably could refer to the interior of the container. A coupler extending from the bottom side of the container towards the interior of the container is contrary to the teachings of the patent and, apparently, to the intent of Klein’s proposed construction. *See* Markman Tr. at 54:19-55:1.

In view of the discussion at the claim construction hearing, I find that Klein’s proposal invoking “a direction normal to an upper surface” is unhelpful, particularly because it does not resolve the concern of Klein, the party advancing it.

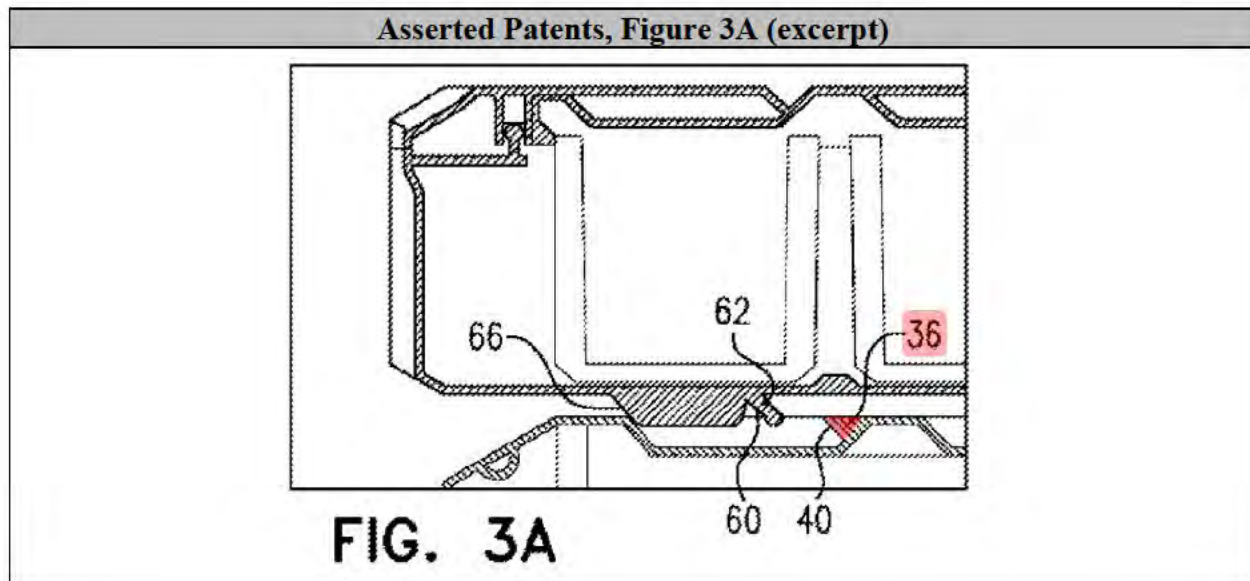
The intrinsic evidence provides guidance as to what a “coupler extending outward from a . . . face” means. With respect to Figure 1B, the specification explains that in one embodiment a “top face” “is configured with several depressed locking locations 32,” shown in green below. ’026 patent at 16:38-32. “Each such depressed locking location is in turn configured with *a*

laterally projecting locking rib 36 extending from a rear portion of the depressed locking location 32 towards a front face of the container.” ’026 patent at 16:25-36 (emphasis added). The ribs 36 are shown in red below:



’026 patent at Figure 1B (excerpted and annotated). Because rib 36 is part of a locking location 32, and because a locking location 32 is part of the top face, then ribs 36 extend from the top face of the container.

The patent provides a cross-sectional view of this configuration, which shows rib 36 in red extending from the top face, but in a direction that is not normal to the top face:



'026 patent at Figure 3A (excerpted and annotated). The patent makes clear that this configuration is a coupler extending from the top face of a container. See '026 patent at 9:27-30 (“the female coupler comprises a single locking rib extend[ing] at rear end of a depressed locking location”).

Klein’s construction, which limits the coupler to extend only in a normal direction, would exclude the embodiments illustrated above. Klein cites no lexicography or clear disavowal of claim scope in the intrinsic record that would justify its narrow construction. See *Apple Inc. v. Wi-LAN Inc.*, 25 F.4th at 967. Accordingly, Klein’s construction is rejected.

Viewing the intrinsic record as a whole, the word “from” is plainly understood in the context of the claims. The term “coupler extending from a [first/second/top] face” will be given its plain and ordinary meaning in this investigation.

3. “sidewalls”

The term “sidewalls” is recited in claims 1 and 9 of the '952 patent; claims 1 and 15 of the '167 patent; and claim 1 of the '026 patent.

PUBLIC VERSION

Complainants' Proposal	Respondent's Proposal
No Construction Necessary; Plain and Ordinary Meaning	"singular planar surface"

Milwaukee argues that the term "sidewalls" does not need construction because "its plain and ordinary meaning can be determined from the claim language and the specification." COCCB at 12. Klein argues that this term should be construed to mean "singular planar surface" in view of the prosecution history of the Asserted Patents. ROCCB at 17.

Claim limitations 1[c] and 1[d] of the '167 are instructive here and recite, in relevant part:

wherein the first female coupler comprises *two sidewalls*, a back wall, and a first rib, *the back wall located between the two sidewalls*, the two sidewalls and the back wall projecting above a depressed surface . . .

wherein the second container comprises a second female coupler at a top face of the second lid, the second female coupler comprising *two sidewalls*, a back wall, and a second rib, *the back wall located between the two sidewalls*, the two sidewalls and the back wall projecting above a depressed surface . . .

'167 patent at claim 1. This claim language, which is similar to language in all asserted claims that recite the term "sidewalls," demonstrates that the "first female coupler" and "second female coupler" each comprises "two sidewalls." Nowhere does the claim language suggest that each of the two claimed sidewalls needs to be a "singular planar surface" as argued by Klein.

Moreover, nothing in the specification suggests that Klein's proposed limitation of the claimed "sidewalls" to a "singular planar surface" is correct. Indeed, Klein's claim construction brief does not identify any support in the claim language or specification for its proposal. Instead,

PUBLIC VERSION

Klein supports its argument with only the prosecution history of U.S. Patent No. 11,427,382 (“the ’382 patent”), a predecessor in the priority chain of the Asserted Patents.⁶

During prosecution of the ’382 patent, then-pending claim 9, which recited “a backwall that extends between the sidewalls,” was rejected as obvious under 35 U.S.C. § 103 over U.S. Publication No. 2014/0161518 (“Ko”) in view of U.S. Patent No. 5,433,416 (“Johnson”). ROCCB Ex. 7, 03/11/2021 Final Office Action, at 8-9. The Examiner stated:

Ko discloses a female coupler (20) with a pair of locking ribs (23A). The coupler includes two sidewalls and a depressed locking location, the pair of locking ribs extending above a surface of the depressed locking location and substantially parallel to a sliding path. . . . Each of the female couplers further comprising a back wall that extends between the sidewalls, wherein a first rib of the pair of locking ribs extends from the back wall and from a first sidewall of the two sidewalls, and a second rib of the pair of locking ribs extends from the back wall and from a second sidewall of the two sidewalls.

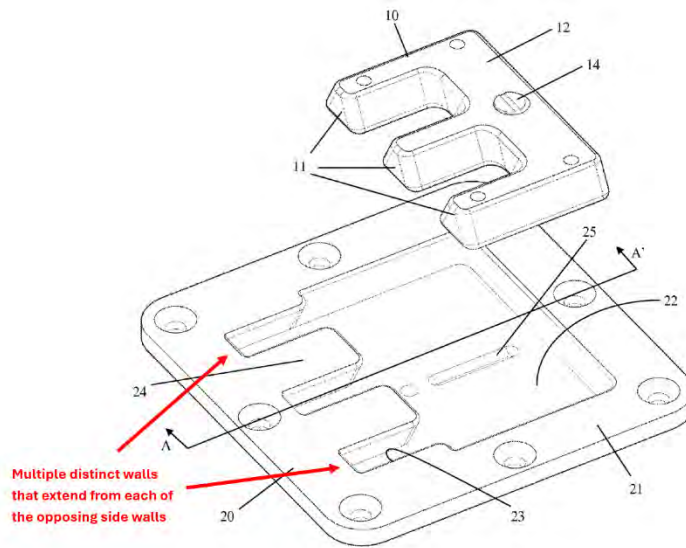
Id.

In response, the applicant argued that:

[T]he combination of Ko and Johnson do not disclose, teach, or suggest a front wall and back wall as recited in amended claim 9. Instead, Ko appears to show multiple distinct walls that extend from opposing side walls, and Johnson appear [sic] to show an open front end of the coupling component. . . . Applicant therefore submits that the combination of Ko and Johnson fails to disclose, teach or suggest ‘each of the female couplers comprises a back wall that extends from each of the two sidewalls and between the two sidewalls, and each of the female couplers comprises a front wall that extends from each of the two sidewalls and between the two sidewalls,’ which claim 9 as amended recites.

⁶ A copy of the ’382 patent is attached as Exhibit 5 to Respondent’s Opening Claim Construction Brief (EDIS Doc. ID 833276) and was also entered into the evidentiary record as RX-1225. Relevant excerpts of the ’382 patent file history appear in Exhibit 7 to Respondent’s Opening Claim Construction Brief and in Exhibit 5 to Complainants’ Responsive Claim Construction Brief (EDIS Doc. ID 834143).

ROCCB Ex. 7, 05/10/2021 Applicant Remarks, at 8-10. The applicant presented an annotated Figure from Ko with this response, identifying with arrows and text the “multiple distinct walls” of Ko that it argued was distinguishable from claim 9:



Id. at 9 (clarifying original annotations that are blurry in original).

The next Office Action, dated September 30, 2021, withdrew the § 103 rejection involving Ko. ROCCB Ex. 7, 09/30/2021 Office Action, at 2-6.

Klein argues that the prosecution history of the '382 patent summarized above “describes the walls of the coupler as a ‘singular planar surface’” and that “the applicant unmistakably distinguished the ‘multiple distinct walls’ of the prior art (Ko) from each of the claimed ‘backwall’ and two ‘sidewalls’ to overcome the rejection.” ROCCB at 17-18.

Klein’s disclaimer argument is not persuasive. The applicant did not define the claim term “sidewalls,” or limit “sidewalls” to any particular geometric shape. Indeed, the patentee did not characterize the claim language—“sidewalls” or otherwise—at all. Instead, the applicant characterized the prior art and stated that the claims being prosecuted at the time differed from that art. Thus, the applicant did not clearly and unmistakably disclaim or disavow any claim scope

about the term “sidewalls,” and the comments made during prosecution of a patent application leading to the issuance of a patent not asserted in this investigation do not change the scope of the term “sidewalls” in the Asserted Patents. *See Shire Dev., LLC v. Watson Pharms., Inc.*, 787 F.3d 1359, 1366 (Fed. Cir. 2015) (finding no clear and unmistakable disavowal because “[d]uring prosecution, [the applicant] carefully characterized the *prior art* as *not having* separate matrices but never actually stated that the *claimed invention does have* separate matrices”) (emphasis in original).

Moreover, nothing in the referenced portions of the ’385 prosecution history suggests that the construction of “sidewalls” should mean “singular planar surfaces,” which is Klein’s proposed construction. Thus, there is no basis to limit the scope of the term in the manner Klein proposes. *See Shire*, 787 F.3d at 1366.

For these reasons, I determine that a “sidewall” should not be restricted to a “singular planar surface” in the asserted patent claims. The term “sidewalls” will be construed according to its plain and ordinary meaning.

4. “corner bumper defines an outer surface that extends past and faces away from each of the [first/second] front face and the [first/second/third/fourth] side face”

The term “corner bumper defines an outer surface that extends past and faces away from each of the [first/second] front face and the [first/second/third/fourth] side face” is recited in claims 1, 5, and 15 of the ’167 patent.

Complainants’ Proposal	Respondent’s Proposal
No Construction Necessary; Plain and Ordinary Meaning	“outer surface that extends past each of the front face and side face in a direction that is normal to each face”

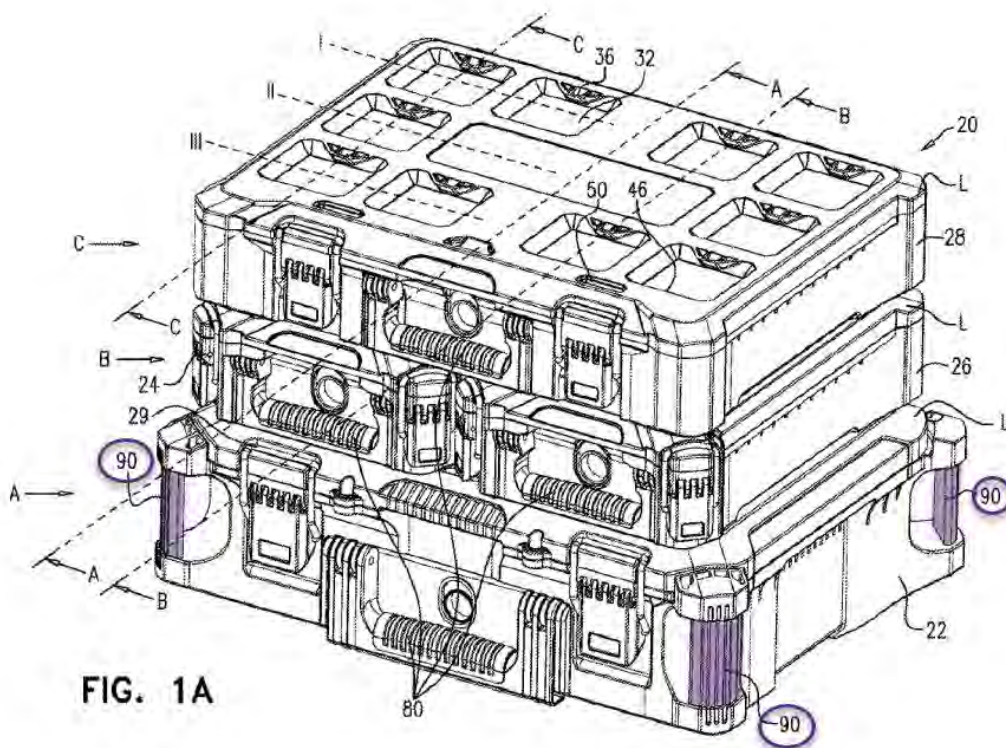
Milwaukee argues that the phrase “corner bumper” does not need construction, and that the words should be afforded their plain and ordinary meaning to a person of ordinary skill in the

PUBLIC VERSION

art. COCCB at 17-19. Klein proposes that this term be construed to mean “outer surface that extends past each of the front face and side face in a direction that is normal to each face.” ROCCB at 19-22.

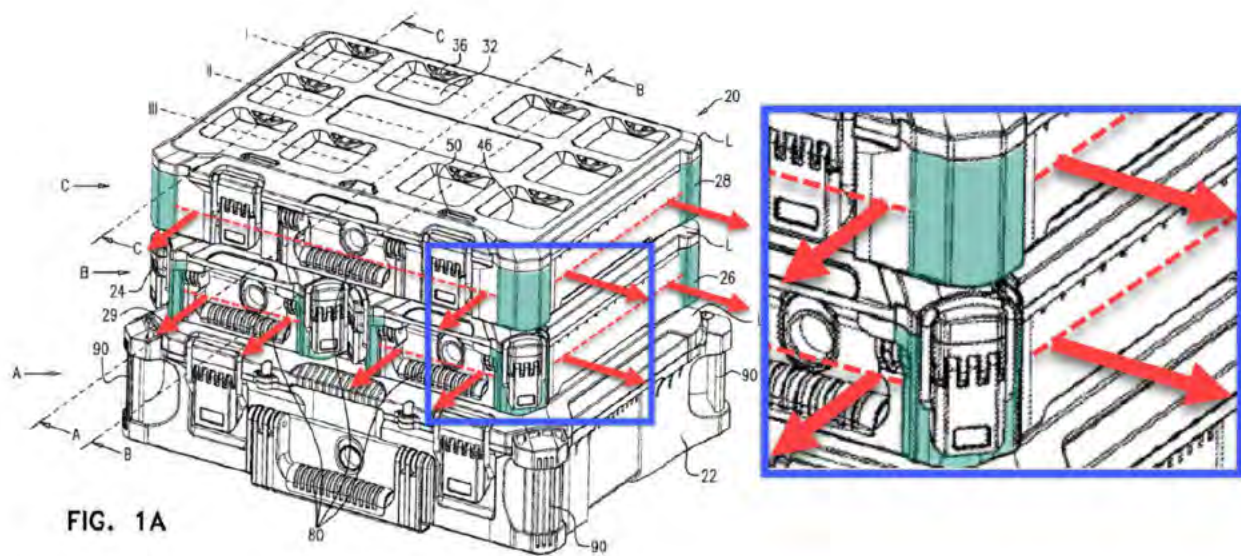
Klein’s proposed construction does not address the words “corner bumper,” which begins the disputed phrase. Accordingly, I conclude that Klein does not argue that the meaning of the term “corner bumper” is in dispute. Klein’s proposal repeats the claim language “outer surface that extends past” and “each of the [first/second] front face and the [first/second/ third/fourth] side face.” Klein’s construction therefore boils down to substituting the claim words “faces away from” with the words “in a direction normal to.” *See* Markman Tr. at 110:15-23. As discussed in section V.A.2 above, Klein uses the words “in a direction that is normal to” to indicate a direction away from the center of the container. *See* Markman Tr. at 54:19-55:1; ROCCB at 21-22.

The term “corner bumper” appears only in the claims of the Asserted Patents and does not appear in the specification. The specification does teach that “corners of the utility module can be reinforced” and that “some containers can be configured with fenderlike protectors 90 at their corners.” ’026 patent at 6:35, 17:49-51; *see also id.* at 21:29-31. Klein annotated Figure 1A with purple, reproduced below, to show its understanding of the fenderlike protectors 90:



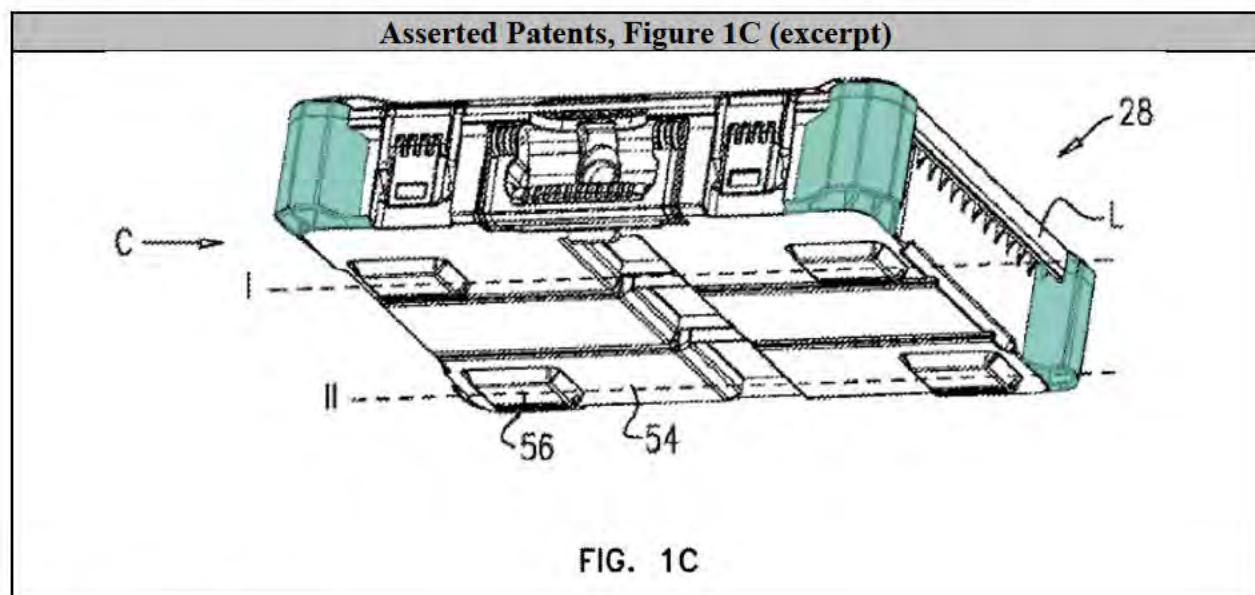
ROCCB at 20 (annotating '167 patent at Fig. 1A). According to Klein, the fenderlike protectors 90 appear as handle-like members at the corners of the container. *Id.* at 19-20.

Klein highlights other structures in green and calls them “embodiments other than those that include ‘protector’ handles”:



ROCCB at 21 (annotating '167 patent at Fig. 1A).

Figure 1C of the patent shows the underside of the structures that Klein highlighted in green, revealing reinforcing ribs extending from those corners. I have highlighted the structures corresponding to Klein's annotations of the top container using the same green:



'167 patent at Fig. 1C (annotated).

PUBLIC VERSION

The term “corner bumper” first appeared as a claim term during prosecution of the ’952 patent on November 1, 2022, when the application for the ’952 patent was filed. JX-0005.0013-14 (’952 file history). Later, on February 22, 2023, the Examiner issued an Office Action directing the applicant to select between two claimed species:

(A) A container assembly comprising a first and second container comprising a toggle locking latch, a spring biased locking latch, a handle, and corner bumpers as recited in [then-pending] Claim 21-29.

(B) A container assembly comprising a first and second container comprising toggle locks and corner protectors with gaps located between the corner protectors and the container body to act as corner carrying handles as recited in [then-pending] Claims 30-34.

JX-0005.0179. The Examiner stated: “The species are independent or distinct because the structure and configuration of the corner protectors are different. In addition, these species are not obvious variants of each other based on the current record.” *Id.* In response to the Office Action, the applicant elected species (A), directed to the container assembly comprising “corner bumpers,” and canceled the pending claims directed to the container assembly comprising “corner protectors with gaps located between the corner protectors and the container body to act as corner carrying handles.” JX-0005.0251-54.

Klein appears to argue that because the applicant did not elect to prosecute the claims with the green highlighted “corner protectors” in response to the restriction requirement, an ordinary artisan would “consider[] only embodiments other than those that include the ‘protector’ handles”—the embodiments Klein highlighted in green—when interpreting this disputed claim phrase. *See* ROCCB at 21.

Klein’s argument is not persuasive. While arguments made by an applicant to overcome a restriction requirement might amount to disclaimer, any such statement must still be “a clear and unmistakable disclaimer of claim scope.” *Uship Intell. Props., LLC v. U.S.*, 714 F.3d 1311, 1315

PUBLIC VERSION

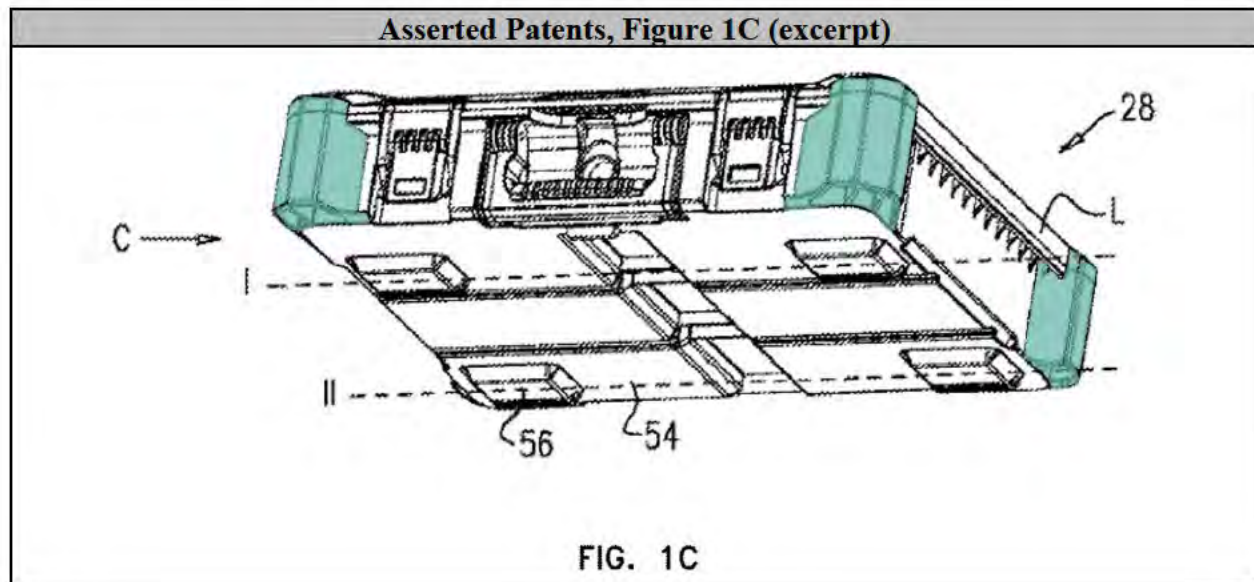
(Fed. Cir. 2013). The prosecution history here fails that standard. The applicant simply made the election and canceled the claims that were not elected. JX-0005.0254. Far from disclaiming the subject matter, the applicant actually told the examiner that it may “pursue the subject matter of non-elected claims via a divisional or other continuing application.” *Id.* The prosecution history here contains no manifest disclaimer. *See Andersen Corp. v. Fiber Composites, LLC*, 474 F.3d 1361, 1370 (Fed. Cir. 2007) (declining to construe the claims according to a restriction requirement that merely reflected “the examiner’s perception that the two groups of claims ‘are related as mutually exclusive species’” where the distinction was “not one that [was] pressed by” the applicant).

Moreover, Klein’s own expert witnesses testified that the purple “corner protectors” embodiment is within the scope of the asserted claims reciting corner bumpers. *See* Tr. (Forest) at 991:4-9 (“When you read the claims in light of the specification, it seems like that’s within -- within the claim term ‘bumper’, ‘corner bumper.’”); *see also id.* at 991:23-992:3.

Given this record, there is no reason that an ordinary artisan interpreting the asserted claims would consider fewer than all of the teachings and drawings in the Asserted Patents. *See Phillips*, 415 F.3d at 1315 (“[T]he specification ‘is always highly relevant to the claim construction analysis.’” (quoting *Vitronics*, 90 F.3d at 1582)).

Next Klein argues that “it is not clear” whether each structure annotated in green in Figure 1A above is a “corner” or a “corner bumper” and it is further unclear “how to distinguish between the two.” ROCCB at 21. To remedy that, Klein proposes that this disputed phrase be limited to require that the outer surface of a corner bumper “extend past each of the front face and side face **in a direction that is normal to** each adjoining face,” as shown with the red arrows Klein added in Figure 1A above. ROCCB at 22 (emphasis in original).

Klein's argument lacks merit. Nothing in the intrinsic evidence suggests that the outer surface defined by the corner bumper can only extend in the normal direction from adjoining faces. In fact, Figure 1C shows just the opposite:



'167 patent at Fig. 1C (annotated). As can be seen, the structure at the front right corner has at least two ribs that are not normal to either adjoining face, and those ribs support an outer surface that extends past and faces away from the front face and the right side face of the container. But the outer surface of the structure, which has a cross-section of a partial polygon, also extends in directions that are *not* normal to each adjoining face. Klein's proposed construction would exclude this embodiment, which counsels against it being correct.

Rejecting Klein's construction as unduly limiting resolves the dispute between the parties. The words of the phrase are otherwise plainly understood. Accordingly, the term "corner bumper defines an outer surface that extends past and faces away from each of the [first/second] front face and the [first/second/third/fourth] side face" will be construed in this investigation according to its plain and ordinary meaning.

5. “corner bumper extending outward”

The term “corner bumper extending outward” is recited in claims 1, 5, and 15 of the ’167 patent.

Complainants’ Proposal	Respondent’s Proposal
No Construction Necessary; Plain and Ordinary Meaning; Not Indefinite	Indefinite

Milwaukee takes the position that this term does not need construction, that it should be afforded its plain and ordinary meaning, and that it is not indefinite. COCCB at 19. Klein argues that this term is indefinite, in violation of section 112 of the Patent Act. ROCCB at 23-26.

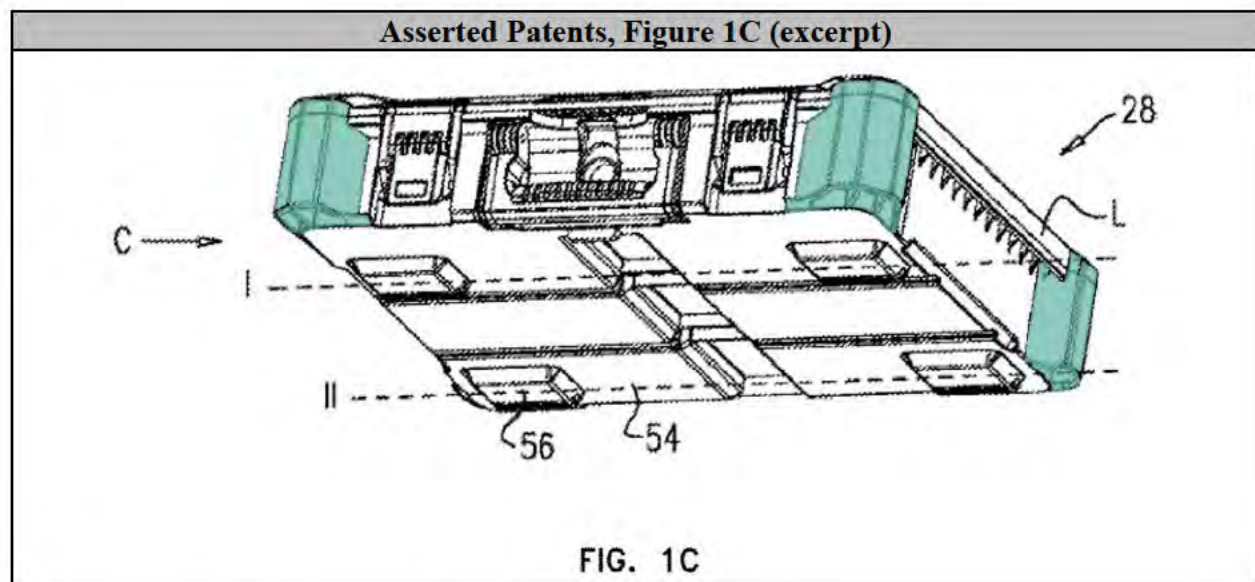
Section 112 of the Patent Act requires that the specification “shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.” 35 U.S.C. § 112(b). The Supreme Court has interpreted that section to require “that a patent’s claims viewed in light of the specification and prosecution history inform those skilled in the art about the scope of the invention with reasonable certainty.” *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 901 (2014). It is a respondent’s burden to prove by clear and convincing evidence that a patent claim is invalid because it is indefinite. *See id.* at 912 n.10 (citing *Microsoft Corp. v. i4i Ltd. P’ship*, 564 U.S. 91, 95 (2011)).

Klein argues neither the specification nor the figures of the Asserted Patents “make clear what it means for a ‘corner bumper’ to ‘extend outward’ from a corner.” ROCCB at 24. Klein argues that Figure 1A, reprinted in the previous section, “does not provide any context for a [person of ordinary skill] to determine how a ‘corner’ is distinct from a ‘corner bumper.’ Instead, it appears that the supposed ‘corner bumper’ would be formed of material ‘extending between the . . . front face and the . . . side face,’ but that is the description of the claimed corner. Put simply, a [person

of ordinary skill] would be unable to distinguish between those structures that are a ‘corner’ and those that are a ‘corner bumper,’ which introduces ambiguity into the claim language.” *Id.*

Klein’s argument is not persuasive. The phrase “corner bumper extending outward from . . . the corner” is straightforward. Klein makes no argument that an ordinary artisan would not understand the meaning of the word “corner.” To the contrary, Klein notes that the claims themselves identify a corner as “extending between the . . . front face and the . . . side face.” ROCCB at 23; *see also id.* at 24 (“that is the description of the claimed corner”). As for the meaning of corner bumper, the claims also provide a description: the “corner bumper defines an outer surface that extends past and faces away from each of the . . . front face and the . . . side face.” ’167 patent at claim 1.

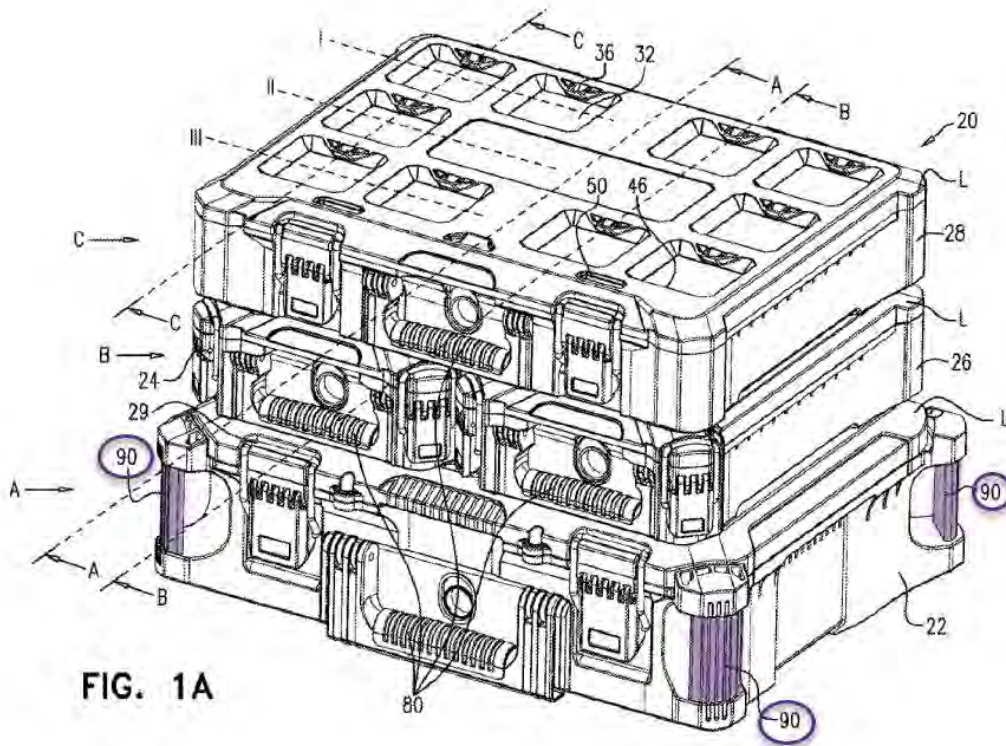
These descriptions in the claims are consistent with embodiments of the invention shown in the figures of the Asserted Patents. For example, Figure 1C of the ’167 patent shows a container having a right front corner between the front face and the right side face, and a corner bumper extending outward from that corner:



’167 patent at Fig. 1C (annotated).

PUBLIC VERSION

Moreover, Klein does not dispute that Figure 1A shows a corner bumper highlighted in purple extending outward from a corner:



'167 patent at Fig. 1A. Instead of addressing the probative intrinsic evidence in Figure 1A, Klein suggests that it should be ignored because the applicant canceled claims in response to a restriction requirement. See ROCCB at 21. But, as discussed in the previous section, the applicant did not clearly disavow any claim scope when canceling the claims (JX-0005.0254), and even Klein's own expert testified that the embodiment highlighted in purple above was within the scope of the asserted claims (Tr. (Forest) at 991:4-992:3). Thus, all of the claims, all of the drawings, and all of the embodiments in the specification must be considered when interpreting the asserted claims. See *Phillips*, 415 F.3d at 1315. The areas in Figure 1A that Klein highlighted in purple show a corner bumper extending outward from a corner.

PUBLIC VERSION

This intrinsic evidence is consistent with the testimony developed at trial. Milwaukee's expert Dr. Klopp testified that in the context of the Asserted Patents, a corner bumper "is a structure that extends in this case between a side face and a front face and is proud of an underlying corner and provides protection to that corner." Tr. (Klopp) 202:24-203:8. Klein's expert Dr. Cameron similarly had no problem identifying corner bumpers:

Q. . . . [C]an you explain what corner bumpers are?

A. Sure. So corner bumpers are used to kind of protect the container from an impact kind of by -- by deforming. So I just put a few -- that concept is really well known in the area of containers and in other applications.

Tr. (Cameron) at 698:11-21; *see also id.* at 700:3-7 ("[A] person of ordinary skill in the art understands what a corner bumper is and the benefits it brings.").

Viewing the investigation record as a whole, I determine that Klein has not shown clear and convincing evidence that the term "corner bumper extending outward" is indefinite. The term will be construed to have its plain and ordinary meaning.

6. "width axis of the second container is approximately one-half the width axis of the first container"

The term "width axis of the second container is approximately one-half of the width axis of the first container" appears in independent claim 1 of the '167 patent.

Claim Term	Milwaukee's Proposed Construction	Klein's Proposed Construction
"width axis of the second container is approximately one-half of the width axis of the first container"	No Construction Necessary; Plain and Ordinary Meaning; Not Indefinite	Indefinite

Milwaukee takes the position that this term does not need construction, that it should be afforded its plain and ordinary meaning, and that it is not indefinite. COCCB at 20-22. Klein argues that this term is indefinite. ROCCB at 26-28.

PUBLIC VERSION

As noted in the previous section, the legal standard for definiteness requires “that a patent’s claims viewed in light of the specification and prosecution history inform those skilled in the art about the scope of the invention with reasonable certainty.” *Nautilus*, 572 U.S. at 901. For the reasons set forth below, I determine that Klein has failed to prove clearly and convincingly that the term “width axis of the second container is approximately one-half of the width axis of the first container” is indefinite.

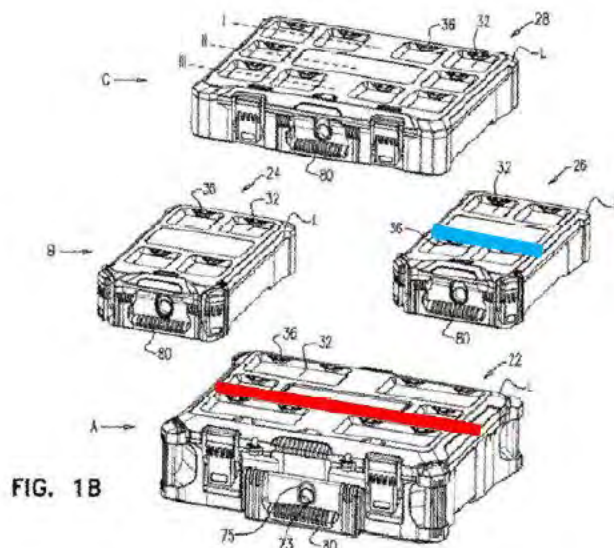
The relevant portion of claim 1 of the ’167 patent reads as follows:

[W]herein the first container defines a width axis parallel to the first front face of the first container and the second container defines a width axis parallel to the first front face of the first container, wherein the width axis of the second container is approximately one-half the width axis of the first container

’167 patent at claim 1.

Klein argues “[t]here is no guidance in the specification for what is meant by a ‘width axis’ being ‘approximately one-half’ of another ‘width axis,’ and therefore, this term renders the claims indefinite.” RRCCB at 18. Klein’s argument ignores the intrinsic evidence. First, the claim language expressly states that the “width axis” is “parallel to the first front face of the first container,” which informs the ordinary artisan as to the relevant orientation of the axis. *Id.*

Additionally, the patent illustrates one embodiment of this limitation in Figure 1B, reproduced below with annotations. This figure includes a first container at the bottom of the assembly and two second containers side-by-side immediately above the first container. *See* ’167 patent at 16:3-24. As shown in this figure, axes defined by the widths of the “first container” (red line) and “second container” (blue line) are each parallel to the first front face of the first container, and the width axis of the second container (blue line) is approximately half of the width axis of the first container (red line).



'167 patent at Fig. 1B (annotated). I find the claim language and the figures provide the ordinary artisan with reasonable certainty about the scope of the term.

Klein further argues that a person of ordinary skill in the art would not understand the meaning of “width axis” in the context of the claims because an “axis” is generally defined in geometry to have a “a component of direction (*i.e.*, an orientation), but not a magnitude (*e.g.*, a length or units of measure).” *See* ROCCB at 27. Klein argues that because the claim compares the length of one axis to another, an artisan would be confused as to whether the recited term is actually a vector, which “has both direction and magnitude.” *Id.* (citing dictionary definitions for “axis” and “vector”). Thus, Klein’s indefiniteness argument is built on a premise: in order for there to be confusion about scope, an ordinary artisan must think of Klein’s vector interpretation when reading the claims. But Klein’s premise is completely unsupported by the record of this investigation. Klein has not proffered any evidence, from an expert or otherwise, that a person of ordinary skill in the relevant art would read the term “width axis” in the asserted claims and think that it refers to a vector. *See, e.g.*, ROCCB at 26-28. This unsupported attorney argument is rejected.

PUBLIC VERSION

Klein also raises a claim differentiation argument. Klein notes that dependent claim 7 of the '952 patent—a patent in the same family as the '167 patent—use the terms “width axis” and “length axis” to describe the orientation of a container,” but claim 4 of the '952 patent also uses the term “width” “*by itself*” to describe a dimension of the container.” See ROCCB at 27-28 (emphasis in original). From this, Klein concludes that the term “width axis” in the '167 patent claims must mean something different than the way the '952 patent uses the term “width” alone in claim 4. *Id.*

Klein’s claim differentiation argument is not persuasive here. First, Klein identifies no authority supporting the proposition that a claim term in a dependent claim of one patent restricts the scope of a different claim term recited in another patent, even when the two patents share the same specification. But, even if comparison of claims between the two patents were appropriate, the doctrine of claim differentiation would have little persuasive value here. The claims that Klein cites in the '952 patent differ from each other and from the asserted claims in the '167 patent in ways beyond the addition of the term “axis.” Thus, the doctrine of claim differentiation is not necessary to prevent redundancy between the claims. See *Andersen Corp. v. Fiber Composites, LLC*, 474 F.3d 1361, 1370 (Fed. Cir. 2007) (“A further reason for not applying the doctrine of claim differentiation in this case is that the Group I claims are not otherwise identical but for the references to” the disputed term.).

Klein further argues that reading the term “width axis of the second container is approximately one-half of the width axis of the first container” to mean the “width of the [second] container is approximately one-half the width of the first container,” as shown above in the annotated Figure 1B, would rewrite the claims to remove the word “axis.” See ROCCB at 27. But I need not determine whether there is a difference in scope between the term “width” and the term

PUBLIC VERSION

“width axis” to resolve Klein’s indefiniteness argument. The relevant inquiry is whether an ordinary artisan would have “reasonable certainty” about the scope of the term “width axis.” *Nautilus*, 572 U.S. at 901.

The record evidence shows that a person of ordinary skill in the art at the time of the invention would have reasonable certainty about the meaning of “width axis.” For example, Klein’s own expert Dr. Cameron testified that she knew what the limitation means. When asked at trial what is required by limitation [e] of claim 1 of the ’167 patent, Dr. Cameron readily testified “I think this is, again, just having a container that is half a width on top.” Tr. (Cameron) at 853:4-8; *see also id.* at 679:11-14 (claim 1 of the ’167 patent is “directed to half-width containers”). Milwaukee’s expert Dr. Nayfeh gave a consistent opinion. *See* CRCCB Ex. 9 (Decl. of Dr. Samir Nayfeh in Support of Complainants’ Claim Construction Positions) ¶¶ 25-26.

Viewing the investigation record as a whole, I determine that Klein has not shown clear and convincing evidence that the term “width axis of the second container is approximately one-half of the width axis of the first container” is indefinite. The term will be construed to have its plain and ordinary meaning, which is “width of the second container is approximately one-half of the width of the first container.”⁷

⁷ As noted, resolving Klein’s indefiniteness argument does not require a determination about whether some claims in the Asserted Patents that use the words “width axis” have overlapping scope with other claims that use only the word “width.” But even if it did, I find that any such overlap (1) does not indicate the claims are indefinite, and (2) is permissible given the record of this investigation, as reviewed in this section. *See, e.g., Andersen Corp. v. Fiber Composites, LLC*, 474 F.3d 1361, 1370 (Fed. Cir. 2007) (construction that resulted in patent claims covering “substantially the same subject matter” was permissible and “not unusual”); *Kraft Foods, Inc. v. Int’l Trading Co.*, 203 F.3d 1362, 1368 (Fed. Cir. 2000) (the written description and prosecution history may “overcome any presumption arising from the doctrine of claim differentiation”); *Multiform Desiccants, Inc. v. Medzam, Ltd.*, 133 F.3d 1473, 1480 (Fed. Cir. 1998) (“[C]laims that are written in different words may ultimately cover substantially the same subject matter.”).

B. Additional Claim Term

1. “corner bumper”

Although the construction of the term “corner bumper” was not briefed and argued by the parties in isolation at the claim construction hearing, the construction of this term is nevertheless crucial to the infringement and technical prong analyses of the asserted claims. *See, e.g.*, RRB at 19-34. Accordingly, this term will be construed here.

Sections V.A.4 and V.A.5 above review the evidence about corner bumpers intrinsic to the Asserted Patents. The parties’ experts agreed at the evidentiary hearing that a “bumper” was commonly understood by those of skill in the art at the time of the invention. *See, e.g.*, Tr. (Cameron) at 700:3-7 (“[A] person of ordinary skill in the art understands what a corner bumper is and the benefits it brings.”). The parties’ experts also agreed that a corner bumper was understood in the art to be a structure that absorbs or dissipates energy and is resistant to damage from impact. *See, e.g.*, Tr. (Forest) at 971:9-18 (“absorb shock and mitigate damage”); Tr. (Cameron) at 698:11-699:4 (“protect the container” and “absorb . . . impact by deforming and . . . dissipating that energy”); Tr. (Nayfeh) at 1221:24-1223:4 (“absorb energy” from impact). In view of this testimony, the term “corner bumper” will be construed to mean a “corner structure that absorbs or dissipates energy and is resistant to damage from impact.”

VI. ’952 PATENT

A. Infringement

In a section 337 investigation, the complainant bears the burden of proving infringement of the asserted patent claims by a preponderance of the evidence. *See Spansion, Inc. v. Int’l Trade Comm’n*, 629 F.3d 1331, 1349 (Fed. Cir. 2010). This standard “requires proving that infringement

PUBLIC VERSION

was more likely than not to have occurred.” *Warner-Lambert Co. v. Teva Pharm. USA, Inc.*, 418 F.3d 1326, 1341 n.15 (Fed. Cir. 2005).

“[W]hoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent.” 35 U.S.C. § 271(a). “Literal infringement requires the patentee to prove that the accused device contains each limitation of the asserted claim(s). If any claim limitation is absent, there is no literal infringement as a matter of law.” *Bayer AG v. Elan Pharm. Research Corp.*, 212 F.3d 1241, 1247 (Fed. Cir. 2000). Literal infringement is a question of fact. *Finisar Corp. v. DirecTV Grp., Inc.*, 523 F.3d 1323, 1332 (Fed. Cir. 2008).

Milwaukee asserts that Klein “is liable for direct and indirect induced infringement of claims 3, 4, 8, and 16 of the ’952 Patent.” CIB at 36. Milwaukee further asserts that “the Accused Products include each and every limitation of these claims” and that Klein “has committed acts of direct and indirect induced infringement.” *Id.*

The asserted claims of the ’952 patent each recite a “container assembly” having a “first container” and “second container.” *See, e.g.*, ’952 patent at claim 1. Accordingly, the infringement analysis of any asserted ’952 patent claim requires a pair of containers to be considered together. Milwaukee has identified a first set of Accused Products that can be considered the claimed first container and a second set of the Accused Products that can be considered the claimed second container in each of the asserted claims. CIB at 36 (citing Tr. (Klopp) at 294:8-14, 297:15-21, 299:18-23, 301:18-302:3; CDX-0003.0205, .0213, .0222, .0227). Under Milwaukee’s infringement theory, multiple combinations of first and second Accused Products constitute the claimed “container assembly.” The tables below summarize the groups of Accused Products that

PUBLIC VERSION

Milwaukee says can be the “first container” and “second container” in the asserted ’952 patent claims.

Accused Products Alleged to Satisfy Claim 3 of the ’952 Patent

“first container”	“second container”
Cooler (JPX-0010)	[intentionally left blank]
Backpack Component Box (JPX-0008)	Backpack Component Box (JPX-0008)
Half Width Short Component Box (JPX-0007)	Half Width Short Component Box (JPX-0007)
Half Width Tall Component Box (JPX-0006)	Half Width Tall Component Box (JPX-0006)
Full Width Short Component Box (JPX-0005)	Full Width Short Component Box (JPX-0005)
Full Width Tall Component Box (JPX-0004)	Full Width Tall Component Box (JPX-0004)
Small Toolbox (JPX-0001)	Small Toolbox (JPX-0001)
Medium Toolbox (JPX-0003)	Medium Toolbox (JPX-0003)
Hybrid Toolbox (JPX-0009)	Hybrid Toolbox (JPX-0009)
Rolling Toolbox (JPX-0002)	

Accused Products Alleged to Satisfy Claim 4 of the ’952 Patent

“first container”	“second container”
Full Width Short Component Box (JPX-0005)	Half Width Short Component Box (JPX-0007)
Full Width Tall Component Box (JPX-0004)	Half Width Tall Component Box (JPX-0006)
Small Toolbox (JPX-0001)	Hybrid Toolbox (JPX-0009)
Medium Toolbox (JPX-0003)	
Rolling Toolbox (JPX-0002)	

PUBLIC VERSION

Accused Products Alleged to Satisfy Claim 8 of the '952 Patent

"first container"
Rolling Toolbox (JPX-0002)

"second container"
Backpack Component Box (JPX-0008)
Half Width Short Component Box (JPX-0007)
Half Width Tall Component Box (JPX-0006)
Full Width Short Component Box (JPX-0005)
Full Width Tall Component Box (JPX-0004)
Small Toolbox (JPX-0001)
Medium Toolbox (JPX-0003)
Hybrid Toolbox (JPX-0009)

Accused Products Alleged to Satisfy Claim 16 of the '952 Patent

"first container"
Rolling Toolbox (JPX-0002)

"second container"
Backpack Component Box (JPX-0008)
Half Width Short Component Box (JPX-0007)
Half Width Tall Component Box (JPX-0006)
Full Width Short Component Box (JPX-0005)
Full Width Tall Component Box (JPX-0004)
Small Toolbox (JPX-0001)
Medium Toolbox (JPX-0003)
Hybrid Toolbox (JPX-0009)
Cooler (JPX-0010)

See CIB at 36-37.

Milwaukee's arguments regarding indirect infringement of the Asserted Products will be addressed separately in section IX below.

1. Claim 1

Although Milwaukee does not allege infringement of independent claim 1 of the '952 patent, it does allege infringement of claims 3, 4, and 8, which depend from claim 1. I thus make the following findings regarding whether the Accused Products satisfy the limitations of claim 1, which are incorporated into claims 3, 4, and 8.

a) Limitations 1[Pre] and 1[a]: “A container assembly comprising: a first container comprising: ”

Milwaukee argues that the preamble of claim 1 of the '952 patent is not limiting because it does not “recite[] essential structure or steps” and is not “necessary to give life, meaning, and vitality” to any of the claims. CIB at 10-11, 38 (citing *Catalina Marketing Int’l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed. Cir. 2002)). Klein did not address the issue of whether the claim preamble is limiting in its post-hearing brief. See RRB at 4-47.

In any event, I find the Accused Products satisfy the preamble as they are containers that fit together in various combinations to form a container assembly. Milwaukee asserts that the following Accused Products comprise a “first container” in accordance with claim 1:

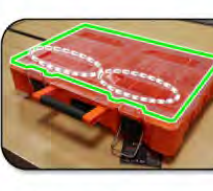
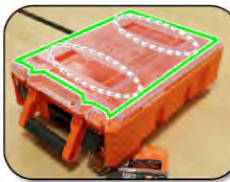
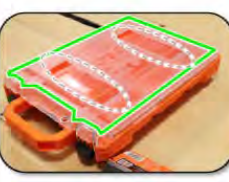
Accused Product	Stock Keeping Unit	Exhibit No.
MODbox Rolling Toolbox	SKU 54802MB	JPX-0002
MODbox Medium Toolbox	SKU 54803MB	JPX-0003
MODbox Small Toolbox	SKU 54804MB	JPX-0001
MODbox Short Component Box, Full Width	SKU 54807MB	JPX-0005
MODbox Tall Component Box, Full Width	SKU 54806MB	JPX-0004
MODbox Tall Component Box, Half Width	SKU 54808MB	JPX-0006
MODbox Short Component Box, Half Width	SKU 54809MB	JPX-0007
MODbox Tool Bag, Tote, and Backpack Component Box	SKU 54812MB	JPX-0008
MODbox Cooler, 17qt	SKU 62204MB	JPX-0010
MODbox Hybrid Toolbox	SKU 54824MB	JPX-0009

PUBLIC VERSION

See CIB at 36-37.⁸ No party disputes that each of the products in this list, which identifies all ten Accused Products, is a “first container,” and I so find. See RRB at 4-47.

- b) **Limitation 1[a][i]: “a first coupler extending from a top face of the first container, the first coupler comprising two sidewalls, a back wall, and a rib, the back wall located between the two sidewalls, the two sidewalls and the back wall projecting above a depressed surface of the top face, and the rib extending away from the back wall in a first direction; ”**

Each of the Accused Products has materially identical “first” female couplers that extend from a depressed surface of the top face of each container. JPX-0001-10. The slide below prepared by Dr. Klopp illustrates the location of the female couplers with white annotation, and the location of the top faces with green annotation:

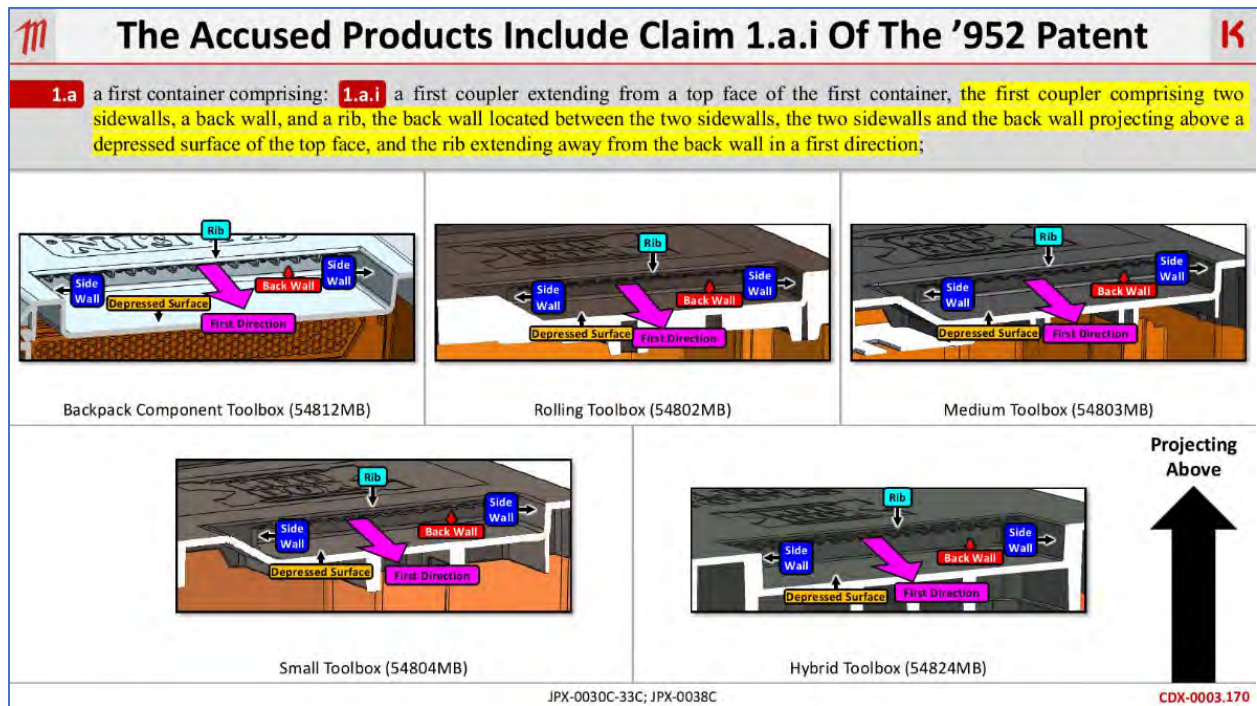
The Accused Products Include Claim 1.a.i Of The '952 Patent				
1.a a first container comprising: 1.a.i a first coupler extending from a top face of the first container, the first coupler comprising two sidewalls, a back wall, and a rib, the back wall located between the two sidewalls, the two sidewalls and the back wall projecting above a depressed surface of the top face, and the rib extending away from the back wall in a first direction;				
				
Rolling Toolbox 54802MB (JPX-0002)	Medium Toolbox 54803MB (JPX-0003)	Small Toolbox 54804MB (JPX-0001)	Full Width Tall Component Box 54806MB (JPX-0004)	Full Width Short Component Box 54807MB (JPX-0005)
				
Half Width Tall Component Box 54808MB (JPX-0006)	Half Width Short Component Box 54809MB (JPX-0007)	Backpack Component Box 54812MB (JPX-0008)	Cooler 62204MB (JPX-0010)	Hybrid Toolbox 54824MB (JPX-0009)
JPX-0001-10 CX-0191-192; CX-0194-201				
CDX-0003.168				

CDX-0003.0168.

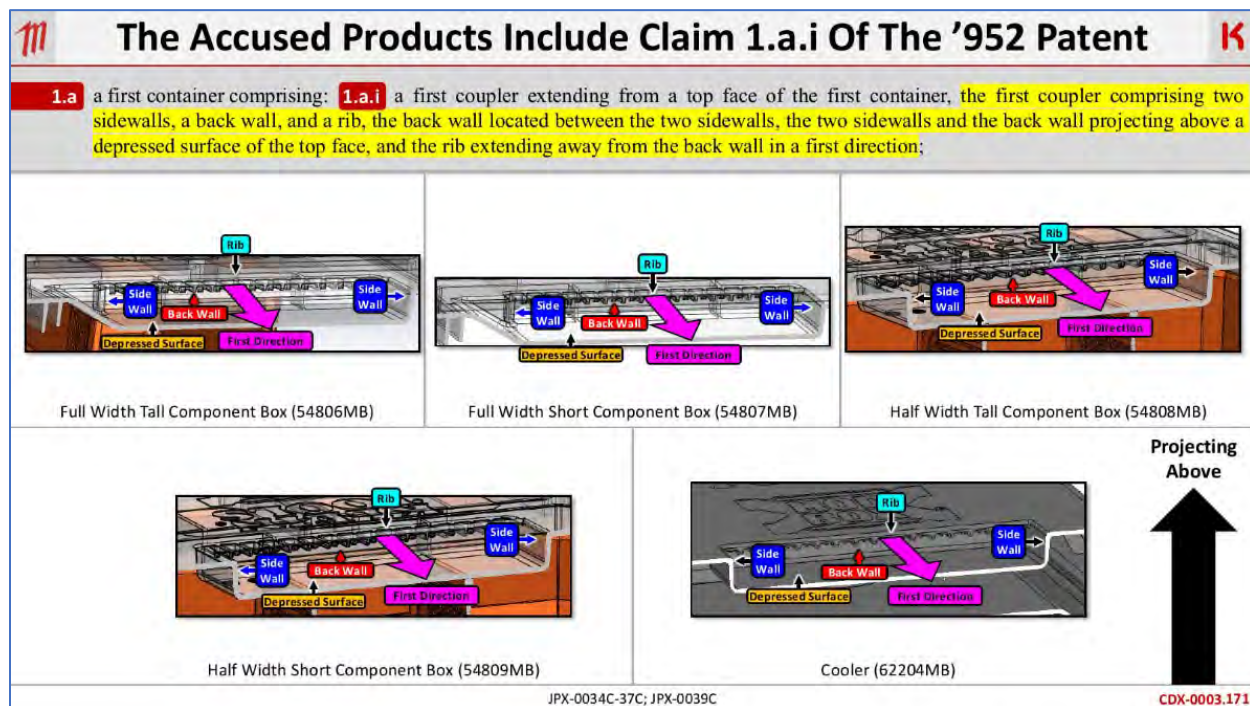
⁸ These ten products comprise the entire set of Accused Products. See *supra* section I.D.1.

PUBLIC VERSION

I find that each of the female couplers in the Accused Products comprises two sidewalls, a back wall, and a rib. CAD drawings in the below slides, prepared by Dr. Klopp, provide further evidence of the female couplers. In each coupler, the two sidewalls (dark blue annotation) and back wall (red annotation) project above (black arrow) the depressed surface (orange annotation) of the top face. CDX-0003.0170-71. In addition, the back wall is located between the two sidewalls and the rib (light blue annotation) extends away from the back wall in a first direction (i.e., towards the front of the container, indicated with pink). *See id.* The rib comprises the entire portion that extends away from the back wall. *See id.*



CDX-0003.0170; JPX-0030C-33C; JPX-0038C.



CDX-0003.0171; JPX-0034C-37C; JPX-0039C.

Klein argues that the Accused Products do not satisfy this limitation because they lack “a rib extending from the back wall.” RRB at 34-39. The crux of Klein’s argument is that the feature identified as the rib in the images above does not “extend[] away from the back wall” as required by the claim language because, in the Accused Products, the identified rib is not “separate or distinct from the alleged ‘face,’ as mandated by the recitation of these two structures separately in the claims.” *See id.* at 35-37. Klein’s argument relies on construing this limitation such that “face” and “rib,” which are separately recited, “are not one and the same structure.” *Id.* at 34 (citing *HTC Corp. v. Cellular Commc’ns Equip., LLC*, 701 F. App’x. 978, 982 (Fed. Cir. 2017)). Klein’s argument is not persuasive.

There is nothing in the teachings of the patent requiring that the “rib” be separate or distinct from the “face.” In fact, the patent teaches the opposite. As noted in the claim construction section above, the patent teaches that rib 36 is part of a depressed locking location 32, and depressed

locking location 32 is part of the top face. '026 patent at 16:25-36. The patent also teaches that the rib 36 extends from the back wall of the depressed locking location, which again is part of the top face. *See id.* This intrinsic evidence contradicts Klein's argument that the claimed rib must be distinct from the claimed face. I find that the claimed "rib" can be both part of the claimed "face" and also extend from the face.⁹

For the reasons above, I find that all Accused Products satisfy this limitation.¹⁰

c) Limitation 1[a][ii]: "a first lid pivotally attached to the first container; and "

Each of the Accused Products includes a materially identical lid that is pivotally attached to the container, thereby allowing the lid to open and close. JPX-0001; JPX-0002; JPX-0003; JPX-0004; JPX-0005; JPX-0006; JPX-0007; JPX-0008; JPX-0009; JPX-0010. The pivot attachment between the lid and the container is illustrated in the slide below prepared by Dr. Klopp, with the pivot location annotated in green:

⁹ Klein's argument here brings to mind a conversation I had with Klein's counsel at the claim construction hearing. There, I had asked counsel whether my nose could be both part of my face and extend from my face. *See Markman Tr.* at 12:22-25. It can. Similarly, a branch can extend from a tree. The claim language here uses the same words in the same sense.

¹⁰ Milwaukee argues that the Accused Products also satisfy this limitation under Klein's proposed claim construction and under the doctrine of equivalents. CIB at 42. But Milwaukee fails to set forth its contentions regarding these alternate theories of infringement in detail in its post-hearing initial brief, and I therefore find that these arguments have been abandoned. *See Order No. 2* at G.R. 14.1 (July 30, 2024).

 The Accused Products Include Claim 1.a.ii Of The '952 Patent 				
1 a a first container comprising: 1.a.ii a first lid pivotally attached to the first container; and				
 Rolling Toolbox 54802MB (JPX-0002)	 Medium Toolbox 54803MB (JPX-0003)	 Small Toolbox 54804MB (JPX-0001)	 Full Width Tall Component Box 54806MB (JPX-0004)	 Full Width Short Component Box 54807MB (JPX-0005)
 Half Width Tall Component Box 54808MB (JPX-0006)	 Half Width Short Component Box 54809MB (JPX-0007)	 Backpack Component Box 54812MB (JPX-0008)	 Cooler 62204MB (JPX-0010)	 Hybrid Toolbox 54824MB (JPX-0009)
JPX-0001-10; CX-0245-254				
CDX-0003.175				

CDX-0003.0175.

No party disputes that this limitation is satisfied. See RRB at 4-47.

d) Limitation 1[a][iii]: “a first toggle locking latch configured to latch the first lid of the first container in a closed position; and ”

Each of the Accused Products includes materially identical toggle locking latches configured to latch the lid in a closed position. JPX-0001; JPX-0002; JPX-0003; JPX-0004; JPX-0005; JPX-0006; JPX-0007; JPX-0008; JPX-0009; JPX-0010. The toggle locking latches are illustrated in the slide below prepared by Dr. Klopp, with the latches identified with green annotation:

 The Accused Products Include Claim 1.a.iii Of The '952 Patent 				
1 a a first container comprising: 1.a.iii a first toggle locking latch configured to latch the first lid of the first container in a closed position; and				
				
Rolling Toolbox 54802MB (JPX-0002)	Medium Toolbox 54803MB (JPX-0003)	Small Toolbox 54804MB (JPX-0001)	Full Width Tall Component Box 54806MB (JPX-0004)	Full Width Short Component Box 54807MB (JPX-0005)
				
Half Width Tall Component Box 54808MB (JPX-0006)	Half Width Short Component Box 54809MB (JPX-0007)	Backpack Component Box 54812MB (JPX-0008)	Cooler 62204MB (JPX-0010)	Hybrid Toolbox 54824MB (JPX-0009)
JPX-0001-10; CX-0257; CX-0259-261; CX-0263-266; JX-0062-63				
CDX-0003.177				

CDX-0003.0177.

No party disputes that this limitation is satisfied. See RRB at 4-47.

e) Limitation 1[b]: “a second container comprising: ”

As identified by Milwaukee, all Accused Products except for the Rolling Toolbox (JPX-0002) and Cooler (JPX-0010)¹¹ comprise a second container. See CIB at 36-37. No party disputes that each of the products in the list below is a “second container,” and I so find:

- Backpack Component Box (JPX-0008)
- Half Width Short Component Box (JPX-0007)
- Half Width Tall Component Box (JPX-0006)

¹¹ Even though Milwaukee did not identify the Cooler (JPX-0010) as a “second container” for purposes of the analysis of claim 1 and its dependent claims, the Cooler nevertheless satisfies many limitations recited in claim 1. In the interest of efficiency, I will make findings that the Cooler satisfies these limitations where applicable. I will make similar findings, where applicable, for “second container” limitations satisfied by the Rolling Toolbox.

PUBLIC VERSION

- Full Width Short Component Box (JPX-0005)
- Full Width Tall Component Box (JPX-0004)
- Small Toolbox (JPX-0001)
- Medium Toolbox (JPX-0003)
- Hybrid Toolbox (JPX-0009)

See RRB at 4-47. For purposes of the '952 patent analysis, these nine products will be referred to as the “Second Container Accused Products.”

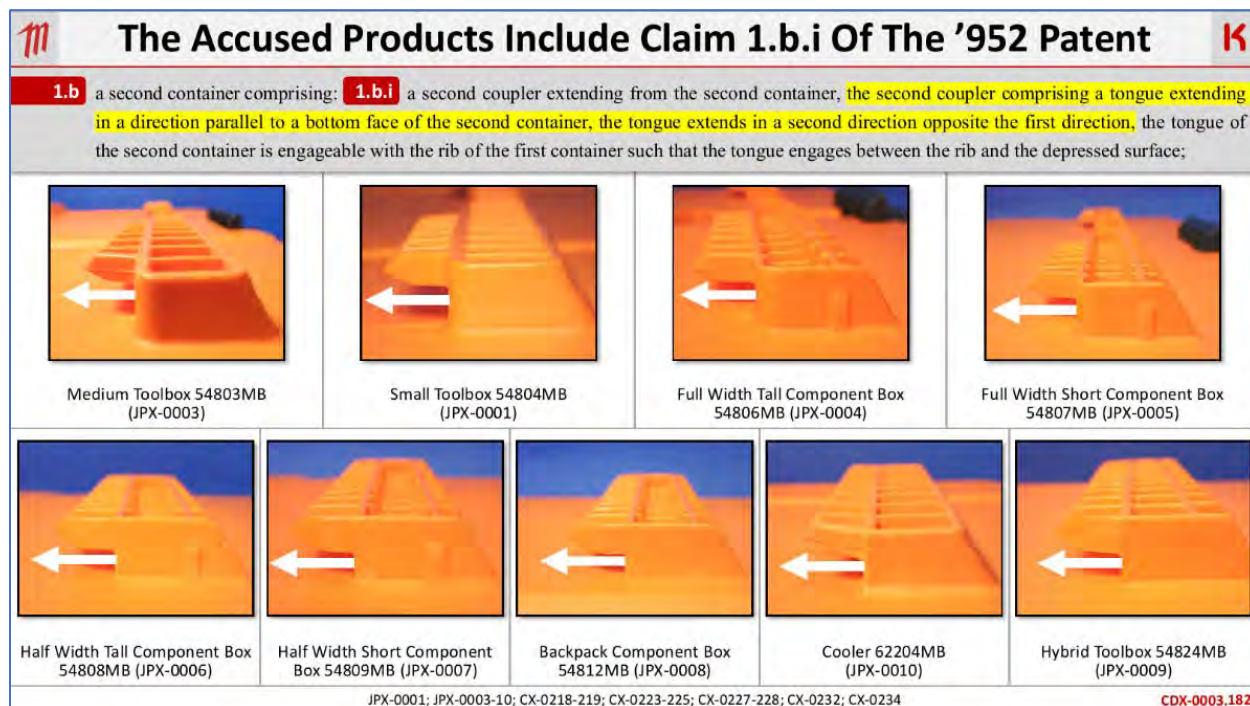
- f) **Limitation 1[b][i]: “a second coupler extending from the second container, the second coupler comprising a tongue extending in a direction parallel to a bottom face of the second container, the tongue extends in a second direction opposite the first direction, the tongue of the second container is engageable with the rib of the first container such that the tongue engages between the rib and the depressed surface; ”**

The Second Container Accused Products and the Cooler all have materially identical “second” male couplers that extend from the bottom face of each container. JPX-0001; JPX-0003-10. The slide below prepared by Dr. Klopp illustrates the location of the male couplers with dotted oval annotations, and the location of the bottom faces with blue annotation:

 The Accused Products Include Claim 1.b.i Of The '952 Patent 			
1.b a second container comprising: 1.b.i a second coupler extending from the second container, the second coupler comprising a tongue extending in a direction parallel to a bottom face of the second container, the tongue extends in a second direction opposite the first direction, the tongue of the second container is engageable with the rib of the first container such that the tongue engages between the rib and the depressed surface;			
 Medium Toolbox 54803MB (JPX-0003)	 Small Toolbox 54804MB (JPX-0001)	 Full Width Tall Component Box 54806MB (JPX-0004)	 Full Width Short Component Box 54807MB (JPX-0005)
 Half Width Tall Component Box 54808MB (JPX-0006)	 Half Width Short Component Box 54809MB (JPX-0007)	 Backpack Component Box 54812MB (JPX-0008)	 Cooler 62204MB (JPX-0010)
			 Hybrid Toolbox 54824MB (JPX-0009)
JPX-0001; JPX-0003-10; CX-0206-214			
CDX-0003.181			

CDX-0003.0181; JPX-0001; JPX-0003-10; CX-0206-14.

Each of the male couplers includes a materially identical tongue that extends parallel to the bottom face and towards the back of the container (*i.e.*, opposite the direction towards the front of the container that the rib of the female coupler extends, or “the first direction”). Close-up photos of the male couplers for each of the Second Container Accused Products and the Cooler are shown in the slide below:



CDX-0003.0182; JPX-0001; JPX-0003-10; CX-0218-19; CX-0223-25; CX-0227-28; CX-0232; CX-0234.

Examination of the physical samples of the Second Container Accused Products and the Accused Products show that, when the first and second containers are coupled together, the tongue of the male coupler of the second container is inserted into the female coupler of the first container such that the tongue is disposed between the depressed surface of the first container and the rib, thus engaging with the rib. JPX-0001-10.

No party disputes that this limitation is satisfied. See RRB at 4-47.

- g) Limitations 1[b][ii] and 1[b][iii]: “a second lid pivotally attached to the second container; a second toggle locking latch configured to latch the second lid of the second container in a closed position;”**

As discussed above in sections VI.A.1.c) and VI.A.1.d), each of the Second Container Accused Products has a lid pivotally attached to the container and a toggle locking latch configured

PUBLIC VERSION

to latch the lid in a closed position. JPX-0001; JPX-0003; JPX-0004; JPX-0005; JPX-0006; JPX-0007; JPX-0008; JPX-0009; JPX-0010.

No party disputes that this limitation is satisfied. *See* RRB at 4-47.

h) Limitations 1[b][iv], 1[b][v], and 1[b][vi]: “a front face; a first side face; an opposing second side face; ”

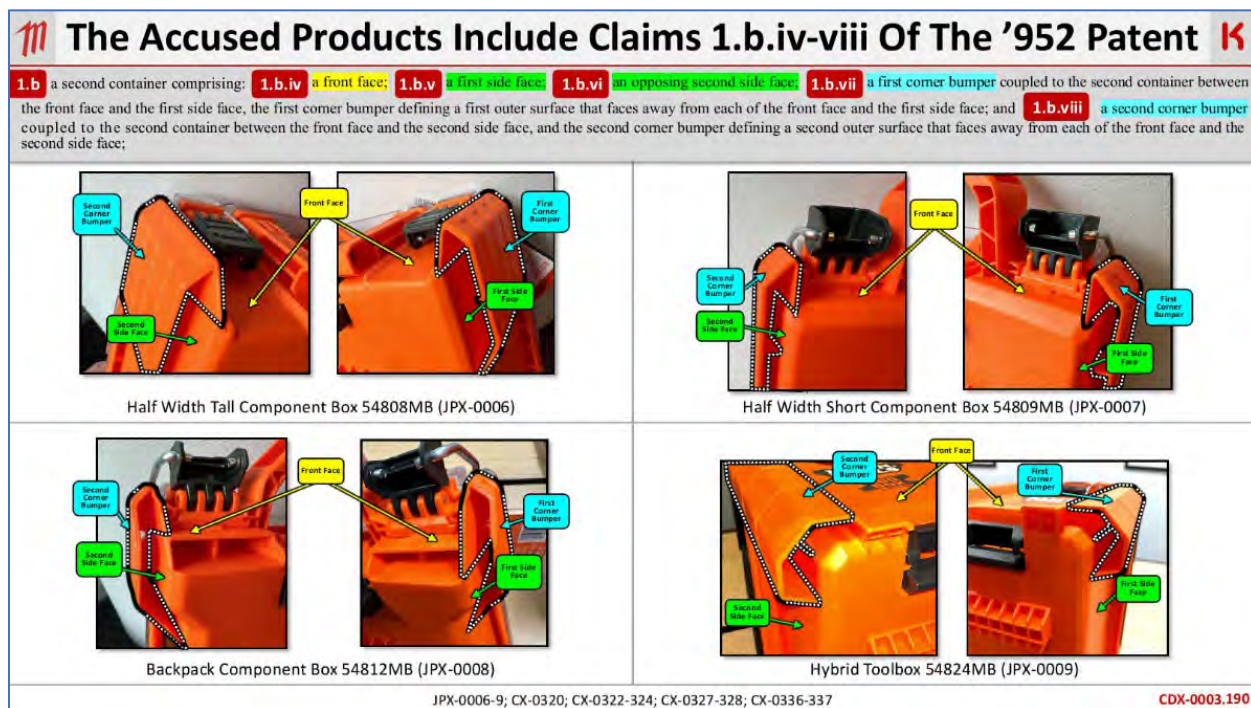
Physical inspection of the Second Container Accused Products, the Cooler, and the Rolling Toolbox shows that they have a materially identical front face, first side face, and opposing side face. JPX-0001; JPX-0002; JPX-0003; JPX-0004; JPX-0005; JPX-0006; JPX-0007; JPX-0008; JPX-0009; JPX-0010. The front face faces outwards from the front of the container, and the side faces face sideways from the sides of the container.

No party disputes that this limitation is satisfied. *See* RRB at 4-47.

i) Limitations 1[b][vii] and 1[b][viii]: “a first corner bumper coupled to the second container between the front face and the first side face, the first corner bumper defining a first outer surface that faces away from each of the front face and the first side face; and a second corner bumper coupled to the second container between the front face and the second side face, and the second corner bumper defining a second outer surface that faces away from each of the front face and the second side face; ”

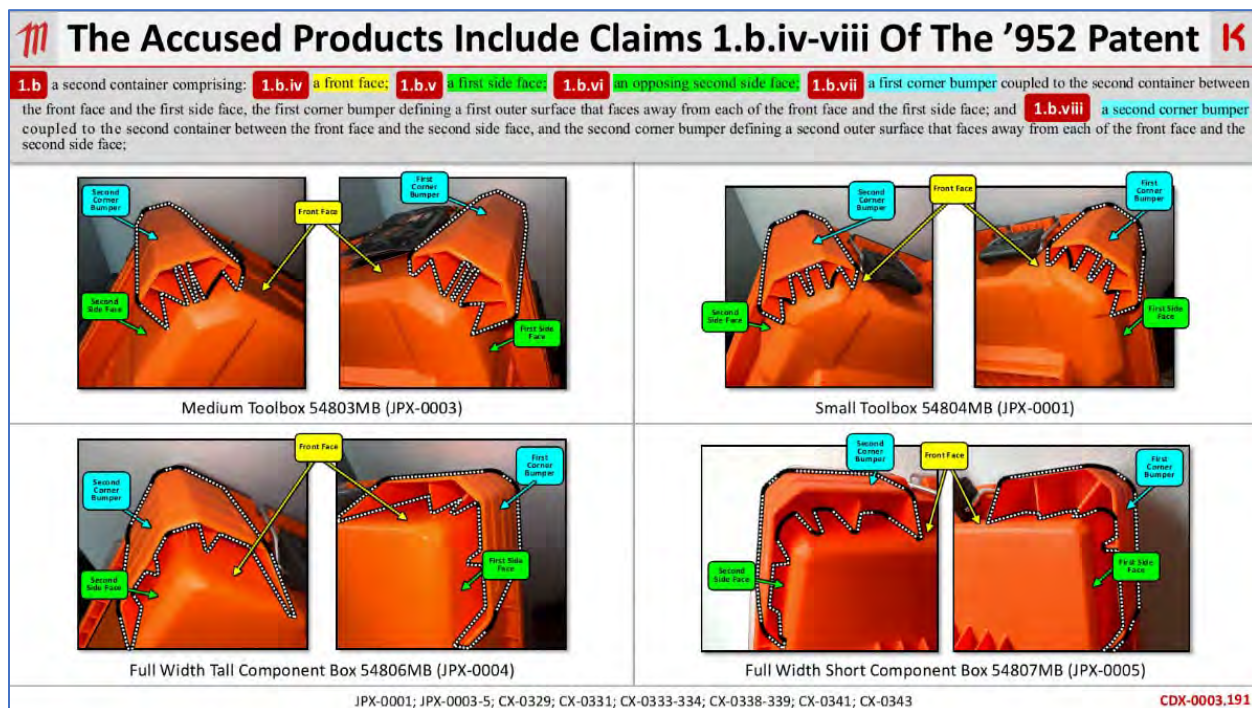
Inspection of the Second Container Accused Products and the Rolling Toolbox shows that they each have a corner bumper located between the front face and each side face such that the corner bumper defines an outer surface that faces away from each of the front face and the first side face. JPX-0001; JPX-0002; JPX-0003; JPX-0004; JPX-0005; JPX-0006; JPX-0007; JPX-0008; JPX-0009. As illustrated in the slides below prepared by Dr. Klopp, the corner bumpers

in the Second Container Accused Products are coupled to their respective containers because each corner bumper is integrally molded with the container.¹² See Tr. (Klopp) at 289:3-290:6.



CDX-0003.0190; JPX-0006-9; CX-0320; CX-0322-24; CX-0327-28; CX-0336-37.

¹² The corner bumpers in the Rolling Toolbox are likewise coupled to the container because each corner bumper is integrally molded with the container.



CDX-0003.0191; JPX-0001; JPX-0003-5; CX-0329; CX-0331; CX-0333-34; CX-0338-39; CX-0341; CX-0343.

Klein argues that the container features identified above are not “corner bumpers” as claimed in the Asserted Patents. RRB at 23-28. Klein argues that the features do not function as “bumpers” because they “provide structural rigidity and stiffness to the overall container” and “are not designed for shock absorption.” *Id.* at 23-25. But these litigation-inspired positions are belied by Klein internal documents describing the Accused Products, drafted before this litigation, that refer to the features in question as “bumper corners” that are “impact resistant.” CX-0168C.0005. Thomas Klein, Jr., the president and COO of Klein, testified that this description conveyed “the intent of the product manager” for the MODbox project. Tr. (Klein) at 570:7-14. The record evidence also shows that, during the design and development of the Accused Products, Klein added ribbing inside the corner bumpers to provide extra stiffness to the containers and their corners. Tr. (Maxey) at 619:16-620:19, 621:6-622:19. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CX-0057C.0010; Tr. (Maxey) at 663:12-15 ([REDACTED]
[REDACTED]). The fact that Klein drop-tested the corner bumpers and observed that the internal ribbing was damaged—thereby protecting the corners of the containers—supports a conclusion that the corner bumpers absorb or dissipate energy and are resistant to impacts. *See* Tr. (Klopp) at 305:4-20; Tr. (Forest) at 977:22-978:4 (testifying that the Accused Products’ corner bumpers provide structural integrity and rigidity to the overall containers, including their corners).

Klein also argues that that the structures identified as corner bumpers are not “coupled to” or “extend from” the containers because the corner bumpers are integrally molded with other portions of the containers. RRB at 25-28. As an initial matter, neither party identified the term “coupled” as needing construction by the date set in the procedural schedule for identifying

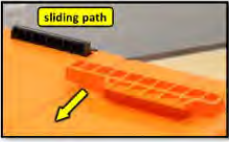
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disputed claim terms, and no party asked for relief from that deadline. Accordingly, arguments about the meaning of “coupled” have been abandoned. In any event, no legal precedent cited by Klein holds that the term “coupled” necessarily excludes two structures that are integrally formed, and nothing in the intrinsic record indicates the claim term as used in the ’952 patent is limited in the manner Klein suggests. *Id.*

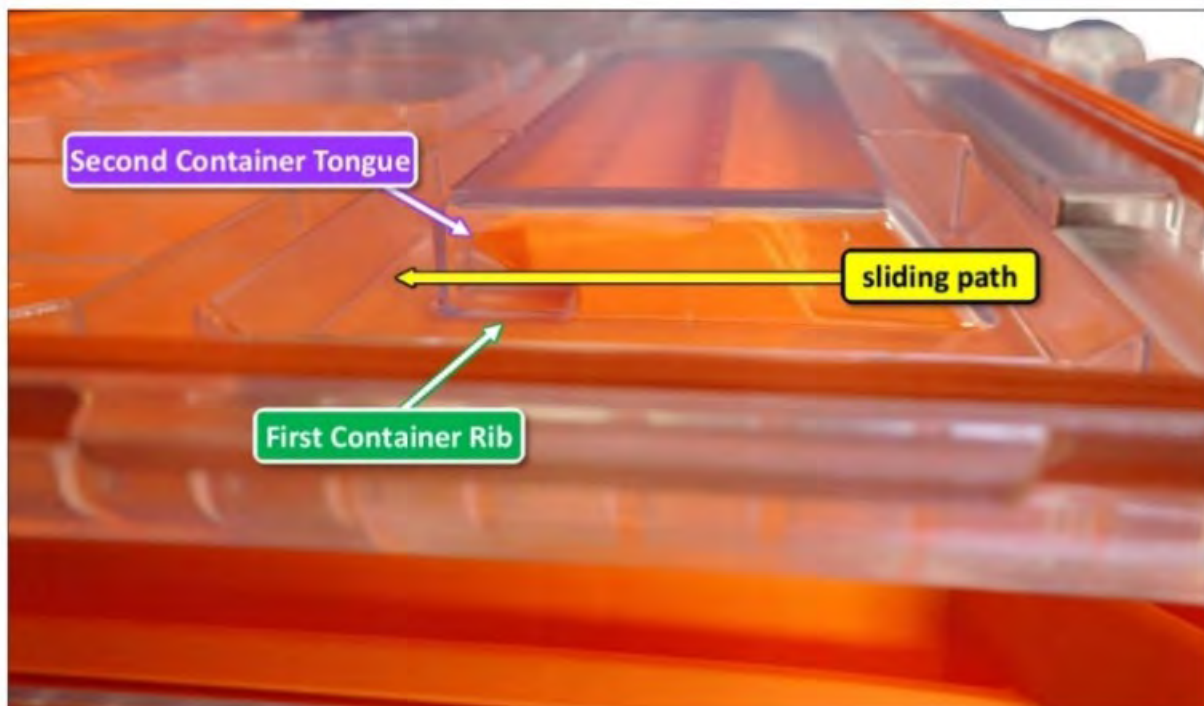
For these reasons, I find that all Second Container Accused Products and the Rolling Toolbox satisfy this limitation.

- j) Limitation 1[b][ix]: “wherein the first and second couplers of the first and second containers engage each other when the first and second containers are slid with respect to each other along a sliding path defined by the rib and the tongue; ”**

Inspection of the physical samples of the Accused Products (*i.e.*, the “first containers”) and the Second Container Accused Products (*i.e.*, the “second containers”) shows that each of the male couplers of the Second Container Accused Products can slide to engage the female couplers of the Accused Products. JPX-0001-10. As illustrated in the slides below prepared by Dr. Klopp, the sliding engagement occurs by relative motion between the male couplers and the female couplers along a sliding path (annotated in yellow) defined by a rib (annotated in green) and tongue (annotated in purple):

 The Accused Products Include Claim 1.b.ix Of The '952 Patent 				
1.b.ix wherein the first and second couplers of the first and second containers engage each other when the first and second containers are slid with respect to each other along a sliding path defined by the rib and the tongue;				
 Medium Toolbox 54803MB (JPX-0003)	 Small Toolbox 54804MB (JPX-0001)	 Full Width Tall Component Box 54806MB (JPX-0004)	 Full Width Short Component Box 54807MB (JPX-0005)	
 Half Width Tall Component Box 54808MB (JPX-0006)	 Half Width Short Component Box 54809MB (JPX-0007)	 Backpack Component Box 54812MB (JPX-0008)	 Cooler 62204MB (JPX-0010)	 Hybrid Toolbox 54824MB (JPX-0009)
JPX-0001; JPX-0003-10; CX-0349-356; CX-0375				
CDX-0003.194				

CDX-0003.0194; JPX-0001; JPX-0003-10; CX-0349-56; CX-0375.



CX-0921; CDX-0003.0195.

No party disputes that this limitation is satisfied. See RRB at 4-47.

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k) **Limitation 1[c]: “a locking latch arresting location defined by one of the first container or the second container; and ”**

Each of the Accused Products includes materially identical locking latch arresting locations configured to receive another container’s locking latch when coupled or connected so as to prevent further sliding between the two containers. JPX-0001-10. The locking latch arresting locations are identified with green annotation in the slide below prepared by Dr. Klopp:



CDX-0003.0197; JPX-0001-10; CX-0261; CX-0267; CX-0281-88.

No party disputes that this limitation is satisfied. See RRB at 4-47.

l) **Limitation 1[d]: “a locking latch coupled to the other of the first container or the second container, the locking latch positionable in a locked position engaging the locking latch arresting location thereby limiting sliding displacement of the first container with respect to the second container.”**

Each Accused Product—except for the Rolling Toolbox (JPX-0002)—has a materially identical locking latch that couples to the locking latch arresting locations on the other Accused

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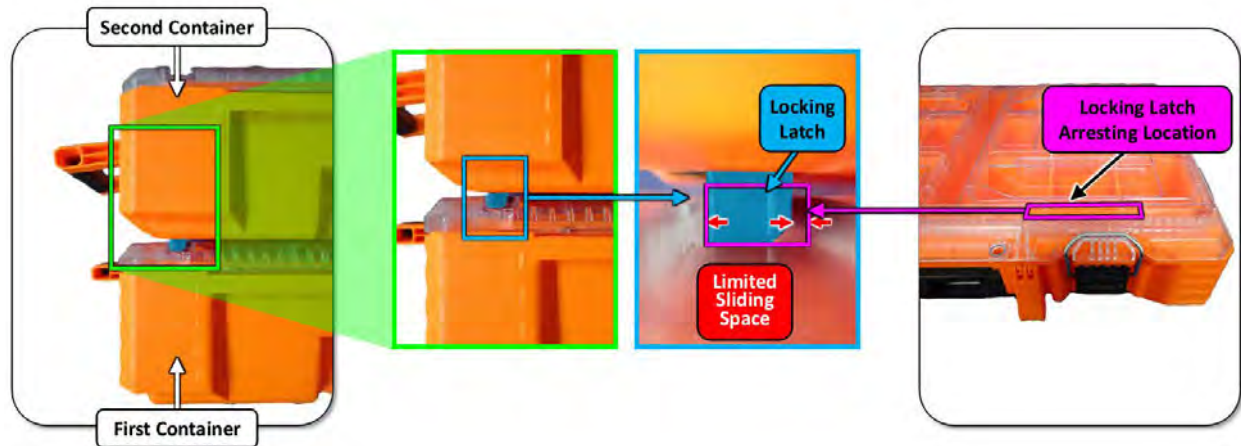
Products. JPX-0001; JPX-0003-10. The locations of these locking latches are shown with white annotation in the slide below prepared by Dr. Klopp:

The Accused Products Include Claim 1.d Of The '952 Patent				
1.d a locking latch coupled to the other of the first container or the second container, the locking latch positionable in a locked position engaging the locking latch arresting location thereby limiting sliding displacement of the first container with respect to the second container.				
				
Medium Toolbox 54803MB (JPX-0003)	Small Toolbox 54804MB (JPX-0001)	Full Width Tall Component Box 54806MB (JPX-0004)	Full Width Short Component Box 54807MB (JPX-0005)	
				
Half Width Tall Component Box 54808MB (JPX-0006)	Half Width Short Component Box 54809MB (JPX-0007)	Backpack Component Box 54812MB (JPX-0008)	Cooler 62204MB (JPX-0010)	Hybrid Toolbox 54824MB (JPX-0009)
JPX-0001; JPX-0003-10; CX-0272-280				
CDX-0003.199				

CDX-0003.0199; JPX-0001; JPX-0003-10; CX-0272-80.

Inspection of the physical samples of the Accused Products demonstrates that engagement of the locking latches with the locking latch arresting locations limits sliding displacement of the first container with respect to the second container. JPX-0001-10. As shown in the illustration below prepared by Dr. Klopp, each locking latch (annotated in blue) is positionable in the locking latch arresting location (annotated in pink); there is limited space (annotated with red arrows) for the first container to engage in sliding displacement relative to the second container when the first and second containers are engaged:

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CX-0917-19; CDX-0003.0200.

In general, and with respect to limitation 1[d] of the '952 patent in particular, Klein argues that the evidence Milwaukee presented at the hearing was “conclusory in nature and fails to provide any clear tie to the claimed products such that [Milwaukee] can meet their burden of proof. [Milwaukee’s] expert, Dr. Klopp, failed to tie his infringement analysis to specific products or exhibits, and because Dr. Klopp’s testimony is not grounded in the evidentiary record, it cannot be relied upon to establish any alleged infringement.” RRB at 39. Klein’s characterization of Dr. Klopp’s testimony is not supported by the record. Moreover, expert testimony is not necessarily required for a factfinder to determine that an accused product satisfies a claim limitation. *See, e.g., Lee v. Mike’s Novelties, Inc.*, 543 F. App’x. 1010, 1016 (Fed. Cir. 2013) (“[n]o expert testimony was required” where jurors could handle and assess the physical evidence of the accused product); *see also Union Carbide Corp. v. Am. Can Co.*, 724 F.2d 1567, 1573 (Fed. Cir. 1984) (no expert testimony needed to explain technology involving plastic bags in the validity context). Here, physical samples of the Accused Products and Domestic Industry Products have been entered into the evidence. I specifically asked Klein at the hearing if it had any objection to me making my own observations about the physical evidence and Klein stated it did not. Tr. at

1244:18-24. More detailed testimony from Dr. Klopp is not required to understand the straightforward evidence at issue.

I find that each Accused Product except for the Rolling Toolbox (JPX-0002) has a locking latch in accordance with limitation 1[d]. I find that the Rolling Toolbox has no locking latch satisfying limitation 1[d]. Accordingly, the Rolling Toolbox can only form a “container assembly” that satisfies the limitations of claim 1 when it is combined with one of the Second Container Accused Products, each of which has a locking latch in satisfaction of limitation 1[d]. Accordingly, a container assembly that satisfies all limitations of claim 1 is formed when an Accused Product is combined with a Second Container Accused Product.

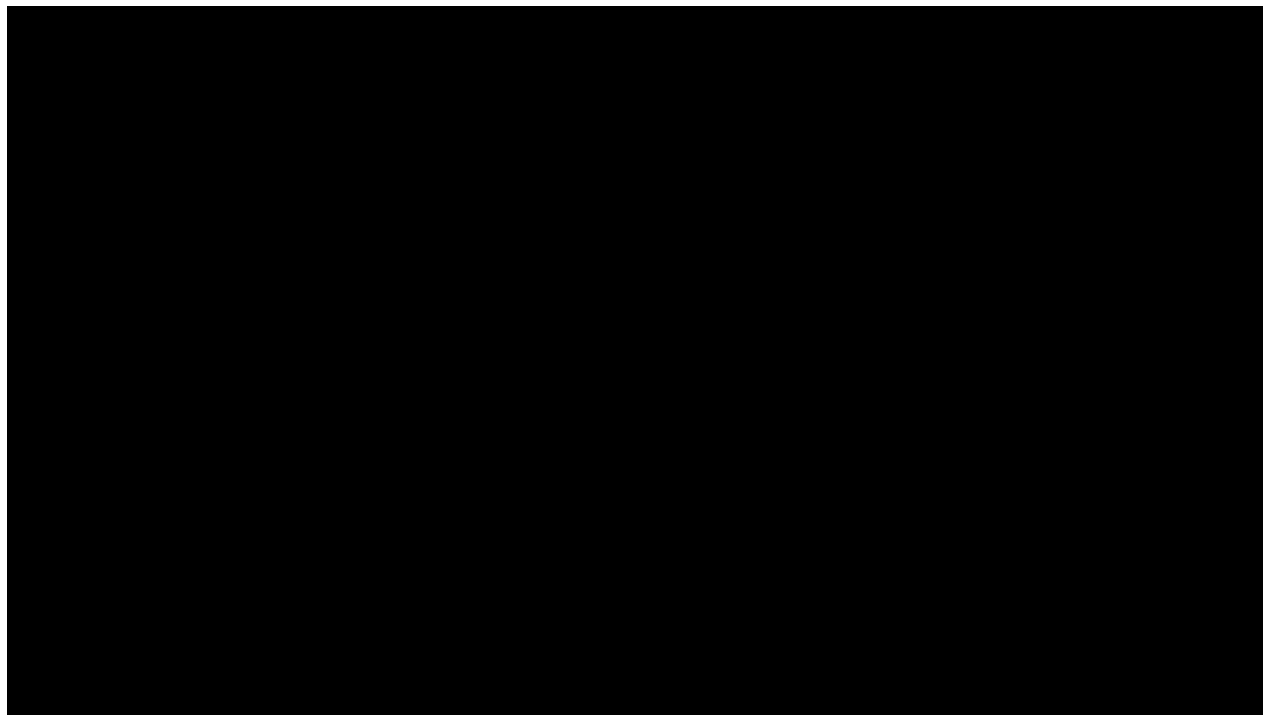
2. Claim 3

a) “The container assembly of claim 1,”

As discussed above, the Accused Products can be paired in combinations that satisfy all limitations of claim 1.

b) “wherein the locking latch is spring biased to engage with the locking latch arresting location.”

Inspection of the physical samples of the Accused Products demonstrates that the locking latch in each of the Accused Products—except for the Rolling Toolbox (JPX-0002), which does not have a locking latch—is spring biased to engage with the locking latch arresting location in another container. JPX-0001-10. As illustrated below in a slide prepared by Dr. Klopp, each locking latch locks into place due to the spring (annotated in red) exerting a force on the latch, thus preventing the two containers from sliding with respect to each other:



CDX-0003.0203; JPX-0031C-39C. No party disputes that this limitation is satisfied. *See* RRB at 4-47.

I find that all of the Accused Products except for the Rolling Toolbox (JPX-0002) meet this limitation. Accordingly, the Rolling Toolbox can only form an infringing “container assembly” when it is combined with one of the Second Container Accused Products, each of which has a locking latch meeting the limitations of claim 3. In sum, an infringing “container assembly” is formed when an Accused Product is combined with a Second Container Accused Product.

3. Claim 4

a) “The container assembly of claim 1,”

As discussed above, the Accused Products can be paired in combinations that satisfy all limitations of claim 1.

PUBLIC VERSION

- b) **“wherein a width of the second container is half of a width of the first container, and the second container is located on top of the first container.”**

This limitation requires that the width of the second container be half the width of the first container. Milwaukee has identified the following Accused Products as satisfying this limitation:

“first container”	“second container”
Full Width Short Component Box (JPX-0005)	Half Width Short Component Box (JPX-0007)
Full Width Tall Component Box (JPX-0004)	Half Width Tall Component Box (JPX-0006)
Small Toolbox (JPX-0001)	Hybrid Toolbox (JPX-0009)
Medium Toolbox (JPX-0003)	
Rolling Toolbox (JPX-0002)	

CIB at 37 (table of products for claim 4). For purposes of the '952 patent infringement analysis, the products in the left column will be referred to as the “Full Width Accused Products” and the products in the right column will be referred to as the “Half Width Accused Products.”

Inspection of the physical samples of the products identified in the above chart shows that the “second container” Half Width Accused Products are approximately half the width of the “first container” Full Width Accused Products. JPX-0001; JPX-0002; JPX-0003; JPX-0004; JPX-0005; JPX-0006; JPX-0007; JPX-0009. No party disputes that the Half Width Accused Products are configured to be attached on top of the Full Width Accused Products. *See* RRB at 4-47. The Full Width Accused Products and Half Width Accused Products listed above therefore satisfy the respective limitations of claim 4.

Accordingly, an infringing “container assembly” is formed when a Full Width Accused Product is combined with a Half Width Accused Product.

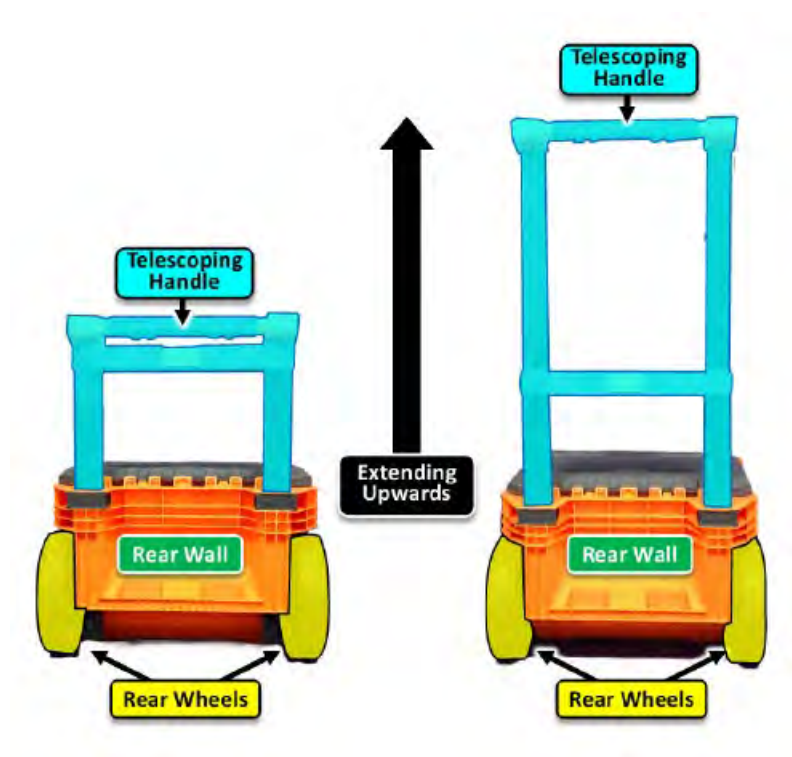
4. Claim 8

a) “The container assembly of claim 1,”

As discussed above, the Accused Products can be paired in combinations that satisfy all limitations of claim 1.

b) “wherein the first container further comprises a pair of rear wheels and a telescoping handle extending upwards from a rear wall of the first container.”

This limitation requires that the first container comprise a pair of rear wheels and a telescoping handle extending upwards from a rear wall of the first container. The only Accused Product Milwaukee has identified as having wheels and a telescoping handle is the Rolling Toolbox (JPX-0002). CIB at 60. An inspection of the Rolling Toolbox shows that it comprises a pair of rear wheels and a telescoping handle extending upwards from the rear wall:



JPX-0002; CX-1094C; CX-1095C; CDX-0003C.0220. I find the Rolling Toolbox thus satisfies the additional “first container” limitations recited in claim 8, but no other Accused Product has been shown to satisfy the additional limitations of claim 8.

Accordingly, an infringing “container assembly” is formed when the Rolling Toolbox is combined with one of the Second Container Accused Products.

5. Claim 9

Although Milwaukee does not allege infringement of independent claim 9 of the ’952 patent, it does allege infringement of claim 16, which depends from claim 9. I thus make findings regarding whether the Accused Products satisfy the limitations of claim 9, which are incorporated into claim 16.

Milwaukee only accuses a subset of the Accused Products of meeting the “first container” and “second container” limitations of claim 9, as follows:

“first container”	“second container”
Rolling Toolbox (JPX-0002)	Backpack Component Box (JPX-0008)
	Half Width Short Component Box (JPX-0007)
	Half Width Tall Component Box (JPX-0006)
	Full Width Short Component Box (JPX-0005)
	Full Width Tall Component Box (JPX-0004)
	Small Toolbox (JPX-0001)
	Medium Toolbox (JPX-0003)
	Hybrid Toolbox (JPX-0009)
	Cooler (JPX-0010)

CIB at 37 (table of products for claim 16).

Most of the limitations of claim 9 cover subject matter identical to the limitations of claim 1 discussed above. Under the same analysis described above in connection with claim 1, I find the

following requirements for the “first container” and “second container” in claim 9 are satisfied by the respective Accused Products listed in the above table, as briefly summarized below:

9. [Pre] A container assembly comprising:

See section VI.A.1.a) above. The Accused Products are containers that fit together in various combinations to form a container assembly.

[a] a first container comprising:

See section VI.A.1.a) above. Milwaukee has identified the Rolling Toolbox as the only Accused Product that satisfies the “first container” limitation. See CIB at 37.

[a.i] a first coupler extending from a top face of the first container, the first coupler comprising two sidewalls, a back wall, and a rib, the back wall located between the two sidewalls, the two sidewalls and the back wall projecting above a depressed surface of the top face, and the rib extending away from the back wall in a first direction;

See section VI.A.1.b) above.

[a.ii] a first lid pivotally attached to the first container; and

See section VI.A.1.c) above.

[a.iii] a first toggle locking latch configured to latch the first lid of the first container in a closed position; and

See section VI.A.1.d) above.

[b] a second container comprising:

See section VI.A.1.e) above. Milwaukee has identified all Accused Products, except for the Rolling Toolbox, as the “second container.” See CIB at 37.

[b.i] a second coupler extending from the second container, the second coupler comprising a tongue extending in a direction parallel to a bottom face of the second container, the tongue extends in a second direction opposite the first direction, the tongue of the second container is engageable with the rib of the first container such that the tongue engages between the rib and the depressed surface, wherein the second coupler of the second

PUBLIC VERSION

container extends from the bottom face of the second container such that the tongue is offset from at least a portion of the bottom face of the second container and wherein the rib engages between the tongue and the bottom face of the second container;

This limitation is unique to claim 9 and is not found in claim 1. I address it separately below.

[b.ii] a second lid pivotally attached to the second container; and

See section VI.A.1.g) above.

[b.iii] a second toggle locking latch configured to latch the second lid of the second container in a closed position;

See section VI.A.1.g) above.

[b.iv] wherein the first and second couplers of the first and second containers engage each other when the first and second containers are slid with respect to each other along a sliding path defined by the rib and the tongue;

See section above.

[c] a locking latch arresting location defined by one of the first container or the second container; and

See section above.

[d] a locking latch coupled to the other of the first container or the second container, the locking latch positionable in a locked position engaging the locking latch arresting location thereby limiting sliding displacement of the first container with respect to the second container.

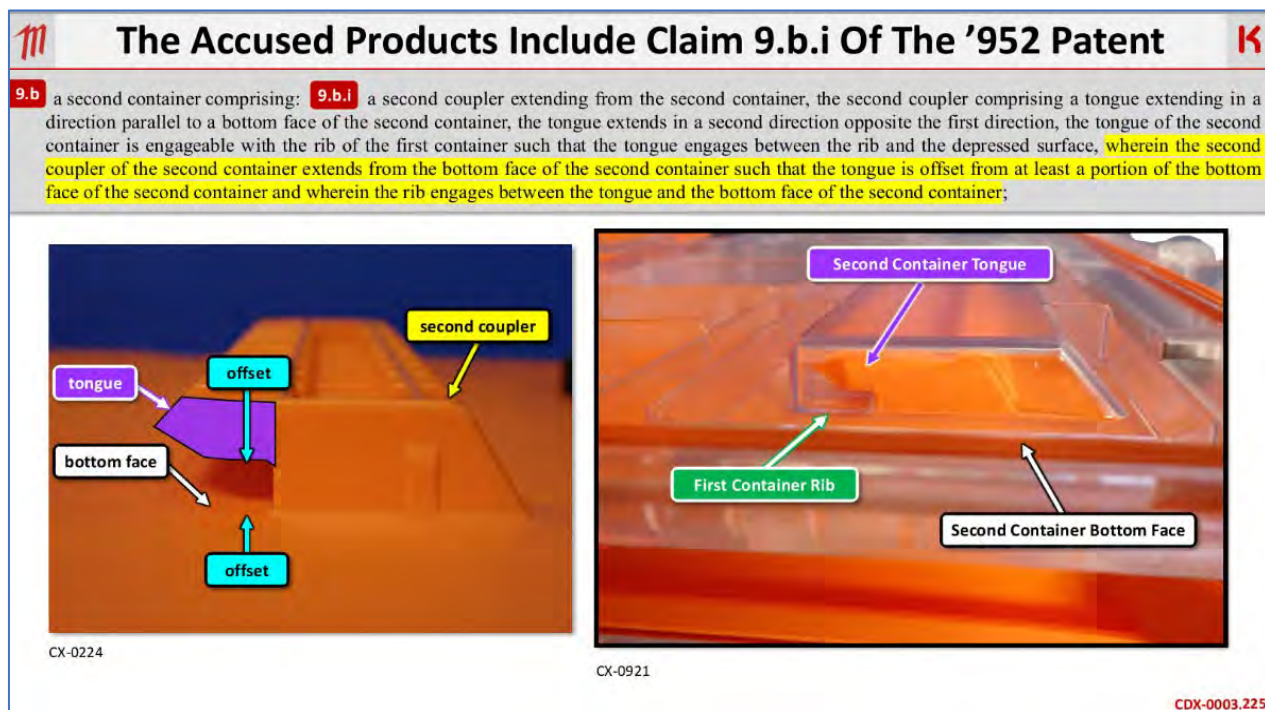
See section above.

As noted above, the only limitation in claim 9 not found in claim 1 is limitation 9[b][i], which recites: “a second coupler extending from the second container, the second coupler comprising a tongue extending in a direction parallel to a bottom face of the second container, the tongue extends in a second direction opposite the first direction, the tongue of the second container

PUBLIC VERSION

is engageable with the rib of the first container such that the tongue engages between the rib and the depressed surface, wherein the second coupler of the second container extends from the bottom face of the second container such that the tongue is offset from at least a portion of the bottom face of the second container and wherein the rib engages between the tongue and the bottom face of the second container.”

An inspection of the physical samples of the Accused Products, minus the Rolling Toolbox, demonstrates that they satisfy limitation 9[b][i]. JPX-0001; JPX-0003-10. As illustrated below in a slide prepared by Dr. Klopp, the tongue (annotated in purple) is offset (annotated in blue) from the bottom face (annotated in white) and is engageable with the rib of the first container (annotated in green) by wedging inside the groove between the rib and the depressed surface of the first container:



CDX-0003.0225; CX-0224; CX-0921. No party contests that this limitation is satisfied. See RRB at 4-47.

PUBLIC VERSION

I thus find that the Rolling Toolbox satisfies all “first container” limitations incorporated into claim 9. I also find that the Accused Products, minus the Rolling Toolbox, satisfy all “second container” limitations of claim 9. Accordingly, a “container assembly” that satisfies all limitations of claim 9 is formed when the Rolling Toolbox is combined any one of the other Accused Products.

6. Claim 16

a) “The container assembly of claim 9,”

As discussed above in connection with claim 9, the Rolling Toolbox satisfies the “first container” limitations of claim 9, and all Accused Products except for the Rolling Toolbox satisfy the “second container” limitation of claim 9. Accordingly, the Rolling Toolbox can be paired with any other Accused Product in combinations that satisfy all limitations of claim 9.

b) “wherein the first container further comprises a pair of rear wheels and a telescoping handle extending upwards from a rear wall of the first container.”

The only Accused Product Milwaukee has identified as having wheels and a telescoping handle is the Rolling Toolbox. CIB at 60. Above, I found that the Rolling Toolbox comprises a pair of rear wheels and a telescoping handle extending upwards from a rear wall of the first container. *See* section VI.A.4.b) above; *see also* JPX-0002. The Rolling Toolbox thus satisfies the additional “first container” limitations recited in claim 16. Accordingly, an infringing “container assembly” is formed when the Rolling Toolbox is combined with any one of the other Accused Products.

7. ’952 Patent Infringement Conclusions

In sum, the record evidence demonstrates that pairs of Accused Products arranged in various combinations satisfy all limitations of all asserted claims of the ’952 patent. These combinations are summarized below:

PUBLIC VERSION

- Claim 3: any Accused Product (“first container”) *plus* any Second Container Product (“second container”)
- Claim 4: any Full Width Accused Product (“first container”) *plus* any Half Width Accused Product (“second container”)
- Claim 8: Rolling Toolbox (“first container”) *plus* any Second Container Accused Product (“second container”)
- Claim 16: Rolling Toolbox (“first container”) *plus* any other Accused Product (“second container”)

Klein infringes the asserted claims when it imports the above combinations of Accused Products into the United States (JX-0010 ¶ 3), resellers infringe the asserted claims when they sell these combinations of the Accused Products (CX-0012C (O’Flaherty Dep.) at 100:22-101:15; CX-0011C (Klein Dep.) at 168:1-169:14; Tr. (Klein) at 511:21-25), and sales teams demonstrating the Accused Products and customers using the Accused Products infringe the asserted claims when they use the combinations of the Accused Products identified above (CX-0012C (O’Flaherty Dep.) at 40:3-11, 68:3-14, 100:22-101:15, 207:19-209:11).

B. Technical Prong

For a patent-based complaint, a violation of section 337 can be found “only if an industry in the United States, relating to the articles protected by the patent . . . concerned, exists or is in the process of being established.” 19 U.S.C. § 1337(a)(2). The complainant bears the burden of establishing that the domestic industry requirement is satisfied. *John Mezzalingua Assocs., Inc. v. Int’l Trade Comm’n*, 660 F.3d 1322, 1331 (Fed. Cir. 2011). The domestic industry requirement of section 337 is often described as having an economic prong and a technical prong. *Lashify, Inc. v. Int’l Trade Comm’n*, 130 F.4th 948, 954 (Fed. Cir. Mar. 5, 2025); *Certain Stringed Musical*

PUBLIC VERSION

Instruments and Components Thereof, Inv. No. 337-TA-586, Comm’n Op. at 12-14, USITC Pub. No. 4120 (Dec. 2009).

The technical prong of the domestic industry requirement is satisfied when the complainant in a patent-based section 337 investigation establishes that it is practicing or exploiting the patents at issue. See 19 U.S.C. § 1337(a)(2) and (3); *Certain Microsphere Adhesives, Process for Making Same and Prods. Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, Comm’n Op. at 8, USITC Pub. No. 2949 (Jan. 1996). “The test for satisfying the ‘technical prong’ of the industry requirement is essentially [the] same as that for infringement, *i.e.*, a comparison of domestic products to the asserted claims.” *Alloc, Inc. v. Int’l Trade Comm’n*, 342 F.3d 1361, 1375 (Fed. Cir. 2003). The technical prong may be satisfied either literally or under the doctrine of equivalents. See *Certain Ground Fault Circuit Interrupters and Products Containing Same*, Inv. No. 337-TA-739, Comm’n Op., 2012 WL 2394435, at *46 (June 8, 2012); *Certain Soft-Edged Trampolines and Components Thereof*, Inv. No. 337-TA-908, Initial Determination at 12 (Dec. 5, 2014). To prevail, the complainant must establish by a preponderance of the evidence that the domestic product practices one or more valid claims of the patent. See *Spanion*, 629 F.3d at 1349; *Certain Vision-Based Driver Assistance System Cameras and Components Thereof*, Inv. No. 337-TA-907, Comm’n Op. at 36, USITC Pub. No. 4866 (Feb. 2019). It is sufficient to show that the products practice any claim of an asserted patent, not necessarily an asserted claim of that patent. See *Certain Male Prophylactic Devices*, Inv. No. 337-TA-546, Comm’n Op. at 38, USITC Pub. No. 4005 (May 2008). In other words, there may be a violation of section 337 where the Domestic Industry Products practice one claim of an asserted patent but the Accused Products infringe a different claim of that same patent.

PUBLIC VERSION

Milwaukee asserts that the Domestic Industry Products “include each and every limitation of claims 3, 4, 8, and 16 of the ’952 Patent” and thus satisfy the technical prong of the domestic industry requirement. CIB at 9.

The asserted claims of the ’952 patent each recite a “container assembly” having a “first container” and “second container.” *See, e.g.*, ’952 patent at claim 1. Accordingly, the technical prong analysis of any asserted ’952 patent claim requires a pair of containers to be considered together. Milwaukee has identified a first set of Domestic Industry Products that can be considered the claimed first container and a second set of Domestic Industry Products that can be considered the claimed second container in each of the asserted claims. CIB at 9 (citing Tr. (Klopp) at 209:21-210:1, 213:5-11, 215:7-13, 218:4-10; CDX-0003.0060, .0068, .0077, .0082). Under Milwaukee’s technical prong theory, multiple combinations of first and second Domestic Industry Products constitute the claimed “container assembly.” The tables below summarize the groups of Domestic Industry Products that Milwaukee says can be the “first container” and “second container” in the asserted ’952 patent claims.

Domestic Industry Products Alleged to Satisfy Claim 3 of the ’952 Patent

“first container”
Large Toolbox (JPX-0015)
Toolbox (JPX-0022)
XL Toolbox (JPX-0025)
Tool Case (JPX-0021)
Compact Toolbox (JPX-0013)
XL Cooler (JPX-0024)
Vacuum (JPX-0023)
Organizer (JPX-0018)
Deep Organizer (JPX-0014)
Compact Organizer (JPX-0012)
Low-Profile Organizer (JPX-0017)
Low-Profile Compact Organizer (JPX-0016)
Compact Cooler (JPX-0011)

“second container”
Large Toolbox (JPX-0015)
Toolbox (JPX-0022)
XL Toolbox (JPX-0025)
Tool Case (JPX-0021)
Compact Toolbox (JPX-0013)
XL Cooler (JPX-0024)
Vacuum (JPX-0023)
Organizer (JPX-0018)
Deep Organizer (JPX-0014)
Compact Organizer (JPX-0012)
Low-Profile Organizer (JPX-0017)
Low-Profile Compact Organizer (JPX-0016)

PUBLIC VERSION

Rolling Modular Tool Chest (JPX-0019)
PACKOUT Rolling Toolbox (JPX-0020) ¹³

Domestic Industry Products Alleged to Satisfy Claim 4 of the '952 Patent

“first container”
PACKOUT Rolling Toolbox (JPX-0020)
Large Toolbox (JPX-0015)
Toolbox (JPX-0022)
XL Toolbox (JPX-0025)
Tool Case (JPX-0021)
XL Cooler (JPX-0024)
Organizer (JPX-0018)
Deep Organizer (JPX-0014)
Low-Profile Organizer (JPX-0017)

“second container”
Compact Toolbox (JPX-0013)
Vacuum (JPX-0023)
Compact Organizer (JPX-0012)
Low-Profile Compact Organizer (JPX-0016)

Domestic Industry Products Alleged to Satisfy Claim 8 of the '952 Patent

“first container”
PACKOUT Rolling Toolbox (JPX-0020)

“second container”
Large Toolbox (JPX-0015)
Toolbox (JPX-0022)
XL Toolbox (JPX-0025)
Tool Case (JPX-0021)
Compact Toolbox (JPX-0013)
XL Cooler (JPX-0024)
Vacuum (JPX-0023)
Organizer (JPX-0018)
Deep Organizer (JPX-0014)
Compact Organizer (JPX-0012)
Low-Profile Organizer (JPX-0017)
Low-Profile Compact Organizer (JPX-0016)

¹³ Milwaukee’s Rolling Toolbox (JPX-0020) will be referred to using the descriptor PACKOUT to distinguish it from Klein’s accused MODbox Rolling Toolbox (JPX-0002).

PUBLIC VERSION

Domestic Industry Products Alleged to Satisfy Claim 16 of the '952 Patent

“first container”	“second container”
PACKOUT Rolling Toolbox (JPX-0020)	Large Toolbox (JPX-0015)
	Toolbox (JPX-0022)
	XL Toolbox (JPX-0025)
	Tool Case (JPX-0021)
	Compact Toolbox (JPX-0013)
	XL Cooler (JPX-0024)
	Vacuum (JPX-0023)
	Organizer (JPX-0018)
	Deep Organizer (JPX-0014)
	Compact Organizer (JPX-0012)
	Low-Profile Organizer (JPX-0017)
	Low-Profile Compact Organizer (JPX-0016)
	Compact Cooler (JPX-0011)

See CIB at 9-10.

1. Claim 1

Although Milwaukee does not rely on independent claim 1 of the '952 patent to show satisfaction of the technical prong of the domestic industry requirement, it does rely on claims 3, 4, and 8, which depend from claim 1. I thus make the following findings regarding whether the Domestic Industry Products satisfy the limitations of claim 1, which are incorporated into claims 3, 4, and 8. For purposes of this analysis, I have considered whether the Accused Products meet the respective “first container” and “second container” requirements in the following groups identified by Milwaukee:

PUBLIC VERSION

“first container”
Large Toolbox (JPX-0015)
Toolbox (JPX-0022)
XL Toolbox (JPX-0025)
Tool Case (JPX-0021)
Compact Toolbox (JPX-0013)
XL Cooler (JPX-0024)
Vacuum (JPX-0023)
Organizer (JPX-0018)
Deep Organizer (JPX-0014)
Compact Organizer (JPX-0012)
Low-Profile Organizer (JPX-0017)
Low-Profile Compact Organizer (JPX-0016)
Compact Cooler (JPX-0011)
Rolling Modular Tool Chest (JPX-0019)
PACKOUT Rolling Toolbox (JPX-0020)

“second container”
Large Toolbox (JPX-0015)
Toolbox (JPX-0022)
XL Toolbox (JPX-0025)
Tool Case (JPX-0021)
Compact Toolbox (JPX-0013)
XL Cooler (JPX-0024)
Vacuum (JPX-0023)
Organizer (JPX-0018)
Deep Organizer (JPX-0014)
Compact Organizer (JPX-0012)
Low-Profile Organizer (JPX-0017)
Low-Profile Compact Organizer (JPX-0016)

See CIB at 9 (table of products for claim 3).

a) Limitations 1[Pre] and 1[a]: “A container assembly comprising: a first container comprising”

Milwaukee argues that the preamble of claim 1 of the ’952 patent is not limiting because it does not “recite[] essential structure or steps” and is not “necessary to give life, meaning, and vitality” to any of the claims. CIB at 10-11 (citing *Catalina Marketing*, 289 F.3d at 808). Klein did not address the issue of whether the claim preamble is limiting in its post-hearing brief. See RRB at 4-47.

In any event, I find the Domestic Industry Products are containers that fit together in various combinations to form a container assembly. As identified by Milwaukee, the following Domestic Industry Products comprise a first container:

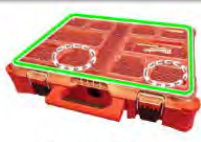
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“first container”
PACKOUT Rolling Toolbox (JPX-0020)
Rolling Modular Tool Chest (JPX-0019)
Large Toolbox (JPX-0015)
Toolbox (JPX-0022)
XL Toolbox (JPX-0025)
Tool Case (JPX-0021)
Compact Toolbox (JPX-0013)
XL Cooler (JPX-0024)
Compact Cooler (JPX-0011)
Vacuum (JPX-0023)
Organizer (JPX-0018)
Deep Organizer (JPX-0014)
Compact Organizer (JPX-0012)
Low-Profile Organizer (JPX-0017)
Low-Profile Compact Organizer (JPX-0016)

CIB at 9. These fifteen items comprise all of the Domestic Industry Products identified by Milwaukee. *See infra* section I.D.2. No party disputes that these Domestic Industry Products can be the “first container,” and I so find. *See* RRB at 4-47.

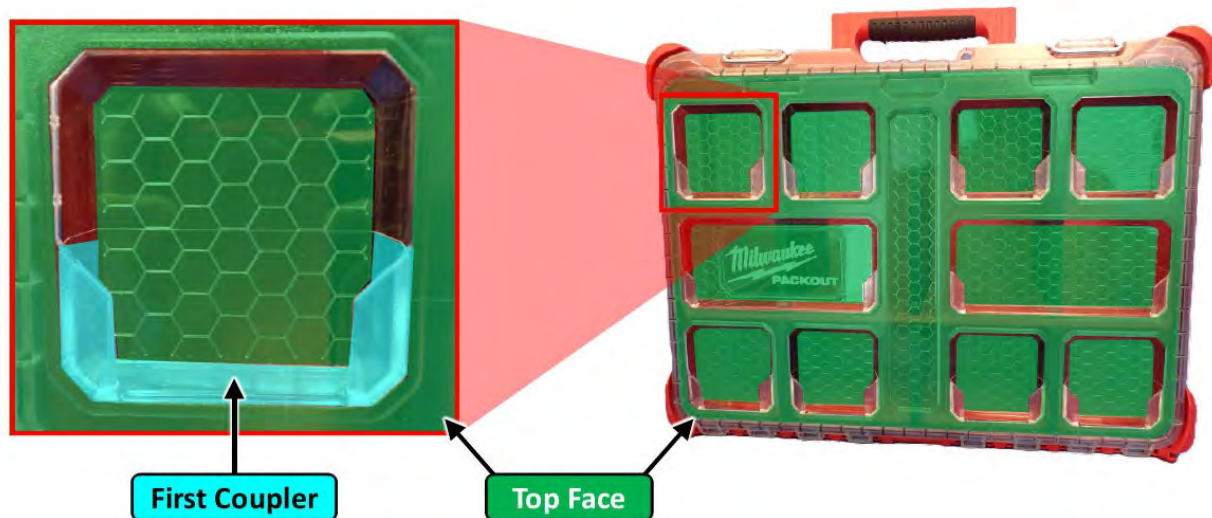
- b) **Limitation 1[a][i]: “a first coupler extending from a top face of the first container, the first coupler comprising two sidewalls, a back wall, and a rib, the back wall located between the two sidewalls, the two sidewalls and the back wall projecting above a depressed surface of the top face, and the rib extending away from the back wall in a first direction; ”**

Each of the Domestic Industry Products includes a materially identical “first” female coupler extending from a top face of the first container. The slide below depicts each Domestic Industry Product with the top face identified with a green dashed annotation, and locations of the first coupler identified with a white dashed annotation.

M		The DI Products Include Claim 1.a.i Of The '952 Patent					K
1.a a first container comprising: 1.a.i a first coupler extending from a top face of the first container, the first coupler comprising two sidewalls, a back wall, and a rib, the back wall located between the two sidewalls, the two sidewalls and the back wall projecting above a depressed surface of the top face, and the rib extending away from the back wall in a first direction;							
							
Rolling Toolbox (JPX-0020)	Rolling Modular Tool Chest (JPX-0019)	Large Toolbox (JPX-0015)	Vacuum (JPX-0023)	Organizer (JPX-0018)			
							
Deep Organizer (JPX-0014)	Toolbox (JPX-0022)	XL Toolbox (JPX-0025)	Tool Case (JPX-0021)	Compact Organizer (JPX-0012)			
							
Compact Toolbox (JPX-0013)	XL Cooler (JPX-0024)	Compact Cooler (JPX-0011)	Low-Profile Organizer (JPX-0017)	Low-Profile Compact Organizer (JPX-0016)			
JPX-0011-25; CX-0452-466							CDX-0003.21

CDX-0003C.0021; *see also* JPX-0011-25 (physical samples of Domestic Industry Products).

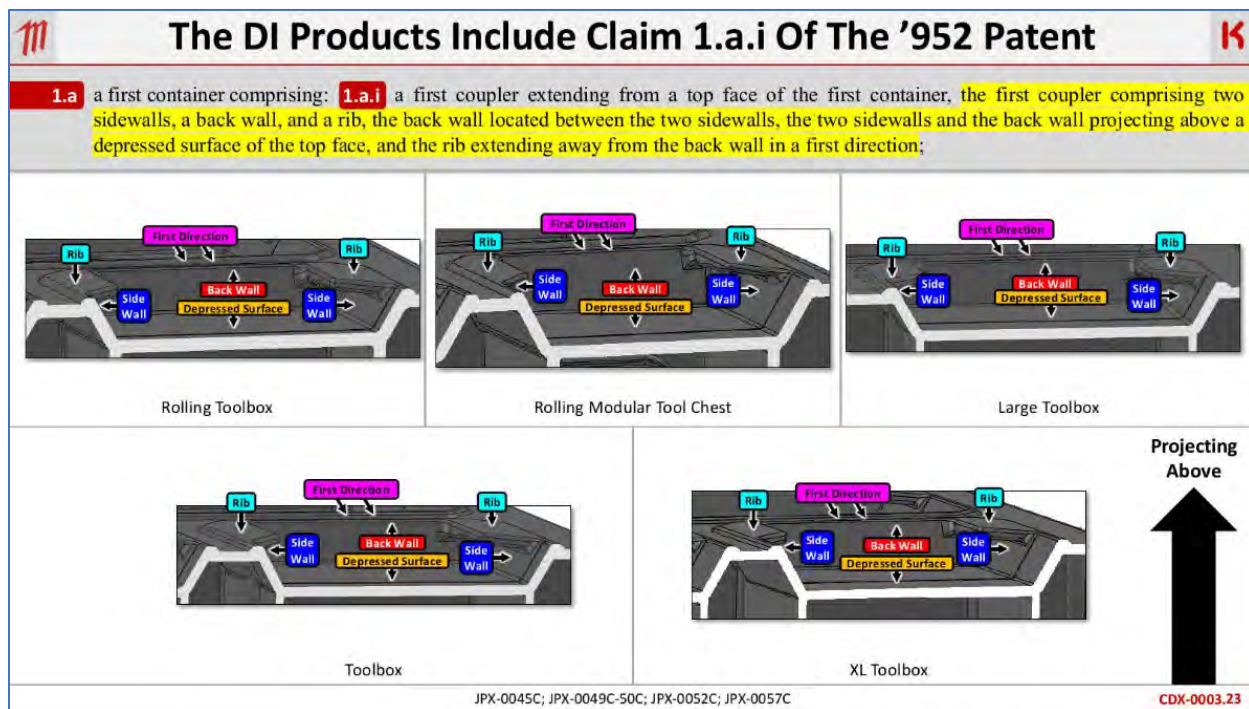
The image below shows the exemplary PACKOUT Deep Organizer, a sample of which has been entered into the record as JPX-0014. The image is annotated with a green rectangle that shows the location of the container's top face and a close-up view of a coupler on that top face:



CX-0901 (annotated).

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The claimed first coupler is identified by the light blue annotation in the image above. This female coupler comprises two sidewalls, a back wall, and a rib. Milwaukee's technical expert Dr. Klopp prepared a slide (reproduced below) illustrating the enumerated parts of the first coupler.



CDX-0003C.0023.

As illustrated in Dr. Klopp's slide, the two sidewalls (labeled with dark blue) and back wall (labeled with red) project above a depressed surface of the top face. The back wall is located between the two sidewalls and the rib (labeled with light blue) extends away from the back wall in a first direction, *i.e.*, towards the front of the container. The female first couplers in the PACKOUT Deep Organizer are materially identical to the female first couplers in the other Domestic Industry Products.

Klein argues that the female couplers in the Domestic Industry Products do not satisfy this claim limitation. RRB at 5-12. Klein's position rests on the teachings of the '952 patent

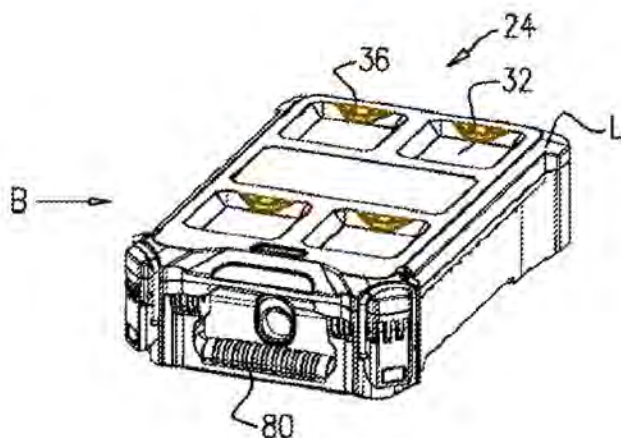
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specification, which Klein characterizes as disclosing “two distinct coupler embodiments.” *See id.* at 5. Relevant portions of the specification are discussed below.

The specification states at the outset that “[a]ccording to one particular configuration the at least one locking rib extends substantially parallel to the sliding path and according to another configuration the at least one locking rib extends substantially perpendicular and intersects the sliding path.” JX-0001 (’026 patent) at 3:49-53.¹⁴ Later, in the “General Description,” the specification describes alternative configurations for the locking rib(s) of the female coupler: (1) a first embodiment includes “a single locking rib [that] can extend at a rear end of a depressed locking location (i.e. the female coupler may comprise a single locking rib) and [is disposed] substantially perpendicular to the sliding path” and (2) a second embodiment includes “[t]wo locking ribs [that] can extend at side edges of a depressed locking location (i.e. the female coupler may comprise two locking ribs) and [are] disposed substantially parallel to the sliding path.” ’026 patent at 5:42-49; *see also id.* at 9:31-35 (“Embodiments” section of the specification); 10:11-14; 12:4-7.

The first coupler embodiment (*i.e.*, the “single locking rib”) is illustrated in Figures 1 through 6. *See* ’026 patent at 15:63-64. As an example, an excerpt of Figure 1B is reproduced below with yellow annotation drawing attention to the locking rib described in the specification:

¹⁴ As the Asserted Patents share a common specification, citations in this section will be made to the ’026 patent unless otherwise specified.



'026 patent at Fig. 1B (excerpted and annotated). For this embodiment, the specification describes “a laterally projecting locking rib 36 extending from a rear portion of the depressed locking location 32 towards a front face of the container.” '026 patent at 16:33-36. The specification further teaches that the rib 36 is configured to receive a complementary locking tongue 60, which is “laterally projecting rearwards” toward the rear portion (*i.e.*, the back wall) of the depressed locking location. *Id.* at 16:53-58.

The second coupler embodiment (*i.e.*, the “two locking ribs”) is illustrated in Figures 7 through 24 of the specification. As an example, an excerpt of Figure 8A is reproduced below with yellow annotation drawing attention to the locking ribs described in the specification:

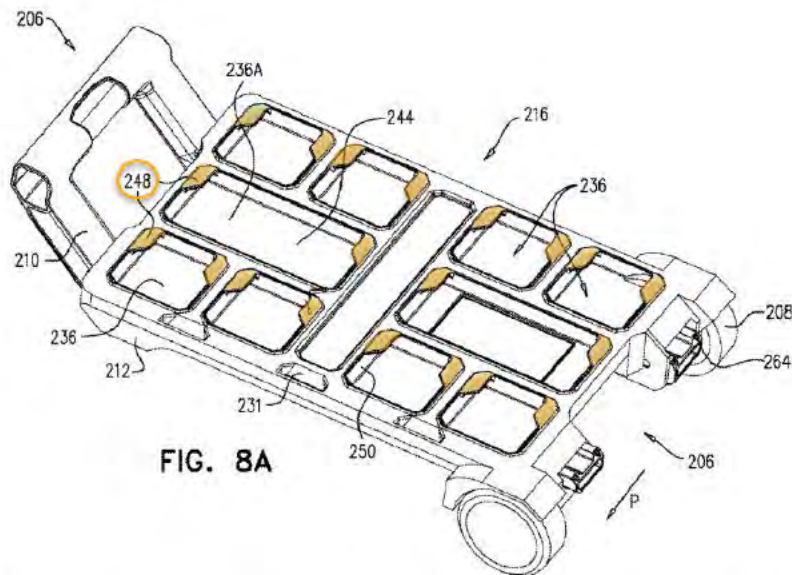


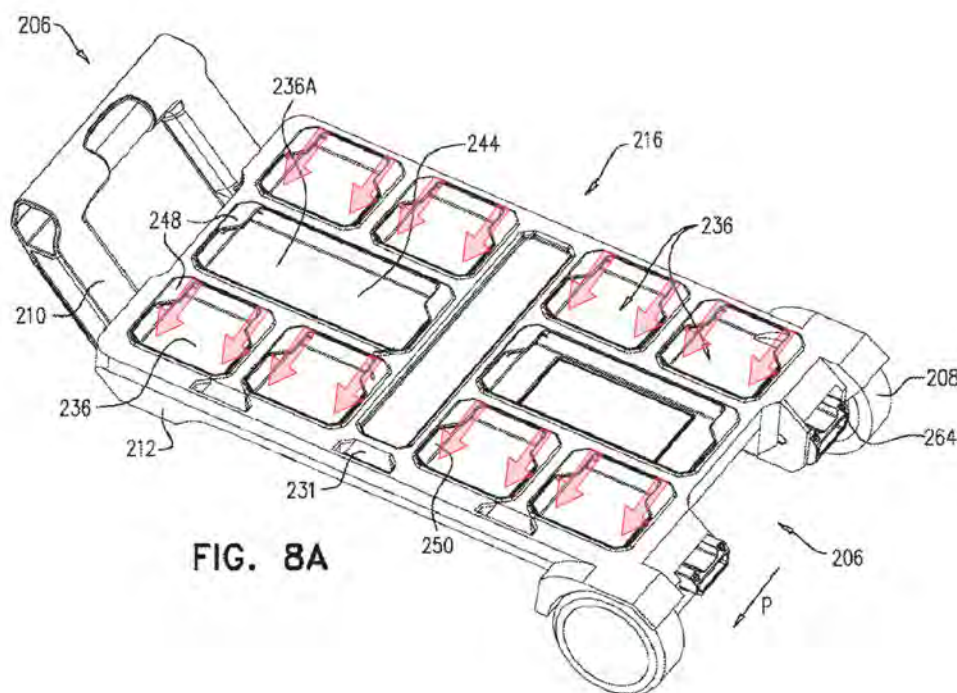
FIG. 8A

'026 patent at Fig. 8A (annotated). These “locking ribs 248 extend substantially in parallel to [the] sliding path of the container unit 202 with respect to the carrier unit 206.” *Id.* at 19:18-20. The ribs 248 of the second coupler embodiment are configured to receive complementary locking tongues that are described as “a downwardly projecting outwards protrusion 258” and “with at least one locking tongue extending along said engaging path at a second sense, opposite to said first sense, and configured for arresting engagement at a space between said locking rib and depressed surface.” JX-0001 at 19:24-34.

Klein argues that a person of ordinary skill in the art would understand from reading the passages above that reference in the claims to a rib “extending from the back wall” means the claims “are directed only to the first coupler embodiment” and that the claims do not cover the second embodiment. RRB at 9-10. Klein contends that the female couplers in the Domestic Industry Products do not practice the first coupler embodiment but instead practice the second embodiment in which two ribs extend from the side edges, and therefore the Domestic Industry Products do not practice the Asserted Claims. RRB at 9-15.

Klein's argument is not persuasive. Although Klein argues the two embodiments "are described as distinct in the specification," and that "the specification never describes any rib as **both** 'extend[ing] at [a] rear end' **and** 'extend[ing] at side edges,'" see RRB at 10 (emphasis in original), the teachings of the patent belie that assertion, as described below.

Figure 8A from the patent, shown below with annotations, demonstrates that the highlighted ribs do, in fact, extend from the rear end of the depressed surface:

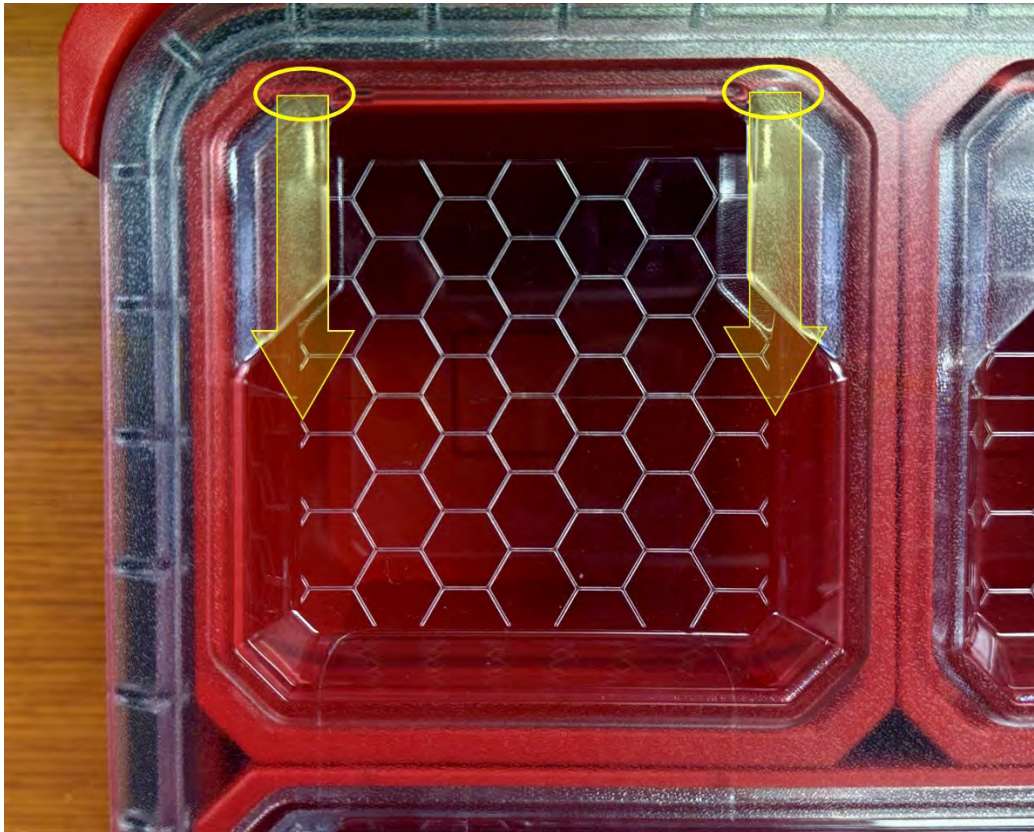


'026 patent at Fig. 8A (annotated). Thus, Figure 8A illustrates an invention with a rib not only extending from the rear wall of the depressed surface, consistent with this limitation of claim 1, but also extending from the side of the depression. Klein's argument that the specification disclaims any invention with a coupling rib extending from both the side and from the rear does not meet the legal standard for disclaimer. Any disclaimer of claim scope in a patent specification must be clear and unmistakable. *Continental Circuits LLC v. Intel Corporation*, 915 F.3d 788, 797 (Fed. Cir. 2019) ("To disavow claim scope, the specification must contain 'expressions of manifest

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exclusion or restriction, representing a clear disavowal of claim scope.”) (quoting *Epistar Corp. v. Int’l Trade Comm’n*, 566 F.3d 1321, 1335 (Fed. Cir. 2009)). Figure 8A shows Klein’s argument does not meet that standard.

Even if Klein’s claim construction argument were correct and claim 1 were limited to an embodiment with a rib extending only from a rear wall, the Domestic Industry Products would satisfy such limitation. All Domestic Industry Products have materially identical female couplers like this one from the Milwaukee PACKOUT Compact Organizer product (JPX-0012):



As illustrated by the annotation, the coupler has a rib extending away from the rear wall.

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For the above reasons, I find that all Domestic Industry Products satisfy claim limitation 1[a][i].¹⁵

c) Limitation 1[a][ii]: “a first lid pivotally attached to the first container; and ”

An inspection of the physical samples shows that each of the Domestic Industry Products has a lid pivotally attached to the container. JPX-0011-25. The pivot attachment between the lids and the containers is illustrated below in a slide prepared by Dr. Klopp:



CDX-0003C.0029. No party disputes that this limitation is satisfied. See RRB at 4-47.

I therefore find that all Domestic Industry Products satisfy this limitation.

¹⁵ Milwaukee argues that the Domestic Industry Products also satisfy this limitation under Klein’s proposed claim construction and under the doctrine of equivalents. CIB at 15. But Milwaukee fails to set forth its contentions regarding these alternate theories of infringement in detail in its post-hearing initial brief, and I therefore find that these arguments have been abandoned. See Order No. 2 at G.R. 14.1 (July 30, 2024).

PUBLIC VERSION

- d) **Limitation 1[a][iii]: “a first toggle locking latch configured to latch the first lid of the first container in a closed position; and ”**

An inspection of the physical samples shows that each of the Domestic Industry Products has a toggle locking latch configured to latch the lid in a closed position. JPX-0011-25. The location of the toggle locking latches on each Domestic Industry Product is illustrated below using green annotation in a slide prepared by Dr. Klopp:



CDX-0003C.0031. No party disputes that this limitation is satisfied. See RRB at 4-47.

I therefore find that all Domestic Industry Products satisfy this limitation.

- e) **Limitation 1[b]: “a second container comprising: ”**

As identified by Milwaukee, the following Domestic Industry Products comprise a second container:

“second container”
Large Toolbox (JPX-0015)
Toolbox (JPX-0022)
XL Toolbox (JPX-0025)
Tool Case (JPX-0021)
Compact Toolbox (JPX-0013)
XL Cooler (JPX-0024)
Vacuum (JPX-0023)
Organizer (JPX-0018)
Deep Organizer (JPX-0014)
Compact Organizer (JPX-0012)
Low-Profile Organizer (JPX-0017)
Low-Profile Compact Organizer (JPX-0016)

See CIB at 9. This list comprises all Domestic Industry Products except for the Compact Cooler (JPX-0011), Rolling Modular Tool Chest (JPX-0019), and PACKOUT Rolling Toolbox (JPX-0020).¹⁶ The products in the list will be referred to as the “Second Container Domestic Industry Products” for purposes of the technical prong analysis of claim 1 and its dependent claims.

- f) **Limitation 1[b][i]: “a second coupler extending from the second container, the second coupler comprising a tongue extending in a direction parallel to a bottom face of the second container, the tongue extends in a second direction opposite the first direction, the tongue of the second container is engageable with the rib of the first container such that the tongue engages between the rib and the depressed surface; ”**

Inspection of the physical samples of the Domestic Industry Products shows that the Second Container Domestic Industry Products and the Compact Cooler each have materially identical male couplers extending from the bottom face of the container. JPX-0011; JPX-0012; JPX-0013; JPX-0014; JPX-0015; JPX-0016; JPX-0017; JPX-0018; JPX-0021; JPX-0022;

¹⁶ Even though Milwaukee did not identify the Compact Cooler (JPX-0011), Rolling Modular Tool Chest (JPX-0019), or PACKOUT Rolling Toolbox (JPX-0020) as a “second container” for purposes of the analysis of claim 1 and its dependent claims, these products nevertheless satisfy many limitations recited in claim 1. In the interest of efficiency, I will make findings that these products satisfy these limitations where applicable.

PUBLIC VERSION

JPX-0023; JPX-0024; JPX-0025. These male couplers comprise a tongue extending in a direction parallel to the bottom face of the container and are engageable with the rib of the female coupler in a first container such that the tongue engages between the rib and the depressed surface. I have confirmed the engagement between the male and female couplers using physical samples of the Domestic Industry Products.

Klein argues that the male couplers of the Second Container Domestic Industry Products and Compact Cooler do not satisfy the requirement of a tongue that “extends in a second direction opposite the first direction” of the tongue on the first container. *See* RRB at 16-18. This argument is an extension of Klein’s argument, addressed in section VI.A.1.b) above, that the female couplers in the Domestic Industry Products do not have the claimed “rib extending away from the rear wall” in a first direction. *Id.* Klein argues that, because the rib in the female couplers does not extend toward the front of the container in a first direction, then the male coupler on the mated container cannot extend in a “second direction opposite the first direction.” *Id.* But as discussed above, Klein’s arguments as to the “rib” and “first direction” are not persuasive, and Klein’s arguments as to the “second direction” are equally not persuasive for the same reasons.

I find that the Second Container Domestic Industry Products and Compact Cooler practice the “second coupler” limitation.

g) Limitation 1[b][ii]: “a second lid pivotally attached to the second container; ”

For the reasons stated in section above, the Second Container Domestic Industry Products satisfy this limitation. No party contests that this limitation is satisfied. *See* RRB at 4-47.

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- h) Limitation 1[b][iii]: “a second toggle locking latch configured to latch the second lid of the second container in a closed position; ”**

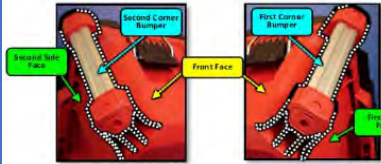
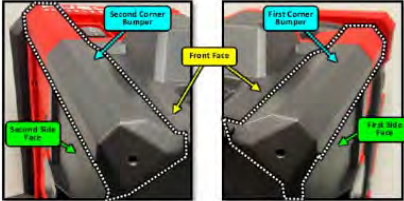
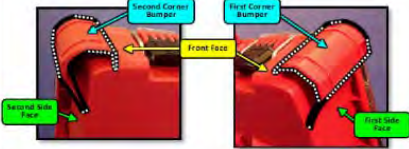
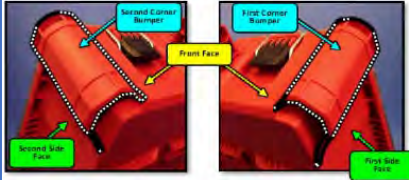
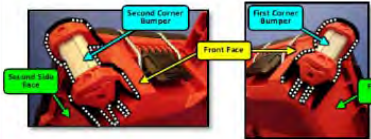
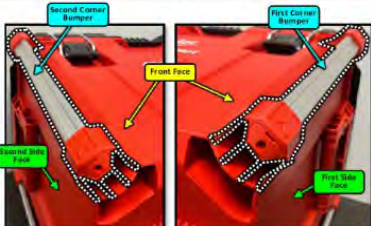
For the reasons stated in section above, the Second Container Domestic Industry Products satisfy this limitation. No party contests that this limitation is satisfied. *See* RRB at 4-47.

- i) Limitations 1[b][iv] through 1[b][viii]: “a front face; a first side face; an opposing second side face; a first corner bumper coupled to the second container between the front face and the first side face, the first corner bumper defining a first outer surface that faces away from each of the front face and the first side face; and a second corner bumper coupled to the second container between the front face and the second side face, and the second corner bumper defining a second outer surface that faces away from each of the front face and the second side face; ”**

Physical examination of all Domestic Industry Products shows they all have materially identical front and side faces; the front faces face outwards from the front of the container, and the side faces face sideways from the sides of the container. JPX-0011-25. Insepction also shows that the Second Container Domestic Industry Products, Rolling Modular Tool Chest, and PACKOUT Rolling Toolbox each have a corner bumper located between the front face and each side face such that the corner bumper defines an outer surface that faces away from each of the front face and the first side face. JPX-0012-25. As illustrated in the slides below prepared by Dr. Klopp, the corner bumpers are coupled to its respective container because each corner bumper is either (a) made from a separate piece of plastic or metal and coupled or connected to the container or (b) integrally molded with the container. *See* Tr. (Klopp) at 203:18-204:5.

The DI Products Include Claims 1.b.iv-viii Of The '952 Patent

1.b a second container comprising: **1.b.iv** a front face; **1.b.v** a first side face; **1.b.vi** an opposing second side face; **1.b.vii** a first corner bumper coupled to the second container between the front face and the first side face, the first corner bumper defining a first outer surface that faces away from each of the front face and the first side face; and **1.b.viii** a second corner bumper coupled to the second container between the front face and the second side face, and the second corner bumper defining a second outer surface that faces away from each of the front face and the second side face;

 Large Toolbox (JPX-0015)	 Vacuum (JPX-0023)	 Organizer (JPX-0018)
 Deep Organizer (JPX-0014)	 Toolbox (JPX-0022)	 XL Toolbox (JPX-0025)

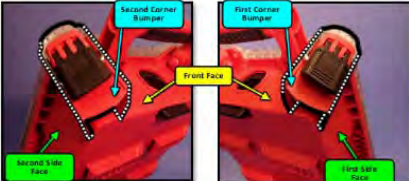
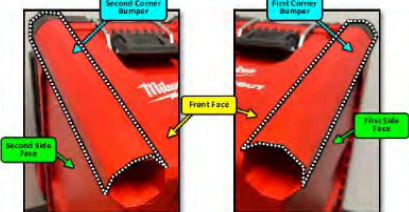
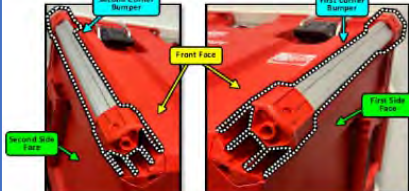
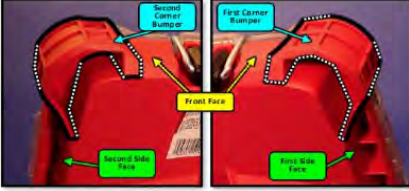
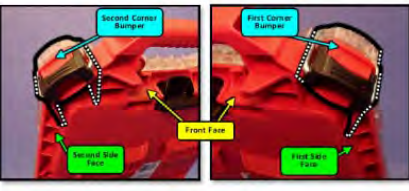
JPX-0014-15; JPX-0018; JPX-0022-23; JPX-0025; CX-0626-631; CX-0634; CX-0644-652

CDX-0003.44

CDX-0003.0044; JPX-0014-15; JPX-0018; JPX-0022-23; JPX-0025; CX-0626-631; CX-0634; CX-0644-652.

The DI Products Include Claims 1.b.iv-viii Of The '952 Patent

1.b a second container comprising: **1.b.iv** a front face; **1.b.v** a first side face; **1.b.vi** an opposing second side face; **1.b.vii** a first corner bumper coupled to the second container between the front face and the first side face, the first corner bumper defining a first outer surface that faces away from each of the front face and the first side face; and **1.b.viii** a second corner bumper coupled to the second container between the front face and the second side face, and the second corner bumper defining a second outer surface that faces away from each of the front face and the second side face;

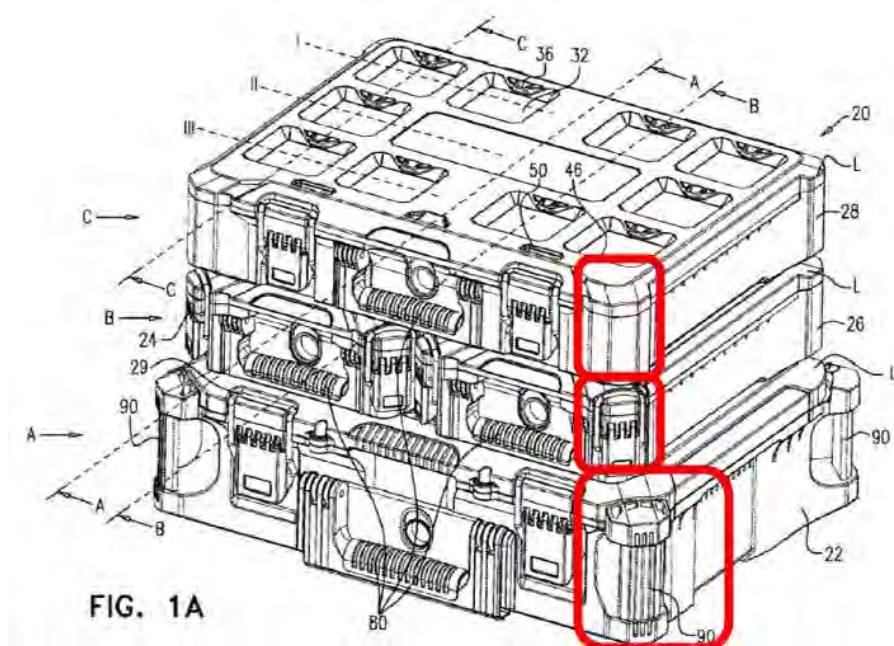
 Tool Case (JPX-0021)	 Compact Organizer (JPX-0012)	 Compact Toolbox (JPX-0013)
 XL Cooler (JPX-0024)	 Low-Profile Organizer (JPX-0017)	 Low-Profile Compact Organizer (JPX-0016)

JPX-0012-13; JPX-0016-17; JPX-0021; JPX-0024; CX-0635-643; CX-0653-661

CDX-0003.45

CDX-0003.0045; JPX-0012-13; JPX-0016-17; JPX-0021; JPX-0024; CX-0635-643; CX-0653-661.

Milwaukee analogizes the corner bumpers of the Domestic Industry Products to various features shown in Figure 1A of the patent:



CIB at 24 (showing '952 patent Figure 1A with red annotations).

In response, Klein argues that only the structures labelled 90 on the bottom container in the stack can be considered “corner bumpers” and that the corner structures in the top-most and middle container in the stack are merely hollow, integrally molded structures or toggle locking latches, not corner bumpers. RRB at 29-34. Klein argues that because the Domestic Industry Products have no structure like element 90, those products have no corner bumpers. *Id.*

Klein’s argument is not persuasive. The intrinsic evidence does not limit the scope of the claimed corner bumpers to the bottom container shown in Figure 1A. The specification states that “*some* of the containers *can be* configured with fender-like protectors 90 at their corners,” ’952

patent at 17:49-51 (emphasis added), and this open-ended language is neither definitional nor a clear and unmistakable disavowal that warrants limiting the scope of the claim. *Cf. Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 906 (Fed. Cir. 2004) (“Even when the specification describes only a single embodiment, the claims of the patent will not be read restrictively unless the patentee has demonstrated a clear intention to limit the claim scope using ‘words or expressions of manifest exclusion or restriction.’” (quoting *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1327 (Fed. Cir. 2002))). Moreover, several other figures, including Figure 1A, show alternate corner bumper embodiments. For example, as shown inside the red annotations in the top two containers of Figure 1A above, the patent illustrates different structures that protrude from the corners of the containers. Additionally, other passages in the specification broadly describe that “[c]orners of the utility module can be reinforced” without limiting the type of structure that provides reinforcement. ’952 patent at 6:35.

Klein also argues that certain structures cannot be “corner bumpers” because they are integrally molded to the rest of the container. RRB at 32-33. This argument fails for the reasons discussed in section VI.A.1.i) above.

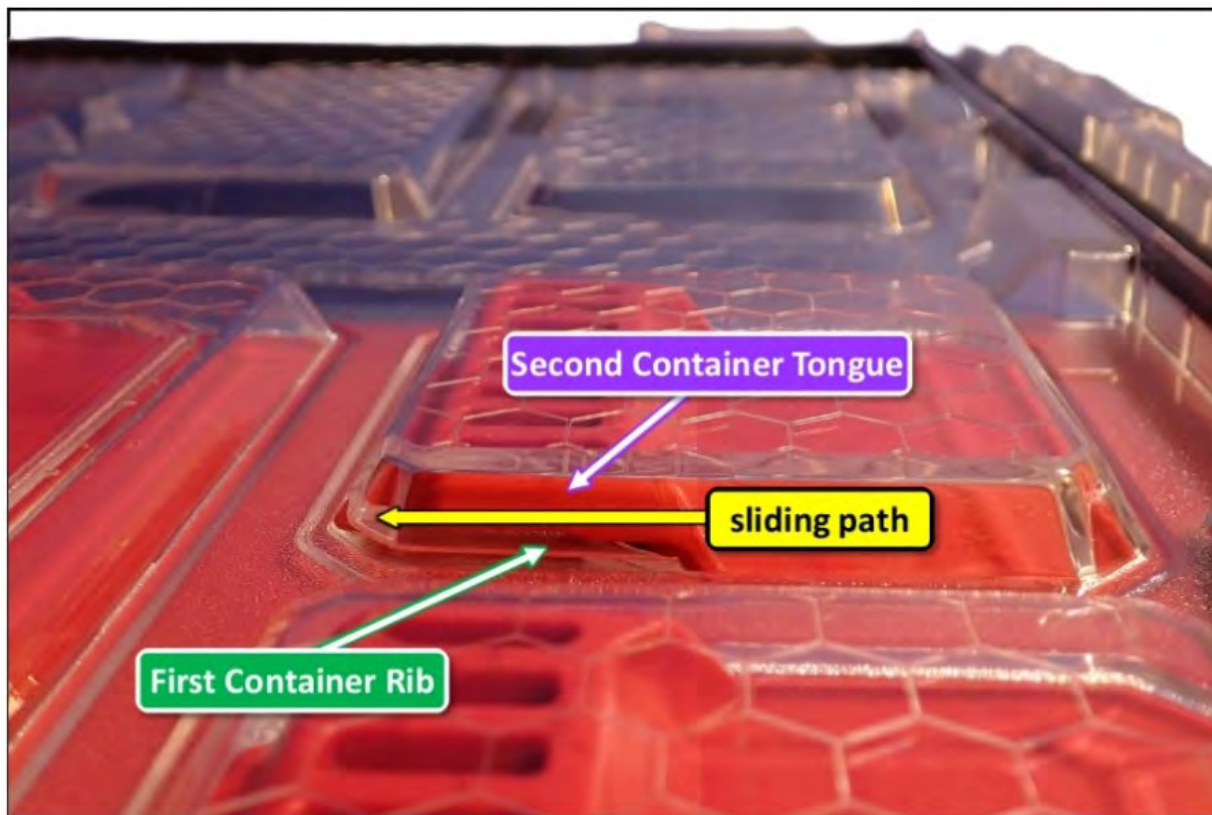
For these reasons, I find that the Second Container Domestic Industry Products satisfy this claim 1 limitation.

- j) **Limitation 1[b][ix]: “wherein the first and second couplers of the first and second containers engage each other when the first and second containers are slid with respect to each other along a sliding path defined by the rib and the tongue; ”**

Inspection of the physical samples of the Domestic Industry Products shows that each of the male couplers on the Second Container Domestic Industry Products and Compact Cooler can slide to engage the female couplers on a mated Domestic Industry Product. JPX-0011-25. As illustrated below in a slide prepared by Dr. Klopp, the sliding engagement occurs when the male

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and female couplers move with respect to each other along a sliding path (annotated in yellow) defined by the male and female couplers in motion and by the rib (annotated in green) and tongue (annotated in purple):



CDX-0003C.0049.

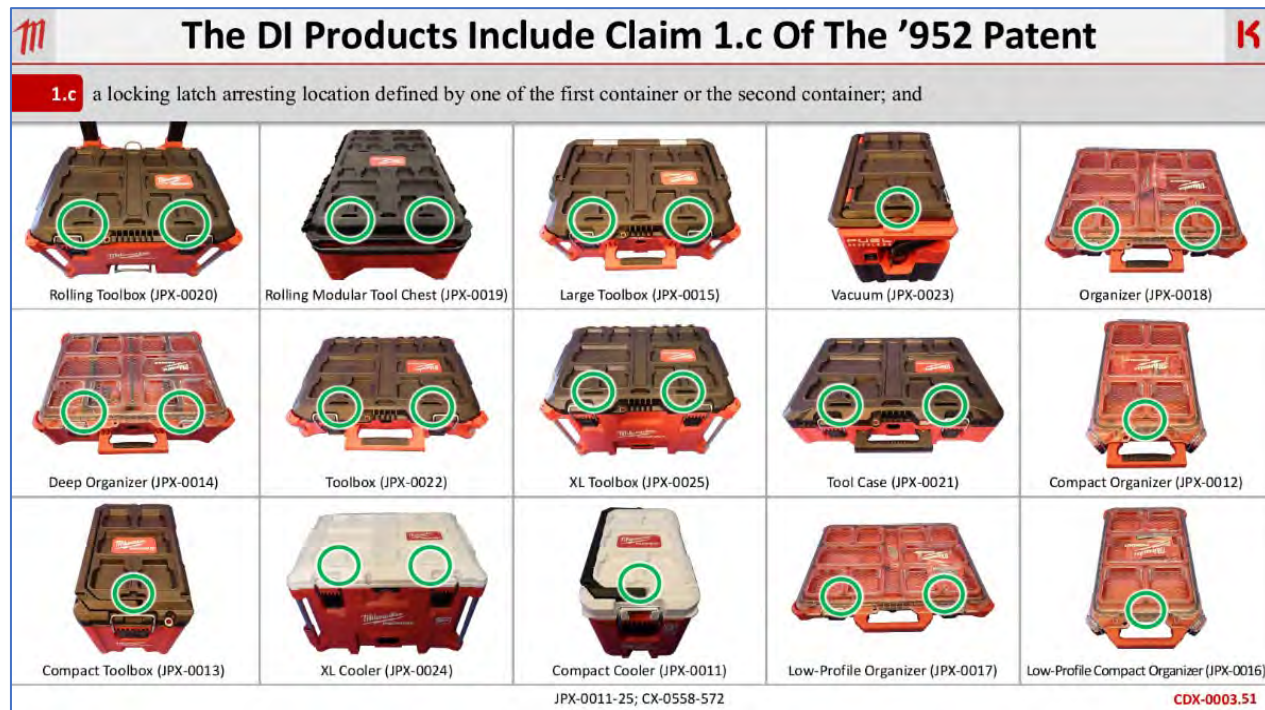
No party contests that this limitation is satisfied. *See* RRB at 4-47. Accordingly, I find that the Domestic Industry Products satisfy this limitation.

k) Limitation 1[c]: “a locking latch arresting location defined by one of the first container or the second container; and ”

Inspection of the of the physical samples of the Domestic Industry Products demonstrates that all containers include materially identical locking latch arresting locations configured to receive another container’s locking latch when coupled or connected together so that sliding

PUBLIC VERSION

between the two containers is prevented. The locking latch arresting locations are identified in the below slide prepared by Dr. Klopp:



CDX-0003C.0051. No party contests that this limitation is satisfied. See RRB at 4-47.

I therefore find that the Domestic Industry Products satisfy this limitation.

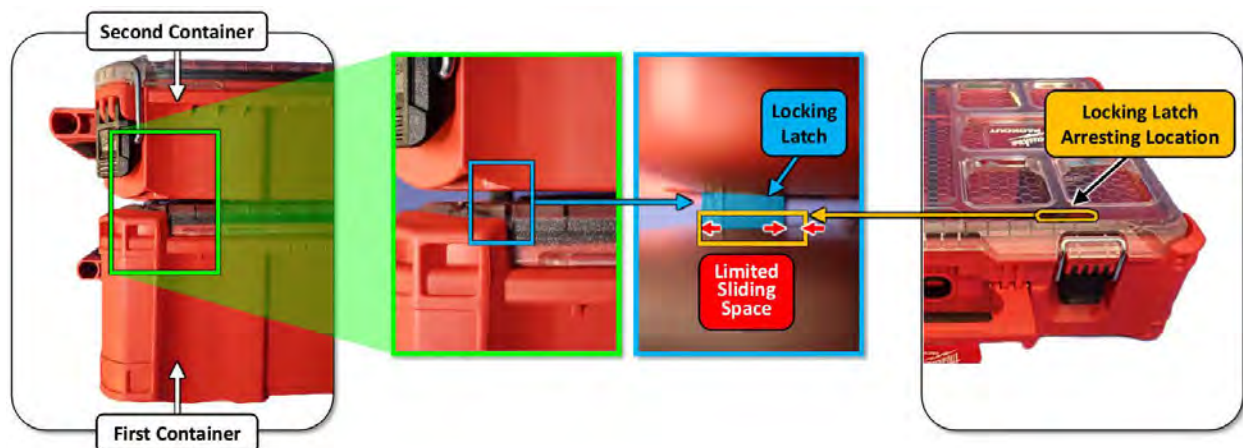
- I) **Limitation 1[d]: “a locking latch coupled to the other of the first container or the second container, the locking latch positionable in a locked position engaging the locking latch arresting location thereby limiting sliding displacement of the first container with respect to the second container.”**

Inspection of the physical samples of the Domestic Industry Products—excluding the Rolling Modular Tool Chest (JPX-0019) and PACKOUT Rolling Toolbox (JPX-0020)—show that they have materially identical locking latches coupled or connected to the other of the first or second container. JPX-0011-18; JPX-0021-25. The slide below prepared by Dr. Klopp shows the location of the locking latches with white annotation:

M		The DI Products Include Claim 1.d Of The '952 Patent				K	
1.d a locking latch coupled to the other of the first container or the second container, the locking latch positionable in a locked position engaging the locking latch arresting location thereby limiting sliding displacement of the first container with respect to the second container.							
 Large Toolbox (JPX-0015)		 Vacuum (JPX-0023)		 Organizer (JPX-0018)		 Deep Organizer (JPX-0014)	
 Toolbox (JPX-0022)		 XL Toolbox (JPX-0025)		 Tool Case (JPX-0021)		 Compact Organizer (JPX-0012)	
 XL Cooler (JPX-0024)		 Compact Cooler (JPX-0011)		 Low-Profile Organizer (JPX-0017)		 Low-Profile Compact Organizer (JPX-0016)	
JPX-0011-18; JPX-0021-25; CX-0538-550							
CDX-0003.53							

CDX-0003C.0053.

As illustrated below, each locking latch (annotated with blue) is positionable in the locking latch arresting location (annotated with orange). There is limited space (annotated with red arrows) for the first container to engage in sliding displacement relative to the second container when the first and second containers are engaged.



CDX-0003C.0054.

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I find that, with the exception of the Rolling Modular Tool Chest (JPX-0019) and PACKOUT Rolling Toolbox (JPX-0020), each Domestic Industry Product has a locking latch in accordance with limitation 1[d]. I find that the Rolling Modular Tool Chest (JPX-0019) and PACKOUT Rolling Toolbox (JPX-0020) do not have a locking latch satisfying limitation 1[d]. Accordingly, the Rolling Modular Tool Chest and the PACKOUT Rolling Toolbox can only form a “container assembly” protected by the patent when combined with one of the Second Container Domestic Industry Products, each of which has a locking latch in satisfaction of limitation 1[d].

In summary, a container assembly that satisfies the limitations of claim 1 is formed when any Domestic Industry Product is combined with a Second Container Domestic Industry Product.

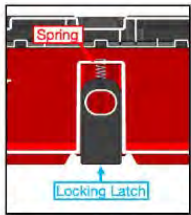
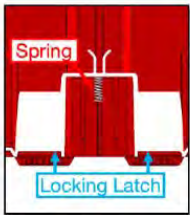
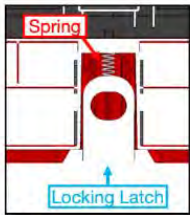
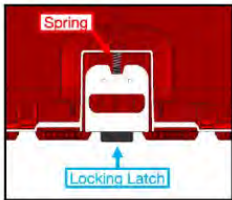
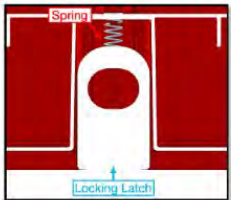
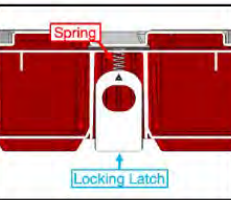
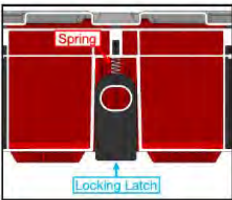
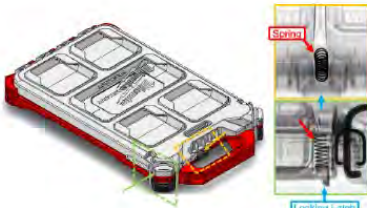
2. Claim 3

a) “The container assembly of claim 1,”

As discussed above, the Domestic Industry Products can be paired in combinations that satisfy all limitations of claim 1.

b) “wherein the locking latch is spring biased to engage with the locking latch arresting location.”

Inspection of the physical samples of the Domestic Industry Products—excluding the Rolling Modular Tool Chest (JPX-0019) and PACKOUT Rolling Toolbox (JPX-0020)—show that each of the locking latches locks into place because a spring exerts a force on the latch, thus preventing the two containers from sliding with respect to each other. JPX-0011-18; JPX-0021-25. The action of the springs (annotated in red) is illustrated in the two slides below prepared by Dr. Klopp:

 The DI Products Include Claim 3 Of The '952 Patent 				
3 The container assembly of claim 1, wherein the locking latch is spring biased to engage with the locking latch arresting location.				
 Large Toolbox	 Toolbox	 XL Toolbox	 Tool Case	
 XL Cooler	 Compact Cooler	 Compact Organizer	 Organizer	 Deep Organizer
JPX-0044C-47C; JPX-0050C; JPX-0052C-53C; JPX-0055C; JPX-0058C CDX-0003.57				
 The DI Products Include Claim 3 Of The '952 Patent 				
3 The container assembly of claim 1, wherein the locking latch is spring biased to engage with the locking latch arresting location.				
 Compact Tool Box		 Vacuum		
 Low-Profile Organizer		 Low-Profile Compact Organizer		
JPX-0023; JPX-0048C; JPX-0054C; JPX-0056C; CX-0551-557 CDX-0003.58				

CDX-0003C.0057-58; *see also* JPX-0044C-47C; JPX-0050C; JPX-0052C-53C; JPX-0055C; JPX-0058C; JPX-0023; JPX-0048C; JPX-0054C; JPX-0056C; CX-0551-57.

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I find that all of the Domestic Industry Products except for the Rolling Modular Tool Chest (JPX-0019) and PACKOUT Rolling Toolbox (JPX-0020) meet this limitation. Accordingly, the Rolling Modular Tool Chest (JPX-0019) and PACKOUT Rolling Toolbox (JPX-0020) can only form an infringing “container assembly” when each is combined with one of the Second Container Domestic Industry Products, each of which has a locking latch meeting the limitations of claim 3.

In summary, a container assembly that practices claim 3 is formed when any Domestic Industry Product is combined with a Second Container Domestic Industry Product.

3. Claim 4

a) “The container assembly of claim 1,”

As discussed above, the Domestic Industry Products can be paired in combinations that satisfy all limitations of claim 1.

b) “wherein a width of the second container is half of a width of the first container, and the second container is located on top of the first container.”

For purposes of the claim 4 analysis, Milwaukee has identified only a subset of the Domestic Industry Products as corresponding to the claimed “first container” and “second container”:

“first container”
PACKOUT Rolling Toolbox (JPX-0020)
Large Toolbox (JPX-0015)
Toolbox (JPX-0022)
XL Toolbox (JPX-0025)
Tool Case (JPX-0021)
XL Cooler (JPX-0024)
Organizer (JPX-0018)
Deep Organizer (JPX-0014)
Low-Profile Organizer (JPX-0017)

“second container”
Compact Toolbox (JPX-0013)
Vacuum (JPX-0023)
Compact Organizer (JPX-0012)
Low-Profile Compact Organizer (JPX-0016)

PUBLIC VERSION

See CIB at 9-10. For purposes of the '952 patent domestic industry technical prong analysis, the products in the left column will be referred to as the “Full Width Domestic Industry Products” and the products in the right column will be referred to as the “Half Width Domestic Industry Products.”

An inspection of the physical samples shows that the width of each of the Half Width Domestic Industry Products is approximately half the width of the Full Width Domestic Industry Products. JPX-0012; JPX-0013; JPX-0014; JPX-0015; JPX-0016; JPX-0017; JPX-0018; JPX-0020; JPX-0021; JPX-0022; JPX-0023; JPX-0024; JPX-0025. In addition, Milwaukee's expert Dr. Klopp prepared a demonstrative slide listing the widths of the first and second containers as obtained by CAD drawings of the containers:

The DI Products Include Claim 4 Of The '952 Patent	
4 The container assembly of claim 1, wherein a width of the second container is half of a width of the first container, and the second container is located on top of the first container.	
Width of claimed “first container”	Width of claimed “second container”
Rolling Toolbox (JPX-0020): 22.1 inches	Compact Toolbox (JPX-0013): 9.8 inches
XL Toolbox (JPX-0025): 21.8 inches	Vacuum (JPX-0023): 10.5 inches
Large Toolbox (JPX-0015): 22.1 inches	Compact Organizer (JPX-0012): 9.8 inches
Toolbox (JPX-0022): 22.1 inches	Low-Profile Compact Organizer (JPX-0016): 9.8 inches
Tool Case (JPX-0021): 20.7 inches	
XL Cooler (JPX-0024): 23 inches	
Deep Organizer (JPX-0014): 19.7 inches	
Organizer (JPX-0018): 19.7 inches	
Low-Profile Organizer (JPX-0017): 19.7 inches	

CX-0722-726; CX-0728-730; CX-0732-736 CDX-0003,63

CDX-0003C.0063; *see also* CX-0722-26, CX-0728-30, CX-0732-36.

No party disputes that the Half Width Domestic Industry Products are configured to be attached on top of the Full Width Domestic Industry Products. *See* RRB at 4-47. The Full Width

PUBLIC VERSION

Domestic Industry Products and Half Width Domestic Industry Products listed above therefore satisfy the respective limitations of claim 4. Accordingly, a container assembly that practices claim 4 is formed when a Full Width Domestic Industry Product is combined with a Half Width Domestic Industry Product.¹⁷

4. Claim 8

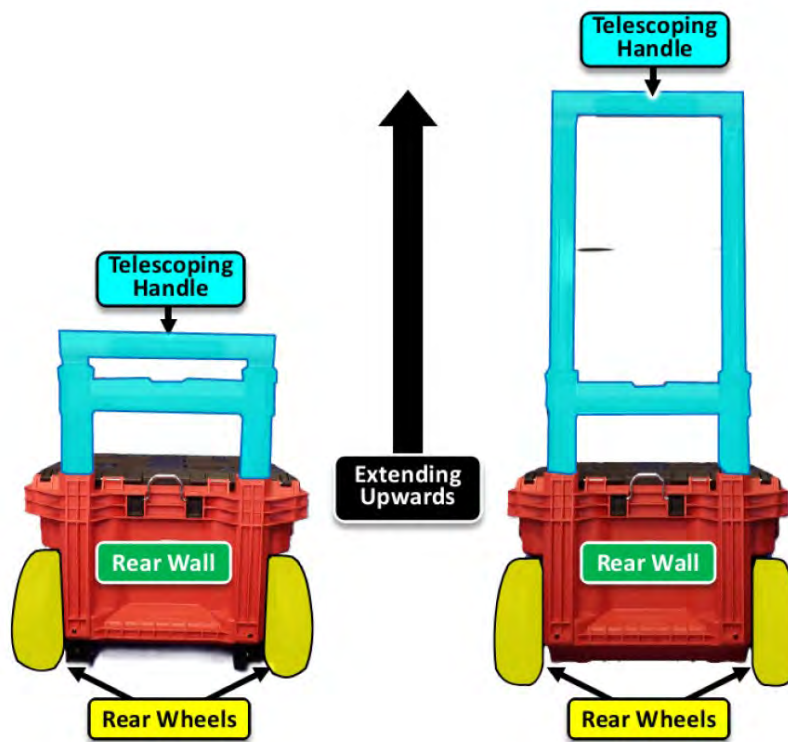
a) “The container assembly of claim 1,”

As discussed above, the Domestic Industry Products can be paired in combinations that satisfy all limitations of claim 1.

b) “wherein the first container further comprises a pair of rear wheels and a telescoping handle extending upwards from a rear wall of the first container.”

This limitation requires that the first container comprise a pair of rear wheels and a telescoping handle extending upwards from a rear wall of the first container. The only Domestic Industry Product Milwaukee has identified as having wheels and a telescoping handle is the PACKOUT Rolling Toolbox. CIB at 10, 33. An inspection of the PACKOUT Rolling Toolbox shows that it comprises a pair of rear wheels and a telescoping handle extending upwards from the rear wall:

¹⁷ Milwaukee argues that the Domestic Industry Products also satisfy this limitation under the doctrine of equivalents. CIB at 33. But Milwaukee fails to set forth its contentions in detail in its post-hearing initial brief, and I therefore find that this argument has been abandoned. See Order No. 2 at G.R. 14.1.



JPX-0020; CX-1052-53; CDX-0003C.0075. I find the PACKOUT Rolling Toolbox thus satisfies the additional “first container” limitations recited in claim 8, but no other Domestic Industry Product has been shown to satisfy the additional limitations of claim 8. Accordingly, a container assembly that practices claim 8 is formed when the PACKOUT Rolling Toolbox is combined with a Second Container Domestic Industry Product.

5. Claim 9

Although Milwaukee does not rely on independent claim 9 of the '952 patent to show satisfaction of the technical prong of the domestic industry requirement, it does rely on claim 16, which depends from claim 9. I thus make findings regarding whether the Domestic Industry Products satisfy the limitations of claim 9.

PUBLIC VERSION

Milwaukee only contends a subset of the Domestic Industry Products are protected by claim 9. Specifically, Milwaukee's analysis of products meeting the "first container" and "second container" limitations is limited as follows:

"first container"	"second container"
PACKOUT Rolling Toolbox (JPX-0020)	Large Toolbox (JPX-0015)
	Toolbox (JPX-0022)
	XL Toolbox (JPX-0025)
	Tool Case (JPX-0021)
	Compact Toolbox (JPX-0013)
	XL Cooler (JPX-0024)
	Vacuum (JPX-0023)
	Organizer (JPX-0018)
	Deep Organizer (JPX-0014)
	Compact Organizer (JPX-0012)
	Low-Profile Organizer (JPX-0017)
	Low-Profile Compact Organizer (JPX-0016)
	Compact Cooler (JPX-0011)

See CIB at 10 (table of products for claim 16). The list of "second container" products Milwaukee identified for claims 9 and 16 is identical to the list of "second container" products identified for claims 1 and 3, with the addition of the Compact Cooler (JPX-0011).

Most of the limitations of claim 9 cover subject matter identical to the limitations of claim 1 discussed above. Under the same analysis described above in connection with claim 1, I find the following requirements for the "first container" and "second container" in claim 9 are satisfied by the respective Domestic Industry Products listed in the above table, as briefly summarized below:

9. [Pre] A container assembly comprising:

See section VI.B.1.a) above. The Domestic Industry Products are containers that fit together in various combinations to form a container assembly.

[a] a first container comprising:

See section VI.B.1.a) above. Milwaukee has identified the PACKOUT Rolling Toolbox as the only Domestic Industry Product that satisfies the "first container" limitation. See CIB at 10.

PUBLIC VERSION

[a.i] a first coupler extending from a top face of the first container, the first coupler comprising two sidewalls, a back wall, and a rib, the back wall located between the two sidewalls, the two sidewalls and the back wall projecting above a depressed surface of the top face, and the rib extending away from the back wall in a first direction;

See section VI.B.1.b) above.

[a.ii] a first lid pivotally attached to the first container; and

See section VI.B.1.c) above.

[a.iii] a first toggle locking latch configured to latch the first lid of the first container in a closed position; and

See section VI.B.1.d) above.

[b] a second container comprising:

See section VI.B.1.e) above. Milwaukee has identified all Accused Products, except for the Rolling Modular Tool Chest and the PACKOUT Rolling Toolbox, as the “second container.”

See CIB at 10.

[b.i] a second coupler extending from the second container, the second coupler comprising a tongue extending in a direction parallel to a bottom face of the second container, the tongue extends in a second direction opposite the first direction, the tongue of the second container is engageable with the rib of the first container such that the tongue engages between the rib and the depressed surface, wherein the second coupler of the second container extends from the bottom face of the second container such that the tongue is offset from at least a portion of the bottom face of the second container and wherein the rib engages between the tongue and the bottom face of the second container;

This limitation is unique to claim 9 and is not found in claim 1. I address it separately below.

[b.ii] a second lid pivotally attached to the second container; and

PUBLIC VERSION

See section VI.B.1.g) above. The Second Container Domestic Industry Products and Compact Cooler Satisfy this limitation.

[b.iii] a second toggle locking latch configured to latch the second lid of the second container in a closed position;

See section VI.B.1.h) above. The Second Container Domestic Industry Products and Compact Cooler Satisfy this limitation.

[b.iv] wherein the first and second couplers of the first and second containers engage each other when the first and second containers are slid with respect to each other along a sliding path defined by the rib and the tongue;

See section VI.B.1.j) above.

[c] a locking latch arresting location defined by one of the first container or the second container; and

See section VI.B.1.k) above.

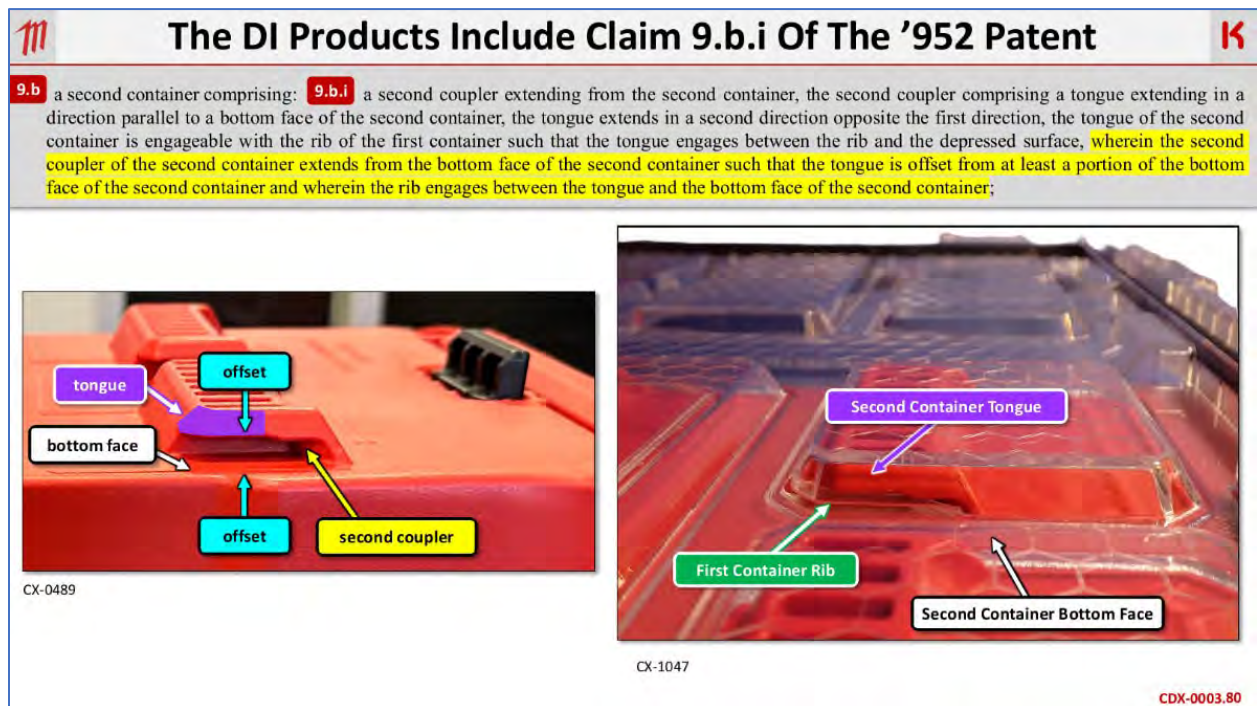
[d] a locking latch coupled to the other of the first container or the second container, the locking latch positionable in a locked position engaging the locking latch arresting location thereby limiting sliding displacement of the first container with respect to the second container.

See section VI.B.1.l) above.

As noted above, the only limitation in claim 9 not found in claim 1 is limitation 9[b][i], which recites: “a second coupler extending from the second container, the second coupler comprising a tongue extending in a direction parallel to a bottom face of the second container, the tongue extends in a second direction opposite the first direction, the tongue of the second container is engageable with the rib of the first container such that the tongue engages between the rib and the depressed surface, wherein the second coupler of the second container extends from the bottom face of the second container such that the tongue is offset from at least a portion of the bottom face

of the second container and wherein the rib engages between the tongue and the bottom face of the second container.”

An inspection of the physical samples of the Domestic Industry Products, minus the Rolling Modular Tool Chest and PACKOUT Rolling Toolbox, demonstrates that they satisfy limitation 9[b][i]. JPX-0011-18; JPX-0021-25. Each of the Second Container Domestic Industry Products and Compact Cooler have a male coupler as discussed in section VI.B.1.f) above. **Shows they each** sdfAs illustrated in the slide below prepared by Dr. Klopp, the tongue (annotated in purple) is offset (annotated in blue) from the bottom face (annotated in white) and is engageable with the rib of the first container (annotated in green) by wedging inside the groove between the rib and the depressed surface of the first container:



CDX-0003C.0080; CX-0489, CX-1047.

PUBLIC VERSION

I thus find that the PACKOUT Rolling Toolbox satisfies all “first container” limitations incorporated into claim 9. I also find that the Accused Products, minus the Rolling Modular Tool Chest and PACKOUT Rolling Toolbox, satisfy all “second container” limitations of claim 9.

Accordingly, a “container assembly” that practices claim 9 is formed when the PACKOUT Rolling Toolbox is combined any one of the Second Container Domestic Industry Products or Compact Cooler.

6. Claim 16

a) “The container assembly of claim 9, ”

As discussed above in connection with claim 9, the PACKOUT Rolling Toolbox satisfies the “first container” limitations of claim 9, and all Accused Products except for the Rolling Modular Tool Chest and PACKOUT Rolling Toolbox satisfy the “second container” limitation of claim 9. Accordingly, the PACKOUT Rolling Toolbox can be paired with any Second Container Domestic Industry product or Compact Cooler in combinations that satisfy all limitations of claim 9.

b) “wherein the first container further comprises a pair of rear wheels and a telescoping handle extending upwards from a rear wall of the first container.”

The only Domestic Industry Product Milwaukee has identified as having wheels and a telescoping handle is the PACKOUT Rolling Toolbox. CIB at 60. Above I found that the PACKOUT Rolling Toolbox comprises a pair of rear wheels and a telescoping handle extending upwards from a rear wall of the first container. *See* section VI.B.4.b) above; *see also* JPX-0020. The PACKOUT Rolling Toolbox thus satisfies the additional “first container” limitations recited in claim 16. Accordingly, a “container assembly” that practices claim 16 is formed when the

PUBLIC VERSION

PACKOUT Rolling Toolbox is combined with any Second Container Domestic Industry product or Compact Cooler.

7. '952 Patent Technical Prong Conclusions

In sum, the record evidence demonstrates that pairs of Domestic Industry Products arranged in various combinations satisfy all limitations of all asserted claims of the '952 patent. These combinations are summarized below:

- Claim 3: any Domestic Industry Product (“first container”) *plus* any Second Container Product (“second container”)
- Claim 4: any Full Width Accused Product (“first container”) *plus* any Half Width Accused Product (“second container”)
- Claim 8: PACKOUT Rolling Toolbox (“first container”) *plus* any Second Container Accused Product (“second container”)
- Claim 16: PACKOUT Rolling Toolbox (“first container”) *plus* any Second Container Accused Product or Compact Cooler (“second container”)

As summarized in the list above, claim 3 is practiced by all Domestic Industry Products, whereas claims 4, 8, and 16 are practiced by only a subset of the Domestic Industry Products. *Cf. Certain Multiple Mode Outdoor Grills and Parts Thereof*, Inv. No. 337-TA-895, Final Initial Determination at 62-63 (Sept. 26, 2014) (finding that even though individual grill components did not infringe the asserted patent, they nevertheless infringed when assembled together), *unreviewed in relevant part*, Comm’n Op. (Feb. 20, 20215); *Certain Infotainment Sys., Components Thereof, and Automobiles Containing the Same*, Inv. No. 337-TA-1119, Final Initial Determination at 43-46 (finding technical prong not satisfied when domestic industry product did not practice the patent by itself and complainant did not adduce evidence showing that the domestic industry product

practiced the patent when combined with additional component items) (Nov. 13, 2019), *aff'd*, Comm'n Op. at 22-23 (May, 28, 2020), *aff'd*, *Broadcom Corp. v. Int'l Trade Comm'n*, 28 F.4th 240, 249-50 (Fed. Cir. 2022).

VII. '167 PATENT

A. Milwaukee's Motion to Strike Klein's Noninfringement Arguments (1409-034)

Milwaukee seeks to strike portions of Klein's responsive post-hearing brief (RRB) that allegedly offer "new arguments regarding non-infringement and the technical prong of the domestic industry requirement." Mot. at 1. The arguments in question are on pages 40-43 of Klein's responsive post-hearing brief and concern the manner which claim 15 of the '167 patent would read on a container assembly having multiple full-width containers. See Mot. at 2; RRB at 40-43. Milwaukee argues Klein's argument should be stricken because (1) Klein did not disclose these arguments in its prehearing brief and the arguments are therefore abandoned under Ground Rule 11.2 and (2) Milwaukee is prejudiced by these arguments because it was deprived of an opportunity to offer rebuttal arguments. Mot. at 1.

I find Milwaukee's pre-hearing brief lists full-width products as corresponding to each of the first, second, and third containers required by claim 15 in both the infringement context and the technical prong context. CPB at 118-120, 216. The full-width Accused Products that Milwaukee lists in all three categories in its post-hearing brief—the Full Width Short Component Box (JPX-0005), Full Width Tall Component Box (JPX-0004), Small Toolbox (JPX-0001), and Medium Toolbox (JPX-0003)—are included in the same categories in its pre-hearing brief. Compare CPB at 216 with CIB at 83. And the full-width Domestic Industry Products that Milwaukee lists in all three categories in its post-hearing brief—Large Toolbox (JPX-0015), Toolbox (JPX-0022), XL Toolbox (JPX-0025), Tool Case (JPX-0021), XL Cooler (JPX-0024),

PUBLIC VERSION

Organizer (JPX-0018), and Deep Organizer (JPX-0014)—are included in the same categories in its pre-hearing brief. *Compare* CPB at 118-120 *with* CIB at 65-66. Accordingly, I find all parties were aware in advance of the evidentiary hearing that the manner in which claim 15 would read on a configuration having multiple full-width containers was at issue.

I find further find that Milwaukee's claims of prejudice are overstated. Milwaukee's expert Dr. Klopp was able to articulate his application of claim 15 on cross-examination and Milwaukee has explained its position in its pre-hearing and post-hearing briefing. I further find that Klein's counter arguments regarding claim 15 are a logical extension of its other positions in the investigation and not so unexpected as to cause prejudice. In the interest of developing a fulsome record, therefore, I decline to strike Klein's response to Milwaukee's assertions. Milwaukee's Motion No. 1409-034 to strike is denied as moot.

B. Infringement

Milwaukee asserts that Klein "is liable for direct and indirect induced infringement of claims 2, 5, 8, 14, and 15 of the '167 Patent." CIB at 81. Milwaukee further asserts that "the Accused Products include each and every limitation of these claims" and that Klein "has committed acts of direct and indirect induced infringement." *Id.*

The asserted claims of the '167 patent recite a "container assembly" having a "first container" and "second container," and asserted claim 15 also requires a "third container." *See, e.g.,* '167 patent at claims 1, 15. Accordingly, the infringement analysis of any asserted '167 patent claim requires a pair or triplet of containers to be considered together. Milwaukee has identified a first set of Accused Products that can be considered the claimed first container, a second set of Accused Products that can be considered the claimed second container, and a third set of Accused Products that can be considered the claimed third container. CIB at 81-82 (citing Tr. (Klopp) at

PUBLIC VERSION

312:5-11, 313:25-314:6, 314:25-315:6, 317:8-13, 319:14-21; CDX-0003.0249, 253, 258, 267, 275). Accordingly, under Milwaukee's infringement theory, multiple combinations of first, second, and third Accused Products constitute the claimed "container assembly." The tables below summarize the groups of Accused Products that Milwaukee says can be the "first container," "second container," and "third container" in the asserted '167 patent claims:

Accused Products Alleged to Satisfy Claim 2 of the '167 Patent

"first container"	"second container"
Rolling Toolbox (JPX-0002)	Half Width Short Component Box (JPX-0007)
	Half Width Tall Component Box (JPX-0006)
	Hybrid Toolbox (JPX-0009)
	Cooler (JPX-0010)

Accused Products Alleged to Satisfy Claim 5 of the '167 Patent

"first container"	"second container"
Full Width Short Component Box (JPX-0005)	Half Width Short Component Box (JPX-0007)
Full Width Tall Component Box (JPX-0004)	Half Width Tall Component Box (JPX-0006)
Small Toolbox (JPX-0001)	Hybrid Toolbox (JPX-0009)
Medium Toolbox (JPX-0003)	
Rolling Toolbox (JPX-0002)	

Accused Products Alleged to Satisfy Claim 8 of the '167 Patent

"first container"	"second container"
Full Width Short Component Box (JPX-0005)	Half Width Short Component Box (JPX-0007)
Full Width Tall Component Box (JPX-0004)	Half Width Tall Component Box (JPX-0006)
Small Toolbox (JPX-0001)	
Medium Toolbox (JPX-0003)	
Rolling Toolbox (JPX-0002)	

PUBLIC VERSION

Accused Products Alleged to Satisfy Claim 14 of the '167 Patent

“first container”	“second container”
Full Width Short Component Box (JPX-0005)	Cooler (JPX-0010)
Full Width Tall Component Box (JPX-0004)	Half Width Short Component Box (JPX-0007)
Small Toolbox (JPX-0001)	Half Width Tall Component Box (JPX-0006)
Medium Toolbox (JPX-0003)	Hybrid Toolbox (JPX-0009)
Rolling Toolbox (JPX-0002)	

Accused Products Alleged to Satisfy Claim 15 of the '167 Patent

“first container”	“second container”	“third container”
Full Width Short Component Box (JPX-0005)	Full Width Short Component Box (JPX-0005)	Full Width Short Component Box (JPX-0005)
Full Width Tall Component Box (JPX-0004)	Full Width Tall Component Box (JPX-0004)	Full Width Tall Component Box (JPX-0004)
Small Toolbox (JPX-0001)	Small Toolbox (JPX-0001)	Small Toolbox (JPX-0001)
Medium Toolbox (JPX-0003)	Medium Toolbox (JPX-0003)	Medium Toolbox (JPX-0003)
Rolling Toolbox (JPX-0002)	Cooler (JPX-0010)	Cooler (JPX-0010)
	Half Width Short Component Box (JPX-0007)	Half Width Short Component Box (JPX-0007)
	Half Width Tall Component Box (JPX-0006)	Half Width Tall Component Box (JPX-0006)
	Hybrid Toolbox (JPX-0009)	Hybrid Toolbox (JPX-0009)

CIB at 82-83.

Milwaukee’s arguments regarding indirect infringement of the Asserted Products will be addressed separately in section IX below.

1. Claim 1

Although Milwaukee does not allege infringement of independent claim 1 of the '167 patent, it does allege infringement of claims 2, 5, 8, and 14, which depend from claim 1. I thus make findings regarding whether the Accused Products satisfy the limitations of claim 1.

Limitation 1[e] requires that a width axis of the second container be approximately one-half a width axis of the first container. As discussed above in section V.A.6, the term “width axis of the second container is approximately one-half of the width axis of the first container” is not indefinite and is construed to have its plain and ordinary meaning, which is “width of the second container is approximately one-half of the width of the first container.” The infringement analysis of this limitation thus becomes identical to the analysis of claim 4 of the '952 patent, discussed above in section VI.A.3.b).

And as with claim 4 of the '952 patent, Milwaukee has identified the following Accused Products as satisfying the “first container” and “second container” limitations of claim 1 of the '167 patent and its dependent claims 2, 5, 8, and 14:

“first container”	“second container”
Full Width Short Component Box (JPX-0005)	Half Width Short Component Box (JPX-0007)
Full Width Tall Component Box (JPX-0004)	Half Width Tall Component Box (JPX-0006)
Small Toolbox (JPX-0001)	Hybrid Toolbox (JPX-0009)
Medium Toolbox (JPX-0003)	Cooler (JPX-0010)
Rolling Toolbox (JPX-0002)	

CIB at 82 (tables of products for claims 2, 5, 8, and 14). For purposes of the infringement analysis of claim 1 and its dependent claims, the products in the left column will be referred to as the “Full Width Accused Products” and the products in the right column will be referred to as the “Half Width Accused Products.”

PUBLIC VERSION

Many of the limitations of claim 1 of the '167 patent cover subject matter materially identical to the limitations of the asserted claims of the '952 patent discussed above in section VI.A, and the Accused Products satisfy the limitations of claim 1 of the '167 patent for the same reasons discussed with respect to the '952 patent. For reference, all limitations of claim 1 below are reproduced with an indication of the section above that discusses the evidence demonstrating that the Accused Products satisfy each particular limitation, while any new subject matter claimed in the '167 patent is discussed in further detail:

1. [Pre] A container assembly comprising:

See section VI.A.1.a) above. The Accused Products are containers that fit together in various combinations to form a container assembly.

[a] a first container comprising:

See section VI.A.1.a) above. The Full Width Accused Products have been identified as the “first container.”

[a.i] a first lid pivotally attached to the first container;

See section VI.A.1.c) above. Each of the Full Width Accused Products has a lid pivotally attached to the container.

[a.ii] a first female coupler at a top face of the first lid;

See section VI.A.1.b) above. Each of the Full Width Accused Products has a first female coupler at the top face of the lid.

PUBLIC VERSION

[a.iii] a first front face, a first side face, an second side face opposite the first side face, the first front face, the first side face, and the second side face collectively partially defining a storage compartment;

See section VI.A.1.h) above. An examination of the physical samples of the Full Width Accused Products shows that each has a front face and two side faces that collectively partially define a storage compartment. JPX-0001; JPX-0002; JPX-0003; JPX-0004; JPX-0005.

[a.iv] a first corner extending between the first front face and the first side face, and a second corner extending between the first front face and the second side face;

An examination of the physical samples of the Full Width Accused Products demonstrate the presence of a first corner extending between the front face and the first side face, and the presence of a second corner extending between the front face and the second side face. JPX-0001; JPX-0002; JPX-0003; JPX-0004; JPX-0005.

[a.v] a first corner bumper extending outward from the first corner; and

See section VI.A.1.i) above. Each of the Full Width Accused Products has a first corner bumper extending outward from the first corner.

[a.vi] a second corner bumper extending outward from the second corner;

See section VI.A.1.i) above. Each of the Full Width Accused Products has a second corner bumper extending outward from the second corner.

[a.vii] wherein the first corner bumper defines an outer surface that extends past and faces away from each of the first front face and the first side face, and wherein the second corner bumper defines an outer surface that extends past and faces away from each of the first front face and the second side face; and

See section VI.A.1.i) above. For the reasons discussed therein, each of the Full Width Accused Products satisfy this limitation.

PUBLIC VERSION

[a.viii] a first locking latch arresting location; and

See section VI.A.1.k) above. Each of the Full Width Accused Products has a locking latch arresting location.

[b] a second container comprising:

See section VI.A.1.e) above. The Half Width Accused Products have been identified as the “second container.”

[b.i] a male coupler extending from a bottom face of the second container, the male coupler configured to slidingly engage with the first female coupler of the first container, wherein the first female coupler and male coupler engage each other when the first and second containers are slid with respect to each other;

See section VI.A.1.f) above. Each of the Half Width Accused Products has a male coupler that satisfies this limitation.

[b.ii] a second lid pivotally attached to the second container; and

See section VI.A.1.g) above. Each of the Half Width Accused Products has a lid pivotally attached to the second container.

[b.iii] a locking latch positionable in a locked position engaging the first locking latch arresting location thereby limiting sliding displacement of the first container with respect to the second container;

See section VI.A.1.l) above. Each of the Half Width Accused Products has a locking latch that satisfies this limitation.

[c] wherein the first female coupler comprises two sidewalls, a back wall, and a first rib, the back wall located between the two sidewalls, the two sidewalls and the back wall projecting above a depressed surface of the top face of the first lid, and the first rib extending away from the back wall in a first direction towards the first front face of the first container;

See section VI.A.1.b) above. For the reasons discussed therein, the Full Width Accused Products have female couplers that satisfy this limitation.

[d] wherein the second container comprises a second female coupler at a top face of the second lid, the second female coupler comprising two sidewalls, a back wall, and a second rib, the back wall located between the two sidewalls, the two sidewalls and the back wall projecting above a depressed surface of the top face of the second lid, and the second rib extending away from the back wall towards a front face of the second container and the first front face of the first container; and

See section VI.A.1.b) above. For the reasons discussed therein, the Half Width Accused Products have female couplers that satisfy this limitation.

[e] wherein the first container defines a width axis parallel to the first front face of the first container and the second container defines a width axis parallel to the first front face of the first container, wherein the width axis of the second container is approximately one-half the width axis of the first container.

See section VI.A.3.b) above. Inspection of the physical samples shows that the “second container” Half Width Accused Products are approximately half the width of the “first container” Full Width Accused Products. JPX-0001; JPX-0002; JPX-0003; JPX-0004; JPX-0005; JPX-0006; JPX-0007; JPX-0009; JPX-0010. The Full Width Accused Products and Half Width Accused Products listed above therefore satisfy this limitation.

Accordingly, a container assembly that satisfies the limitations of claim 1 is formed when a Full Width Accused Product is combined with a Half Width Accused Product.

2. Claim 2

a) Limitation 2[Pre]: “The container assembly of claim 1, the first container comprising: ”

As discussed above, the Accused Products can be paired in combinations that satisfy all limitations of claim 1. Moreover, the Rolling Toolbox has been identified as the “first container” for claim 2 of the ’167 patent. See CIB at 82.

b) Limitation 2[a]: “a first rear wall opposite the first front face; ”

An examination of the physical sample of the Rolling Toolbox shows that it has a rear wall opposite the front face. JPX-0002.

c) Limitations 2[b] and 2[c]: “a pair of rear wheels extending past the first rear wall; and a telescoping handle extending upwards from the first rear wall of the first container.”

An examination of the physical sample of the Rolling Toolbox shows that it has a pair of rear wheels extending past the rear wall and a telescoping handle extending upwards from the rear wall. JPX-0002.

Accordingly, an infringing container assembly is formed when a Rolling Toolbox is combined with a Half Width Accused Product.

3. Claim 5

a) Limitation 5[Pre]: “The container assembly of claim 1, the second container comprising: ”

As discussed above, the Full Width Accused Products and Half Width Accused Products can be paired in combinations that satisfy the limitations of claim 1. Moreover, the Full Width Accused Products have been identified as the “first container” and the Half Width Short Component Box (JPX-0007), Half Width Tall Component Box (JPX-0006), and Hybrid Toolbox (JPX-0009) have been identified as the “second container” for claim 5. See CIB at 82.

- b) **Limitations 5[a], 5[b], 5[c], 5[d], and 5[e]: “a second front face, a third side face, and a fourth side face opposite the third side face; a third corner extending between the second front face and the third side face; a fourth corner extending between the second front face and the fourth side face; a third corner bumper extending outward from the third corner, wherein the third corner bumper defines an outer surface that extends past and faces away from each of the second front face and the third side face; and a fourth corner bumper extending outward from the fourth corner, wherein the fourth corner bumper defines an outer surface that extends past and faces away from each of the second front face and the fourth side face.**

These limitations recite the same subject matter as Limitations 1[a][iii], 1[a][iv], 1[a][v], 1[a][vi], and 1[a][vii] of claim 1 of the '167 patent, except applied to the “second container” instead of the “first container.” See sections VII.B.1, VI.A.1 above. For the reasons discussed therein, the Half Width Short Component Box (JPX-0007), Half Width Tall Component Box (JPX-0006), and Hybrid Toolbox (JPX-0009) satisfy this claim limitation.

Accordingly, an infringing container assembly is formed when a Full Width Accused Product is combined with one of the Half Width Short Component Box (JPX-0007), Half Width Tall Component Box (JPX-0006), or Hybrid Toolbox (JPX-0009).

4. Claim 8

a) “The container assembly of claim 1, ”

As discussed above, the Full Width Accused Products and Half Width Accused Products can be paired in combinations that satisfy the limitations of claim 1. Moreover, the Full Width Accused Products have been identified as the “first container” and the Half Width Short Component Box (JPX-0007) and Half Width Tall Component Box (JPX-0006) have been identified as the “second container” for claim 8. See CIB at 82.

- b) **“the first container comprising a first toggle locking latch configured to latch the first lid of the first container in a closed position, and a second toggle locking latch configured to latch the first lid of the first container in a closed position, and the second container comprising a third toggle locking latch configured to latch the second lid of the second container in a closed position, and a fourth toggle locking latch configured to latch the second lid of the second container in a closed position.”**

An examination of the physical samples of the Full Width Accused Products, the Half Width Short Component Box, and the Half Width Tall Component Box shows that these containers each have two toggle locking latches configured to latch their lids in the closed position, thereby satisfying this limitation. JPX-0001-07.

Accordingly, an infringing container assembly is formed when a Full Width Accused Product is combined with one of the Half Width Short Component Box (JPX-0007), Half Width Tall Component Box (JPX-0006), or Hybrid Toolbox (JPX-0009).

5. Claim 13

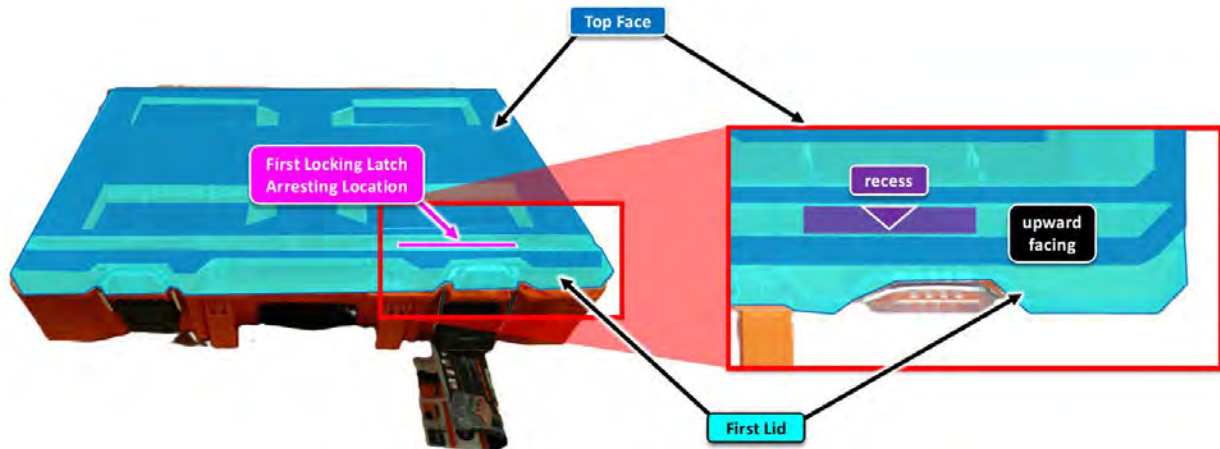
- a) **“The container assembly of claim 1, ”**

As discussed above, the Full Width Accused Products and Half Width Accused Products can be paired in combinations that satisfy the limitations of claim 1.

- b) **“wherein the first locking latch arresting location is a recess defined in an upward facing surface of the top face of the first lid.”**

An examination of the physical samples of the Full Width Accused Products show that they all have materially identical locking latch arresting locations. JPX-0001; JPX-0002; JPX-0003; JPX-0004; JPX-0005. There is a face located at each lid of the Full Width Accused Products, and the upward facing surface of the lid has a recess that comprises the claimed locking latch arresting location. JPX-0001; JPX-0002; JPX-0003; JPX-0004; JPX-0005.

As shown below in an illustration prepared by Dr. Klopp, the first lid of each first container (annotated in light blue) has a top face (location annotated in dark blue), and the first locking latch arresting location (annotated in pink) is a recess (annotated in purple) in an upward facing surface at the top face:



CX-1185-86; CDX-0003.0262.

Accordingly, I find this limitation satisfied. An infringing container assembly is therefore formed when a Full Width Accused Product is combined with a Half Width Accused Product.

6. Claim 14

a) “The container assembly of claim 13, ”

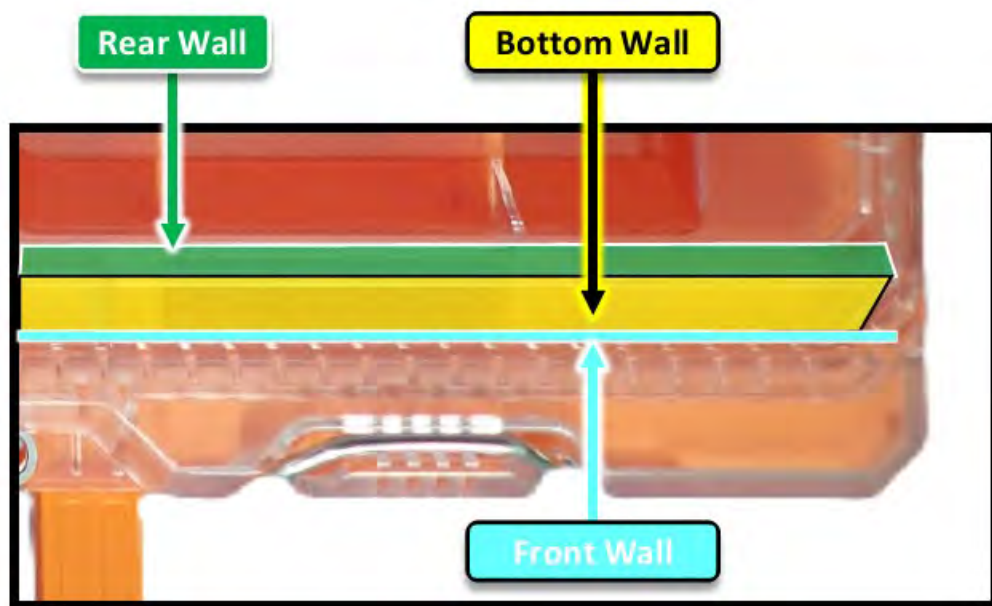
As discussed above, the Full Width Accused Products and Half Width Accused Products can be paired in combinations that satisfy the limitations of claim 13.

b) “wherein the recess comprises a front wall, a rear wall and a bottom wall extending between the front wall and the rear wall, wherein a lower face of the locking latch faces the bottom wall of the recess when the locking latch is in the locked position.”

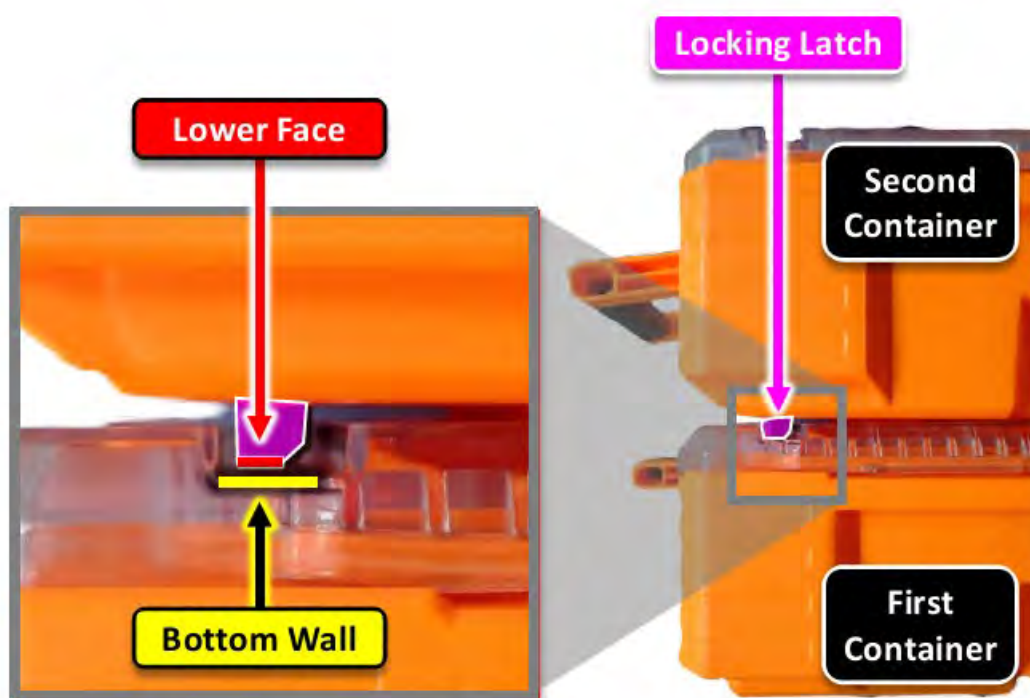
For the reasons explained in sections VI.A.1.k) and VI.A.1.l) above regarding limitations 1[c] and 1[d] of the '952 patent, the Full Width Accused Products and Half Width Accused Products include materially identical locking latches and locking latch arresting locations that

PUBLIC VERSION

satisfy the additional limitations of the claim 14. As shown below in illustrations prepared by Dr. Klopp, the recess of the first container comprises a front wall (annotated in light blue), a rear wall (annotated in green), and a bottom wall (annotated in yellow) connected to both the front and rear walls and extending between the front and rear walls. See CDX-0003.0265. When the first and second containers are assembled in the locked position, the locking latch comprises a lower face (annotated in red) facing the bottom wall of the recess (annotated in yellow). *Id.*



CX-1223; CDX-0003.0265.



CX-1242; CDX-0003.0265.

An infringing container assembly is therefore formed when a Full Width Accused Product is combined with a Half Width Accused Product.

7. Claim 15

Most of the limitations of claim 15 of the '167 patent cover subject matter identical to the limitations of claim 1 of the '167 patent discussed above. Yet other limitations of claim 15 cover subject matter already discussed in the context of the '952 patent. The main difference between claim 15 and claims previously discussed is that claim 15 claims a container assembly comprising three containers instead of two. Milwaukee identifies the following Accused Products as the “first container,” “second container,” and “third container” in claim 15:

PUBLIC VERSION

“first container”	“second container”	“third container”
Full Width Short Component Box (JPX-0005)	Full Width Short Component Box (JPX-0005)	Full Width Short Component Box (JPX-0005)
Full Width Tall Component Box (JPX-0004)	Full Width Tall Component Box (JPX-0004)	Full Width Tall Component Box (JPX-0004)
Small Toolbox (JPX-0001)	Small Toolbox (JPX-0001)	Small Toolbox (JPX-0001)
Medium Toolbox (JPX-0003)	Medium Toolbox (JPX-0003)	Medium Toolbox (JPX-0003)
Rolling Toolbox (JPX-0002)	*Cooler (JPX-0010)	*Cooler (JPX-0010)
	*Half Width Short Component Box (JPX-0007)	*Half Width Short Component Box (JPX-0007)
	*Half Width Tall Component Box (JPX-0006)	*Half Width Tall Component Box (JPX-0006)
	*Hybrid Toolbox (JPX-0009)	*Hybrid Toolbox (JPX-0009)

CIB at 83.

I note that the products Milwaukee identifies as the claimed “second container” are identical to the products it identifies as the claimed “third container.” For purposes of this claim 15 infringement analysis, the products in the leftmost column will be referred to as the “First Container Accused Products,” the products in the center column will be referred to as the “Second Container Accused Products,” and the products in the rightmost column will be referred to as the “Third Container Accused Products.” Accused Products with an asterisk will be referred to as “Half Width Accused Products” for purposes that will become relevant below.

For reference, all limitations of claim 15 are reproduced below with an indication of the section above that discusses the evidence demonstrating that the Accused Products satisfy each particular limitation:

15. [Pre] A container assembly comprising:

See section VI.A.1.a) above. The Accused Products are containers that fit together in various combinations to form a container assembly.

[a] a first container comprising:

See section VI.A.1.a) above. The First Container Accused Products are identified in the table above.

[a][i] a first lid pivotally attached to the first container;

See section VI.A.1.c). All First Container Accused Products satisfy this limitation.

[a][ii] a first female coupler at a top face of the first lid;

See sections VI.A.1.b) and VII.B.1. All First Container Accused Products have a female coupler at a top face of the first lid.

[a][iii] a first front face, a first side face, an second side face opposite the first side face, the first front face, the first side face, and the second side face collectively partially defining a storage compartment;

See sections VI.A.1.h) and VII.B.1. All First Container Accused Products have a front face and two side faces collectively partially defining a storage compartment.

[a][iv] a first corner extending between the first front face and the first side face, and a second corner extending between the first front face and the second side face;

See sections VI.A.1.i) and VII.B.1. All First Container Accused Products have corners between the front face and each of the side faces.

[a][v] a first corner bumper extending outward from the first corner; and

See sections VI.A.1.i) and VII.B.1. All First Container Accused Products have a first corner bumper extending outward from the first corner.

PUBLIC VERSION

[a][vi] a second corner bumper extending outward from the second corner;

See sections VI.A.1.i) and VII.B.1. All First Container Accused Products have a second corner bumper extending outward from the second corner.

[a][vii] wherein the first corner bumper defines an outer surface that extends past and faces away from each of the first front face and the first side face, and wherein the second corner bumper defines an outer surface that extends past and faces away from each of the first front face and the second side face; and

See sections VI.A.1.i) and VII.B.1. All First Container Accused Products have first and second corner bumpers that satisfy this limitation.

[a][viii] a first locking latch arresting location; and

See sections VI.A.1.k) and VII.B.1. All First Container Accused Products have a locking latch arresting location.

[b] a second container comprising:

The Second Container Accused Products are identified in the table above.

[b][i] a male coupler extending from a bottom face of the second container, the male coupler configured to slidably engage with the first female coupler of the first container, wherein the first female coupler and male coupler engage each other when the first and second containers are slid with respect to each other;

See sections VI.A.1.f) and VII.B.1. All Second Container Accused Products have male couplers that satisfy this limitation.

[b][ii] a second lid pivotally attached to the second container; and

See sections VI.A.1.c), VI.A.1.g), and VII.B.1. All Second Container Accused Products have a lid pivotally attached to the container.

PUBLIC VERSION

[b][iii] a locking latch positionable in a locked position engaging the first locking latch arresting location thereby limiting sliding displacement of the first container with respect to the second container;

See sections VI.A.1.l) and VII.B.1. The Second Container Accused Products have a locking latch positionable in a locked position to limit sliding displacement with respect to the First Container Accused Products.

[c] the first container comprising a plurality of female couplers including the first female coupler, the plurality of female couplers at the top face of the first lid, the first container comprising a second locking latch arresting location; and

See sections VI.A.1.b), VI.A.1.k) and VII.B.1. Examination of the physical samples of the First Container Accused Products (a set coextensive with the Full Width Accused Products discussed with respect to claim 1 of the '167 patent) shows that each has a plurality of female couplers at the top face of the lid. JPX-0001-05. Moreover, each of the physical samples shows that the First Container Accused Products has a second locking latch arresting location. For the Full Width Short Component Box (JPX-0005) and Full Width Tall Component Box (JPX-0004), the first and second locking latch arresting locations are distinguishable as separate recesses in the translucent lid.

Klein argues that the Rolling Toolbox (JPX-0002), Medium Toolbox (JPX-0003), the Small Toolbox (JPX-0001) does not satisfy this limitation because, unlike the Full Width Short Component Box (JPX-0005) and Full Width Tall Component Box (JPX-0004), they do not have “one or more locking latch arresting locations,” but rather “a single channel” that Milwaukee identifies as the first and second locking latch arresting location. RRB at 40. Klein’s argument is not persuasive.

PUBLIC VERSION

The claim language recites a “first locking latch arresting **location**” and a “second locking latch **location**”—there is nothing in the patent teachings to restrict the locking latch locations to separate structures or features on the container. Manipulation of the physical samples of the Rolling Toolbox (JPX-0002), Medium Toolbox (JPX-0003), the Small Toolbox (JPX-0001) shows that these products do, in fact, have first and second locking latch locations. For example, connecting a Half Width Short Component Box (a “second container”) to the top of the Rolling Toolbox (a “first container”) shows that the connection can be made in two ways—the Half Width Short Component Box may connect to the left half of the Rolling Toolbox lid, or the Half Width Short Component Box may connect to the right half of the Rolling Toolbox lid. Thus, the Rolling Toolbox has first and second locking latch arresting locations that connect with the locking latch of the Half Width Short Component Box.

Accordingly, the First Container Accused Products satisfy this limitation.

[d] the container assembly comprising a third container comprising:

The Third Container Accused Products are identified in the table above. The list of Third Container Accused Products is identical to the list of Second Container Accused Products.

[d][i] a second male coupler extending from a bottom face of the third container, the second male coupler configured to slidably engage with one of the plurality of female couplers of the first container, wherein the second male coupler and the at least one of the plurality of female couplers engage each other when the first and second containers are slid with respect to each other;

See sections VI.A.1.f) and VII.B.1. All Third Container Accused Products have male couplers that satisfy this limitation.

[d][ii] a third lid pivotally attached to the third container;

PUBLIC VERSION

See sections VI.A.1.c), VI.A.1.g), and VII.B.1. All Third Container Accused Products have a lid pivotally attached to the container.

[d][iii] a third female coupler at a top face of the third lid, the third female coupler comprising two sidewalls, a back wall, and a first rib, the back wall located between the two sidewalls, the two sidewalls and the back wall projecting above a depressed surface of the top face of the third lid, and the first rib extending away from the back wall towards a front face of the third container and the front face of the first container; and

See sections VI.A.1.b) and VII.B.1. All Third Container Accused Products have a female coupler at a top face of the first lid that satisfies this limitation.

[d][iv] a second locking latch positionable in a locked position engaging the second locking latch arresting location thereby limiting sliding displacement of the third container with respect to the first container.

See sections VI.A.1.l), VI.A.1.k), and VII.B.1. The Third Container Accused Products have a locking latch positionable in a locked position to limit sliding displacement with respect to the First Container Accused Products.

Combinations of Accused Products that Infringe Claim 15

Unlike other Asserted Patent claims, which require only two containers, claim 15 of the '167 patent requires three containers. Claim 15 will not be satisfied by every combination that uses one container from each of the three Accused Product container categories identified by Milwaukee. The limiting factor is the combination of limitation 15[b][iii] and limitation 15[d][iv]. Limitation 15[b][iii] recites a locking latch on the second container that engages with a first locking latch arresting location on the first container. Limitation 15[d][iv] recites a locking latch on the third container that engages with a second locking latch arresting location on the first container.

Satisfaction of claim 15 thus requires that the first container have two separate locking latch arresting locations. See Tr. (Klopp) at 363:9-15 (“[T]he first locking latch arresting location

and the second locking latch arresting location can't be the same thing.”). But if both the second and third containers are accused MODbox full-width containers, the structure and orientation of the respective locking latches would both necessarily be positionable in the same locking latch arresting location on the first container. Accordingly, a configuration in which all three containers are MODbox full-width containers cannot practice each and every element of claim 15.

Notwithstanding that fact, all of the MODbox containers identified in connection with claim 15 infringe claim 15 in configurations with three containers so long as the first container is a full-width container and no more than one of the other two containers is a full-width container. Accordingly, there are two genera of container assemblies that meet every limitation of claim 15:

(1) An assembly from a First Container Accused Product combined with any Second Container Accused Product and any Third Container Accused Product that is a Half Width Accused Product,¹⁸ and

(2) An assembly from a First Container Accused Product combined with any Second Container Accused Product that is a Half Width Accused Product and any Third Container Accused Product.

Because all Accused Products identified by Milwaukee in connection with claim 15 may be used in such assemblies that meet those requirements, they are infringing articles.

¹⁸ The Half Width Accused Products for purposes of the claim 15 analysis are: the Cooler (JPX-0010), Half Width Short Component Box (JPX-0007), Half Width Tall Component Box (JPX-0006), and Hybrid Toolbox (JPX-0009).

8. '167 Patent Infringement Conclusions

In sum, the record evidence demonstrates that Accused Products arranged in various combinations satisfy all limitations of all asserted claims of the '026 patent. These combinations are summarized below:

- Claim 2: Rolling Toolbox (“first container”) *plus* any Half Width Accused Product (“second container”)
- Claim 5: any Full Width Accused Product (“first container”) *plus* Half Width Short Component Box (JPX-0007) *or* Half Width Tall Component Box (JPX-0006) *or* Hybrid Toolbox (JPX-0009) (“second container”)
- Claim 8: any Full Width Accused Product (“first container”) *plus* Half Width Short Component Box (JPX-0007) *or* Half Width Tall Component Box (JPX-0006) (“second container”)
- Claim 14: any Full Width Accused Product (“first container”) *plus* any Half Width Accused Product (“second container”)
- Claim 15: the specific combinations that infringe claim 15 have been delineated above in section VII.B.7

Klein infringes the asserted claims when it imports the above combinations of Accused Products into the United States (JX-0010 ¶ 3), resellers infringe the asserted claims when they sell these combinations of the Accused Products (CX-0012C (O’Flaherty Dep.) at 100:22-101:15; CX-0011C (Klein Dep.) at 168:1-169:14; Tr. (Klein) at 511:21-25), and sales teams demonstrating the Accused Products and customers using the Accused Products infringe the asserted claims when they use the combinations of the Accused Products identified above (CX-0012C (O’Flaherty Dep.) at 40:3-11, 68:3-14, 100:22-101:15, 207:19-209:11).

C. Technical Prong

Milwaukee asserts that the Domestic Industry Products “include each and every limitation of claims 2, 5, 8, 14, and 15 of the ’167 Patent both literally and under the doctrine of equivalents such that Complainants satisfy the technical prong of the domestic industry requirement.” CIB at 65-66.

The asserted claims of the ’167 patent recite a “container assembly” having a “first container” and “second container,” and asserted claim 15 also requires a “third container.” *See, e.g.,* ’167 patent at claims 1, 15. Accordingly, the technical prong analysis of any asserted ’167 patent claim requires a pair or triplet of containers to be considered together. Milwaukee has identified a first set of Domestic Industry Products that can be considered the claimed first container, a second set of Domestic Industry Products that can be considered the claimed second container, and a third set of Domestic Industry Products that can be considered the claimed third container. CIB at 65-66 (citing Tr. (Klopp) at 229:3-8, 230:18-24, 231:24-232:5, 234:11-17, 237:16-23; CDX-0003.0105, 109, 114, 123, 131). Accordingly, under Milwaukee’s technical prong theory, multiple combinations of first, second, and third Domestic Industry Products constitute the claimed “container assembly.” The tables below summarize the groups of Domestic Industry Products that Milwaukee says can be the “first container,” “second container,” and “third container” in the asserted ’167 patent claims:

Domestic Industry Products Alleged to Satisfy Claim 2 of the ’167 Patent

“first container”	“second container”
PACKOUT Rolling Toolbox (JPX-0020)	Compact Toolbox (JPX-0013)
	Vacuum (JPX-0023)
	Compact Organizer (JPX-0012)
	Low-Profile Organizer (JPX-0017)
	Compact Cooler (JPX-0011)

PUBLIC VERSION

Domestic Industry Products Alleged to Satisfy Claim 5 of the '167 Patent

"first container"
PACKOUT Rolling Toolbox (JPX-0020)
Large Toolbox (JPX-0015)
Toolbox (JPX-0022)
XL Toolbox (JPX-0025)
Tool Case (JPX-0021)
XL Cooler (JPX-0024)
Organizer (JPX-0018)
Deep Organizer (JPX-0014)
Low-Profile Organizer (JPX-0017)

"second container"
Compact Organizer (JPX-0012)
Low-Profile Compact Organizer (JPX-0016)

Domestic Industry Products Alleged to Satisfy Claim 8 of the '167 Patent

"first container"
PACKOUT Rolling Toolbox (JPX-0020)
Large Toolbox (JPX-0015)
Toolbox (JPX-0022)
XL Toolbox (JPX-0025)
Tool Case (JPX-0021)
XL Cooler (JPX-0024)
Organizer (JPX-0018)
Deep Organizer (JPX-0014)
Low-Profile Organizer (JPX-0017)

"second container"
Compact Organizer (JPX-0012)
Low-Profile Compact Organizer (JPX-0016)
Vacuum (JPX-0023)

Domestic Industry Products Alleged to Satisfy Claim 14 of the '167 Patent

"first container"
PACKOUT Rolling Toolbox (JPX-0020)
Large Toolbox (JPX-0015)
Toolbox (JPX-0022)
XL Toolbox (JPX-0025)
Tool Case (JPX-0021)
XL Cooler (JPX-0024)
Organizer (JPX-0018)
Deep Organizer (JPX-0014)
Low-Profile Organizer (JPX-0017)

"second container"
Compact Toolbox (JPX-0013)
Vacuum (JPX-0023)
Compact Organizer (JPX-0012)
Low-Profile Compact Organizer (JPX-0016)
Compact Cooler (JPX-0011)

Domestic Industry Products Alleged to Satisfy Claim 15 of the '167 Patent

“first container”	“second container”	“third container”
PACKOUT Rolling Toolbox (JPX-0020)	Large Toolbox (JPX-0015)	Large Toolbox (JPX-0015)
Rolling Modular Tool Chest (JPX-0019)	Toolbox (JPX-0022)	Toolbox (JPX-0022)
Large Toolbox (JPX-0015)	XL Toolbox (JPX-0025)	XL Toolbox (JPX-0025)
Toolbox (JPX-0022)	Tool Case (JPX-0021)	Tool Case (JPX-0021)
XL Toolbox (JPX-0025)	XL Cooler (JPX-0024)	XL Cooler (JPX-0024)
Tool Case (JPX-0021)	Organizer (JPX-0018)	Organizer (JPX-0018)
XL Cooler (JPX-0024)	Deep Organizer (JPX-0014)	Deep Organizer (JPX-0014)
Organizer (JPX-0018)	Compact Organizer (JPX-0012)	Compact Organizer (JPX-0012)
Deep Organizer (JPX-0014)	Compact Toolbox (JPX-0013)	Compact Toolbox (JPX-0013)
Compact Organizer (JPX-0012)	Compact Cooler (JPX-0011)	Compact Cooler (JPX-0011)
	Vacuum (JPX-0023)	Vacuum (JPX-0023)
	Low-Profile Organizer (JPX-0017)	Low-Profile Organizer (JPX-0017)
	Low-Profile Compact Organizer (JPX-0016)	Low-Profile Compact Organizer (JPX-0016)

CIB at 65-66.

1. Claim 1

Although Milwaukee does not rely on independent claim 1 of the '952 patent to show satisfaction of the technical prong of the domestic industry requirement, it does rely on claims 2, 5, 8, 13, and 14, which depend from claim 1. I thus make the following findings regarding whether the Domestic Industry Products satisfy the limitations of claim 1.

Limitation 1[e] requires that a width axis of the second container be approximately one-half a width axis of the first container. As discussed above in section V.A.6, the term “width axis of the second container is approximately one-half of the width axis of the first container” is not indefinite and is construed to have its plain and ordinary meaning, which is “width of the second container is approximately one-half of the width of the first container.” The technical prong

PUBLIC VERSION

analysis of this limitation thus becomes identical to the analysis of claim 4 of the '952 patent, discussed above in section VI.B.4.

Milwaukee has identified the following Domestic Industry Products as satisfying the “first container” and “second container” limitations of claim 1 of the '167 patent and its dependent claims 2, 5, 8, and 14:

“first container”
PACKOUT Rolling Toolbox (JPX-0020)
Large Toolbox (JPX-0015)
Toolbox (JPX-0022)
XL Toolbox (JPX-0025)
Tool Case (JPX-0021)
XL Cooler (JPX-0024)
Organizer (JPX-0018)
Deep Organizer (JPX-0014)
Low-Profile Organizer (JPX-0017)

“second container”
Compact Toolbox (JPX-0013)
Vacuum (JPX-0023)
Compact Organizer (JPX-0012)
Low-Profile Compact Organizer (JPX-0016)
Compact Cooler (JPX-0011)

See CIB at 65-66 (tables of products for claims 2, 5, 8, and 14). For purposes of the technical prong analysis of claim 1 and its dependent claims, the products in the left column will be referred to as the “Full Width Domestic Industry Products” and the products in the right column will be referred to as the “Half Width Domestic Industry Products.”

Many of the limitations of claim 1 of the '167 patent cover subject matter materially identical to the limitations of the asserted claims of the '952 patent discussed above in section VI.B, and the Domestic Industry Products satisfy the limitations of claim 1 of the '167 patent for the same reasons discussed with respect to the '952 patent. For reference, all limitations of claim 1 below are reproduced with an indication of the section above that discusses the evidence demonstrating that the Domestic Industry Products satisfy each particular limitation, while any new subject matter claimed in the '167 patent is discussed in further detail:

PUBLIC VERSION

1. [Pre] A container assembly comprising:

See section VI.B.1.a) above. The Domestic Industry Products are containers that fit together in various combinations to form a container assembly.

[a] a first container comprising:

See section VI.B.1.a) above. The Full Width Accused Products have been identified as the “first container.”

[a.i] a first lid pivotally attached to the first container;

See section VI.B.1.c) above. Each of the Full Width Accused Products has a lid pivotally attached to the container.

[a.ii] a first female coupler at a top face of the first lid;

See section VI.B.1.b) above. Each of the Full Width Accused Products has a first female coupler at the top face of the lid.

[a.iii] a first front face, a first side face, an second side face opposite the first side face, the first front face, the first side face, and the second side face collectively partially defining a storage compartment;

See section VI.B.1.i) above. An examination of the physical samples of the Full Width Domestic Industry Products shows that each has a front face and two side faces that collectively partially define a storage compartment. JPX-0014; JPX-0015; JPX-0017; JPX-0018; JPX-0020; JPX-0021; JPX-0022; JPX-0024; JPX-0025.

[a.iv] a first corner extending between the first front face and the first side face, and a second corner extending between the first front face and the second side face;

An examination of the physical samples of the Full Width Domestic Industry Products demonstrate the presence of a first corner extending between the front face and the first side face, and the presence of a second corner extending between the front face and the second side face.

PUBLIC VERSION

JPX-0014; JPX-0015; JPX-0017; JPX-0018; JPX-0020; JPX-0021; JPX-0022; JPX-0024; JPX-0025.

[a.v] a first corner bumper extending outward from the first corner; and

See section VI.B.1.i) above. Each of the Full Width Domestic Industry Products has a first corner bumper extending outward from the first corner.

[a.vi] a second corner bumper extending outward from the second corner;

See section VI.B.1.i) above. Each of the Full Width Domestic Industry Products has a second corner bumper extending outward from the second corner.

[a.vii] wherein the first corner bumper defines an outer surface that extends past and faces away from each of the first front face and the first side face, and wherein the second corner bumper defines an outer surface that extends past and faces away from each of the first front face and the second side face; and

See section VI.B.1.i) above. For the reasons discussed in those sections, each of the Full Width Domestic Industry Products satisfy this limitation.

[a.viii] a first locking latch arresting location; and

See section VI.B.1.k) above. Each of the Full Width Domestic Industry Products has a locking latch arresting location.

[b] a second container comprising:

See section VI.B.1.e) above. The Half Width Domestic Industry Products have been identified as the “second container.”

PUBLIC VERSION

[b.i] a male coupler extending from a bottom face of the second container, the male coupler configured to slidingly engage with the first female coupler of the first container, wherein the first female coupler and male coupler engage each other when the first and second containers are slid with respect to each other;

See section VI.B.1.f) above. Each of the Half Width Domestic Industry Products has a male coupler that satisfies this limitation.

[b.ii] a second lid pivotally attached to the second container; and

See section VI.B.1.g) above. Each of the Half Width Domestic Industry Products has a lid pivotally attached to the second container.

[b.iii] a locking latch positionable in a locked position engaging the first locking latch arresting location thereby limiting sliding displacement of the first container with respect to the second container;

See section VI.B.1.h) above. Each of the Half Width Domestic Industry Products has a locking latch that satisfies this limitation.

[c] wherein the first female coupler comprises two sidewalls, a back wall, and a first rib, the back wall located between the two sidewalls, the two sidewalls and the back wall projecting above a depressed surface of the top face of the first lid, and the first rib extending away from the back wall in a first direction towards the first front face of the first container;

See section VI.B.1.b) above. For the reasons discussed therein, the Full Width Domestic Industry Products have female couplers that satisfy this limitation.

[d] wherein the second container comprises a second female coupler at a top face of the second lid, the second female coupler comprising two sidewalls, a back wall, and a second rib, the back wall located between the two sidewalls, the two sidewalls and the back wall projecting above a depressed surface of the top face of the second lid, and the second rib extending away from the back wall towards a front face of the second container and the first front face of the first container; and

See section VI.B.1.b) above. For the reasons discussed therein, the Half Width Domestic Industry Products have female couplers that satisfy this limitation.

[e] wherein the first container defines a width axis parallel to the first front face of the first container and the second container defines a width axis parallel to the first front face of the first container, wherein the width axis of the second container is approximately one-half the width axis of the first container.

See section VI.B.3.b) above. Inspection of the physical samples shows that the “second container” Half Width Domestic Industry Products are approximately half the width of the “first container” Full Width Domestic Industry Products. JPX-0011-13; JPX-0016; JPX-0023. The Full Width Domestic Industry Products and Half Width Domestic Industry Products listed above therefore satisfy this limitation.

Accordingly, a container assembly that practices claim 1 is formed when a Full Width Domestic Industry Product is combined with a Half Width Domestic Industry Product.

2. Claim 2

a) Limitation 2[Pre]: “The container assembly of claim 1, the first container comprising: ”

As discussed above, the Domestic Industry Products can be paired in combinations that satisfy all limitations of claim 1. Moreover, the PACKOUT Rolling Toolbox has been identified as the “first container” for claim 2 of the ’167 patent. See CIB at 65-66.

- b) Limitations 2[a], 2[b], and 2[c]: “a first rear wall opposite the first front face; a pair of rear wheels extending past the first rear wall; and a telescoping handle extending upwards from the first rear wall of the first container.”**

An inspection of the physical sample of the PACKOUT Rolling Toolbox (JPX-0020) shows it has a rear wall opposite the front face. And, as discussed above in section VI.B.4.b), the PACKOUT Rolling Toolbox also has a pair of rear wheels extending past the rear wall and a telescoping handle extending upwards from the first rear wall. *See also* JPX-0020. The PACKOUT Rolling Toolbox thus practices claim 2.

Accordingly, a container assembly that practices claim 2 is formed when a PACKOUT Rolling Toolbox is combined with a Half Width Domestic Industry Product.

3. Claim 5

- a) Limitation 5[Pre]: “The container assembly of claim 1, the second container comprising: ”**

As discussed above, the Domestic Industry Products can be paired in combinations that satisfy all limitations of claim 1. In addition, the Compact Organizer and Low-Profile Compact Organizer have been identified by Milwaukee as the “second container” for purposes of the claim 2 analysis. *See* CIB at 65-66.

- b) Limitations 5[a], 5[b], and 5[c]: “a second front face, a third side face, and a fourth side face opposite the third side face; a third corner extending between the second front face and the third side face; a fourth corner extending between the second front face and the fourth side face; ”**

An examination of the physical samples of the Compact Organizer and Low-Profile Compact Organizer shows that each has a front face, and two opposing side faces that define a storage compartment. JPX-0012; JPX-0016. The physical samples also demonstrate the presence of a corner extending between the front face and a side face, and the presence of a second corner

extending between the front face and the other side face. JPX-0012; JPX-0016. Accordingly, I find that these limitations are satisfied.

- c) **Limitations 5[d] and 5[e]: “a third corner bumper extending outward from the third corner, wherein the third corner bumper defines an outer surface that extends past and faces away from each of the second front face and the third side face; and a fourth corner bumper extending outward from the fourth corner, wherein the fourth corner bumper defines an outer surface that extends past and faces away from each of the second front face and the fourth side face.”**

These limitations are identical to limitations 1[a][v], 1[a][vi], and 1[a][vii] recited in claim 1—the difference is that claim 1 applies these limitations to the “first container” whereas claim 5 applies these limitations to the “second container.” Thus, for the reasons discussed above in sections VII.C.1 and VI.B.1, these limitations are satisfied.

Accordingly, a container assembly that practices claim 5 is formed when a Full Width Domestic Industry Product is combined with either the Compact Organizer or Low-Profile Compact Organizer.

4. Claim 8

- a) **“The container assembly of claim 1, ”**

As discussed above, the Domestic Industry Products can be paired in combinations that satisfy all limitations of claim 1. In addition, Milwaukee has identified the following Domestic Industry Products as the “second container” for purposes of the claim 8 analysis: Compact Organizer (JPX-0012), Low-Profile Compact Organizer (JPX-0016), and Vacuum (JPX-0023). See CIB at 65-66.

- b) **“the first container comprising a first toggle locking latch configured to latch the first lid of the first container in a closed position, and a second toggle locking latch configured to latch the first lid of the first container in a closed position, and the second container comprising a third toggle locking latch configured to latch the second lid of the second container in a closed position, and a fourth toggle locking latch configured to latch the second lid of the second container in a closed position.”**

An inspection of the physical samples of the Domestic Industry Products identified by Milwaukee as practicing claim 8 shows that these products each have two toggle locking latches configured to hold the container lids in a closed position. See section VI.A.1.d) above. I therefore find that these products satisfy these limitations of claim 8.

Accordingly, a container assembly that practices claim 8 is formed when a Full Width Domestic Industry Product is combined any one of the following: Compact Organizer, Low-Profile Compact Organizer, or Vacuum.

5. Claim 13

- a) **“The container assembly of claim 1, ”**

As discussed above, the Full Width Domestic Industry Products and Half Width Domestic Industry Products can be paired in combinations that satisfy the limitations of claim 1.

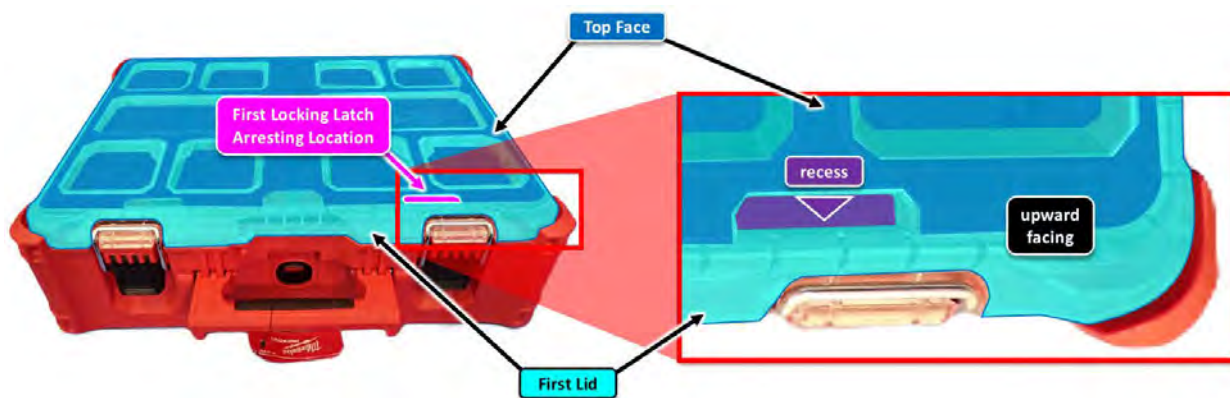
- b) **“wherein the first locking latch arresting location is a recess defined in an upward facing surface of the top face of the first lid.”**

An examination of the physical samples of the Full Width Domestic Industry Products shows that they all have materially identical locking latch arresting locations. JPX-0014-15; JPX-0017-18; JPX-0020-22; JPX-0024-25. There is a face located at each lid of the Full Width Domestic Industry Products, and the upward facing surface of the lid has a recess that comprises

PUBLIC VERSION

the claimed locking latch arresting location. JPX-0014-15; JPX-0017-18; JPX-0020-22; JPX-0024-25.

As illustrated below in a demonstrative slide prepared by Dr. Klopp, the top face of an exemplary product is annotated in blue, and the first locking latch arresting location is annotated in pink.



CDX-0003.0118; *see also* CX-1166-67.

Accordingly, I find this limitation satisfied. A container assembly that practices claim 13 is therefore formed when a Full Width Domestic Industry Product is combined with a Half Width Domestic Industry Product.

6. Claim 14

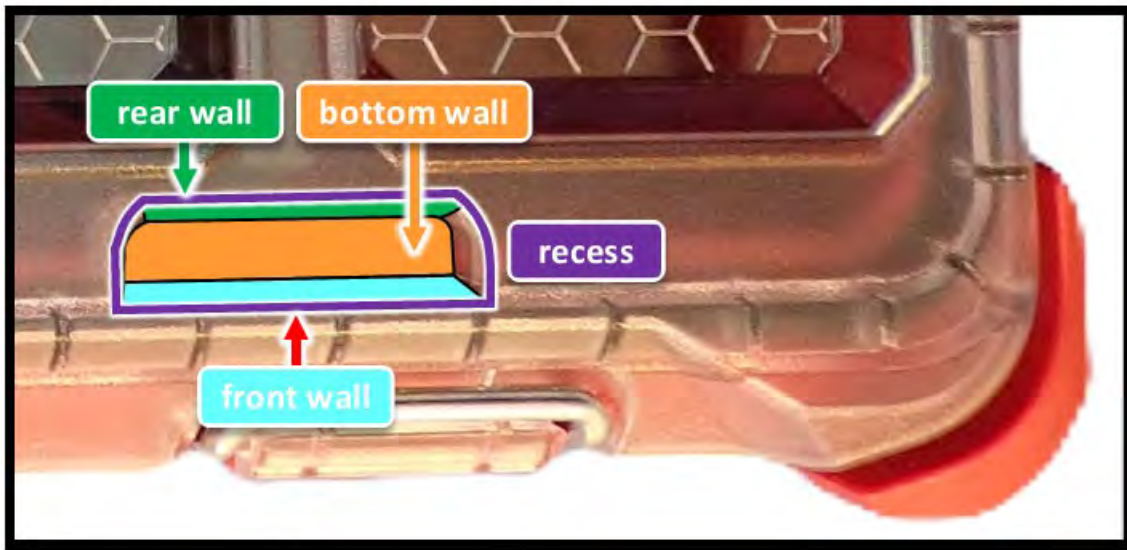
a) “The container assembly of claim 13, ”

As discussed above, the Full Width Domestic Industry Products and Half Width Domestic Industry Products can be paired in combinations that satisfy the limitations of claim 13.

PUBLIC VERSION

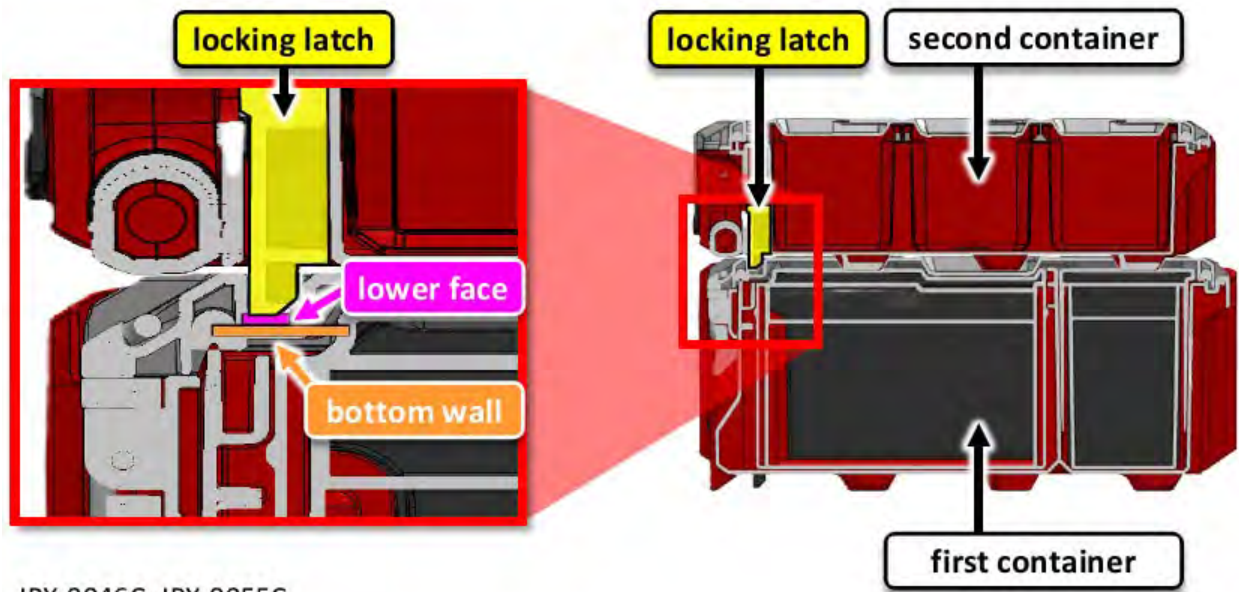
- b) “wherein the recess comprises a front wall, a rear wall and a bottom wall extending between the front wall and the rear wall, wherein a lower face of the locking latch faces the bottom wall of the recess when the locking latch is in the locked position.”

As discussed above in sections VI.B.1.k) and VI.B.1.l) with respect to limitations 1[c] and 1[d] of the '952 patent, all Domestic Industry Products have materially identical locking latches and locking latch arresting locations. As illustrated below, the recess (purple annotation) of the first container comprises a front wall (light blue annotation), a rear wall (green annotation), and a bottom wall (orange annotation) connected to both the front and rear walls and extending between the front and rear walls.



CDX-0003.0121; see CX-1128.

When the first and second containers are assembled in the locked position, the locking latch comprises a lower face (pink annotation) facing the bottom wall of the recess (orange annotation).



JPX-0046C; JPX-0055C

CDX-0003.0121 (citing JPX-0046C; JPX-0055C).

A container assembly that practices claim 14 is therefore formed when a Full Width Domestic Industry Product is combined with a Half Width Domestic Industry Product.

7. Claim 15

Most of the limitations of claim 15 of the '167 patent cover subject matter identical to the limitations of claim 1 of the '167 patent discussed above. Yet other limitations of claim 15 cover subject matter already discussed in the context of the '952 patent. The main difference between claim 15 and claims previously discussed is that claim 15 claims a container assembly comprising three containers instead of two. Milwaukee identifies the following Domestic Industry Products as the “first container,” “second container,” and “third container” in claim 15:

PUBLIC VERSION

“first container”	“second container”	“third container”
PACKOUT Rolling Toolbox (JPX-0020)	Large Toolbox (JPX-0015)	Large Toolbox (JPX-0015)
Rolling Modular Tool Chest (JPX-0019)	Toolbox (JPX-0022)	Toolbox (JPX-0022)
Large Toolbox (JPX-0015)	XL Toolbox (JPX-0025)	XL Toolbox (JPX-0025)
Toolbox (JPX-0022)	Tool Case (JPX-0021)	Tool Case (JPX-0021)
XL Toolbox (JPX-0025)	XL Cooler (JPX-0024)	XL Cooler (JPX-0024)
Tool Case (JPX-0021)	Organizer (JPX-0018)	Organizer (JPX-0018)
XL Cooler (JPX-0024)	Deep Organizer (JPX-0014)	Deep Organizer (JPX-0014)
Organizer (JPX-0018)	*Compact Organizer (JPX-0012)	*Compact Organizer (JPX-0012)
Deep Organizer (JPX-0014)	*Compact Toolbox (JPX-0013)	*Compact Toolbox (JPX-0013)
<i>Compact Organizer (JPX-0012)</i>	*Compact Cooler (JPX-0011)	*Compact Cooler (JPX-0011)
	Vacuum (JPX-0023)	Vacuum (JPX-0023)
	Low-Profile Organizer (JPX-0017)	Low-Profile Organizer (JPX-0017)
	*Low-Profile Compact Organizer (JPX-0016)	*Low-Profile Compact Organizer (JPX-0016)

See CIB at 65-66.

I note that the products Milwaukee identifies as the claimed “second container” are identical to the products it identifies as the claimed “third container.” For purposes of this claim 15 technical prong analysis, the products in the leftmost column will be referred to as the “First Container Accused Products,” the products in the center column will be referred to as the “Second Container Accused Products,” and the products in the rightmost column will be referred to as the “Third Container Accused Products.” Domestic Industry Products with an asterisk will be referred to as “Half Width Domestic Industry Products” as the width of those products is relevant to the analysis of claim 15. Similarly, the Compact Organizer is emphasized in the leftmost column above because its features are also relevant to the analysis of claim 15.

PUBLIC VERSION

For reference, all limitations of claim 15 are reproduced below with an indication of the section above that discusses the evidence demonstrating that the Domestic Industry Products satisfy each particular limitation:

15. [Pre] A container assembly comprising:

See section VI.B.1.a) above. The Domestic Industry Products are containers that fit together in various combinations to form a container assembly.

[a] a first container comprising:

The First Container Domestic Industry Products are identified in the table above.

[a][i] a first lid pivotally attached to the first container;

See section VI.B.1.c). All First Container Domestic Industry Products satisfy this limitation.

[a][ii] a first female coupler at a top face of the first lid;

See sections VI.B.1.b) and VII.C.1. All First Container Domestic Industry Products have a female coupler at a top face of the first lid.

[a][iii] a first front face, a first side face, an second side face opposite the first side face, the first front face, the first side face, and the second side face collectively partially defining a storage compartment;

See sections VI.B.1.i) and VII.C.1. All First Container Domestic Industry Products have a front face and two side faces collectively partially defining a storage compartment.

[a][iv] a first corner extending between the first front face and the first side face, and a second corner extending between the first front face and the second side face;

See sections VI.B.1.i) and VII.C.1. All First Container Domestic Industry Products have corners between the front face and each of the side faces.

[a][v] a first corner bumper extending outward from the first corner; and

PUBLIC VERSION

See sections VI.B.1.i) and VII.C.1. All First Container Domestic Industry Products have a first corner bumper extending outward from the first corner.

[a][vi] a second corner bumper extending outward from the second corner;

See sections VI.B.1.i) and VII.C.1. All First Container Domestic Industry Products have a second corner bumper extending outward from the second corner.

[a][vii] wherein the first corner bumper defines an outer surface that extends past and faces away from each of the first front face and the first side face, and wherein the second corner bumper defines an outer surface that extends past and faces away from each of the first front face and the second side face; and

See sections VI.B.1.i) and VII.C.1. All First Container Domestic Industry Products have first and second corner bumpers that satisfy this limitation.

[a][viii] a first locking latch arresting location; and

See sections VI.B.1.k) and VII.C.1. All First Container Domestic Industry Products have a locking latch arresting location.

[b] a second container comprising:

The Second Container Domestic Industry Products are identified in the table above.

[b][i] a male coupler extending from a bottom face of the second container, the male coupler configured to slidingly engage with the first female coupler of the first container, wherein the first female coupler and male coupler engage each other when the first and second containers are slid with respect to each other;

See sections VI.B.1.f) and VII.C.1. All Second Container Domestic Industry Products have male couplers that satisfy this limitation.

[b][ii] a second lid pivotally attached to the second container; and

See sections VI.B.1.c), VI.B.1.g), and VII.C.1. All Second Container Domestic Industry Products have a lid pivotally attached to the container.

PUBLIC VERSION

[b][iii] a locking latch positionable in a locked position engaging the first locking latch arresting location thereby limiting sliding displacement of the first container with respect to the second container;

See sections VI.B.1.l) and VII.C.1. The Second Container Domestic Industry Products have a locking latch positionable in a locked position to limit sliding displacement with respect to the First Container Accused Products.

[c] the first container comprising a plurality of female couplers including the first female coupler, the plurality of female couplers at the top face of the first lid, the first container comprising a second locking latch arresting location; and

See sections VI.B.1.b) and VII.C.1. The First Container Domestic Industry Products each have a plurality of female couplers at the top face of the lid. The physical samples show that the First Container Domestic Industry Products—except for the Compact Organizer (JPX-0012)—have a second locking latch arresting location. JPX-0012; JPX-0014-15; JPX-0018-22; JPX-0024-25. The Compact Organizer only has one locking latch arresting location. JPX-0012.

[d] the container assembly comprising a third container comprising:

The Third Container Accused Products are identified in the table above. The list of Third Container Domestic Industry Products is identical to the list of Second Container Domestic Industry Products.

[d][i] a second male coupler extending from a bottom face of the third container, the second male coupler configured to slidably engage with one of the plurality of female couplers of the first container, wherein the second male coupler and the at least one of the plurality of female couplers engage each other when the first and second containers are slid with respect to each other;

See sections VI.B.1.f) and VII.C.1. All Third Container Domestic Industry Products have male couplers that satisfy this limitation.

PUBLIC VERSION

[d][iii] a third lid pivotally attached to the third container;

See sections VI.B.1.c) and VII.C.1. All Third Container Domestic Industry Products have a lid pivotally attached to the container.

[d][iii] a third female coupler at a top face of the third lid, the third female coupler comprising two sidewalls, a back wall, and a first rib, the back wall located between the two sidewalls, the two sidewalls and the back wall projecting above a depressed surface of the top face of the third lid, and the first rib extending away from the back wall towards a front face of the third container and the front face of the first container; and

See sections VI.B.1.b) and VII.C.1. All Third Container Domestic Industry Products have a female coupler at a top face of the first lid that satisfies this limitation.

[d][iv] a second locking latch positionable in a locked position engaging the second locking latch arresting location thereby limiting sliding displacement of the third container with respect to the first container.

See sections VI.B.1.i) and VII.C.1. The Third Container Domestic Industry Products have a locking latch positionable in a locked position to limit sliding displacement with respect to the First Container Domestic Industry Products.

Combinations of Domestic Industry Products that Practice Claim 15

Unlike other Asserted Patent claims, which require only two containers, claim 15 of the '167 patent requires three containers. Claim 15 will not be satisfied by every combination that uses one container from each of the three Domestic Industry Product container categories identified by Milwaukee. The limiting factor is the combination of limitation 15[b][iii] and limitation 15[d][iv]. Limitation 15[b][iii] recites a locking latch on the second container that engages with a first locking latch arresting location on the first container. Limitation 15[d][iv]

PUBLIC VERSION

recites a locking latch on the third container that engages with a second locking latch arresting location on the first container.

Satisfaction of claim 15 thus requires that the first container have two separate locking latch arresting locations. *See* Tr. (Klopp) at 363:9-15 (“[T]he first locking latch arresting location and the second locking latch arresting location can’t be the same thing.”). But if both the second and third containers are PACKOUT full-width containers, the structure and orientation of the respective locking latches would both necessarily be positionable in the same locking latch arresting location on the first container. Accordingly, a configuration in which all three containers are PACKOUT full-width containers cannot practice each and every element of claim 15.

Additionally, an assembly in which the Compact Organizer (JPX-0012) is the first container does not practice claim 15 because, as explained above, the Compact Organizer does not have a “second locking latch arresting location.” The Compact Organizer only has one locking latch arresting location. JPX-0012.

Notwithstanding these special cases, all of the PACKOUT containers identified in connection with claim 15 practice claim 15 in configurations with three containers so long as the first container is a full-width container and no more than one of the other two containers is a full-width container. Accordingly, there are two genera of container assemblies that meet every limitation of claim 15:

(1) a First Container Domestic Industry Product (other than the Compact Organizer) *plus* any Second Container Domestic Industry Product *plus* any Third Container Domestic Industry Product that is a Half Width Domestic Industry Product,¹⁹ and

(2) a First Container Domestic Industry Product (other than the Compact Organizer) *plus* any Second Container Domestic Industry Product that is a Half Width Domestic Industry Product *plus* any Third Container Domestic Industry Product.

Because all Domestic Industry Products identified by Milwaukee in connection with claim 15 may be used in such assemblies that meet those requirements, they are articles protected by the '167 patent.

8. '167 Patent Technical Prong Conclusions

In sum, the record evidence demonstrates that Domestic Industry Products arranged in various combinations satisfy all limitations of all asserted claims of the '167 patent. These combinations are summarized below:

- Claim 2: PACKOUT Rolling Toolbox (“first container”) *plus* any Half Width Domestic Industry Product (“second container”)
- Claim 5: any Full Width Domestic Industry Product (“first container”) *plus* Compact Organizer or Low-Profile Compact Organizer (“second container”)
- Claim 8: any Full Width Domestic Industry Product (“first container”) *plus* Compact Organizer, Low-Profile Compact Organizer, or Vacuum (“second container”)

¹⁹ The Half Width Domestic Industry Products for purposes of the claim 15 analysis are: the Compact Organizer (JPX-0012), Compact Toolbox (JPX-0013), Compact Cooler (JPX-0011), and Low-Profile Compact Organizer (JPX-0016).

PUBLIC VERSION

- Claim 14: any Full Width Domestic Industry Product (“first container”) *plus* any Half Width Domestic Industry Product (“second container”)
- Claim 15: the specific combinations that practice claim 15 have been delineated above in section VII.C.7

As summarized in the list above, claim 15 is practiced by all Domestic Industry Products, whereas claims 2, 5, 8, 14 are practiced by only a subset of the Domestic Industry Products. *Cf. Certain Multiple Mode Outdoor Grills and Parts Thereof*, Inv. No. 337-TA-895, Final Initial Determination at 62-63 (Sept. 26, 2014) (finding that even though individual grill components did not infringe the asserted patent, they nevertheless infringed when assembled together), *unreviewed in relevant part*, Comm’n Op. (Feb. 20, 2015); *Certain Infotainment Sys., Components Thereof, and Automobiles Containing the Same*, Inv. No. 337-TA-1119, Final Initial Determination at 43-46 (finding technical prong not satisfied when domestic industry product did not practice the patent by itself and complainant did not adduce evidence showing that the domestic industry product practiced the patent when combined with additional component items) (Nov. 13, 2019), *aff’d*, Comm’n Op. at 22-23 (May, 28, 2020), *aff’d*, *Broadcom Corp. v. Int’l Trade Comm’n*, 28 F.4th 240, 249-50 (Fed. Cir. 2022).

VIII. ’026 PATENT

A. Infringement

Milwaukee asserts that Klein “is liable for direct and indirect induced infringement of claims 4 and 8 of the ’026 Patent.” CIB at 100. Milwaukee further asserts that “the Accused Products include each and every limitation of these claims” and that Klein “has committed acts of direct and indirect induced infringement.” *Id.*

PUBLIC VERSION

The asserted claims of the '026 patent each recite a “container assembly” having a “first container” and “second container.” *See, e.g.*, '026 patent at claims 1, 4, 8. Accordingly, the infringement analysis of any asserted '026 patent claim requires a pair of containers to be considered together. Milwaukee has identified a first set of Accused Products that can be considered the claimed first container and second set of Accused Products that can be considered the claimed second container. CIB at 100 (citing Tr. (Klopp) at 323:14-20, 324:1-7; CDX-0003.0289, 0291). Under Milwaukee’s infringement theory, multiple combinations of first and second Accused Products constitute the claimed “container assembly.” The tables below summarize the groups of Accused Products that Milwaukee says can be the “first container” and “second container” in the asserted '026 patent claims:

Accused Products Alleged to Satisfy Claim 4 of the '026 Patent

“first container”
Cooler (JPX-0010)
Backpack Component Box (JPX-0008)
Half Width Short Component Box (JPX-0007)
Half Width Tall Component Box (JPX-0006)
Full Width Short Component Box (JPX-0005)
Full Width Tall Component Box (JPX-0004)
Small Toolbox (JPX-0001)
Medium Toolbox (JPX-0003)
Hybrid Toolbox (JPX-0009)
Rolling Toolbox (JPX-0002)

“second container”
Cooler (JPX-0010)
Backpack Component Box (JPX-0008)
Half Width Short Component Box (JPX-0007)
Half Width Tall Component Box (JPX-0006)
Full Width Short Component Box (JPX-0005)
Full Width Tall Component Box (JPX-0004)
Small Toolbox (JPX-0001)
Medium Toolbox (JPX-0003)
Hybrid Toolbox (JPX-0009)

Accused Products Alleged to Satisfy Claim 8 of the '026 Patent

“first container”
Full Width Short Component Box (JPX-0005)
Full Width Tall Component Box

“second container”
Cooler (JPX-0010)
Half Width Short Component Box

PUBLIC VERSION

“first container”
(JPX-0004)
Small Toolbox (JPX-0001)
Medium Toolbox (JPX-0003)
Rolling Toolbox (JPX-0002)

“second container”
(JPX-0007)
Half Width Tall Component Box (JPX-0006)
Hybrid Toolbox (JPX-0009)

See CIB at 100-01.

Milwaukee’s arguments regarding indirect infringement of the Asserted Products will be addressed separately in section IX below.

1. Claim 1

Although Milwaukee does not allege infringement claims 1-3 of the ’167 patent, it does allege infringement of claims 4 and 8, which depend from these claims. I thus make the following findings regarding whether the Accused Products satisfy the limitations of claims 1-3. For purposes of this analysis, the “first container” and “second container” limitations will be applied to the following products:

“first container”
Cooler (JPX-0010)
Backpack Component Box (JPX-0008)
Half Width Short Component Box (JPX-0007)
Half Width Tall Component Box (JPX-0006)
Full Width Short Component Box (JPX-0005)
Full Width Tall Component Box (JPX-0004)
Small Toolbox (JPX-0001)
Medium Toolbox (JPX-0003)
Hybrid Toolbox (JPX-0009)
Rolling Toolbox (JPX-0002)

“second container”
Cooler (JPX-0010)
Backpack Component Box (JPX-0008)
Half Width Short Component Box (JPX-0007)
Half Width Tall Component Box (JPX-0006)
Full Width Short Component Box (JPX-0005)
Full Width Tall Component Box (JPX-0004)
Small Toolbox (JPX-0001)
Medium Toolbox (JPX-0003)
Hybrid Toolbox (JPX-0009)

CIB at 100-01 (table of products for claim 4). The products in the left column comprise the entire set of Accused Products, and the products in the right column are the same with the exception of

the Rolling Toolbox. For purposes of the '026 patent infringement analysis, the products in the right column will be referred to as the "Second Container Accused Products."

Claim 1 of the '026 patent addresses subject matter materially identical to that discussed with respect to claim 1 of the '952 patent in section VI.A.1 above, and the Accused Products satisfy the limitations of claim 1 of the '026 patent for the same reasons discussed with respect to the '952 patent. For reference, all limitations of claim 1 of the '026 patent are reproduced below with an indication of the section above that discusses the evidence demonstrating that the Accused Products satisfy each particular limitation, while any new subject matter claimed in the '026 patent is discussed separately:

1. [Pre] A container assembly comprising:

See section VI.A.1.a) above. The Accused Products are containers that fit together in various combinations to form a container assembly.

[a] a first container comprising:

See section VI.A.1.a) above. Each Accused Product has been identified as the claimed first container.

[a.i] a first coupler extending from a first face of the first container, the first coupler comprising two sidewalls, a back wall, and a rib, the back wall located between the two sidewalls, the two sidewalls and the back wall projecting from a depressed surface of the first face, and the rib extending from the back wall in a first direction;

See section VI.A.1.b) above. The primary difference between the claim language in the '026 patent and the '952 patent is that the '026 patent claims a first coupler extending from a "first face," whereas the '952 patent claims a first coupler extending from a "top face." For purposes of the infringement analysis, the "top face" equals the "first face," and thus the Accused Products satisfy this limitation.

PUBLIC VERSION

[a.ii] a lid pivotally attached to the first container; and

See section VI.A.1.c) above. All Accused Products satisfy this limitation.

[a.iii] a toggle locking latch configured to latch the lid of the first container in a closed position;

See section VI.A.1.d) above. All Accused Products satisfy this limitation.

[b] a second container comprising:

See section VI.A.1.e) above. The Second Container Accused Products are all Accused Products except for the Rolling Toolbox (JPX-0002).

[b.i] a second coupler extending from a second face of the second container, the second coupler comprising a tongue offset from the second face, the tongue extends in a second direction opposite the first direction, the tongue of the second container is engageable with the rib of the first container;

See section VI.A.1.f) above. All Second Container Accused Products satisfy this limitation.

[b.ii] a lid pivotally attached to the second container; and

See section VI.A.1.g) above. All Second Container Accused Products satisfy this limitation.

[b.iii] a toggle locking latch configured to latch the lid of the second container in a closed position;

See section VI.A.1.g) above. All Second Container Accused Products satisfy this limitation.

[b.iv] wherein the first and second couplers of the first and second containers engage each other when the first and second containers are slid with respect to each other along a sliding path defined by the rib and the tongue;

See section above. The Accused Products satisfy this limitation.

[c] a locking latch arresting location defined by one of the first container or the second container; and

PUBLIC VERSION

See section above. The Accused Products satisfy this limitation.

[d] a locking latch coupled to the other of the first container or the second container, the locking latch positionable in a locked position engaging the locking latch arresting location thereby limiting sliding displacement of the first container with respect to the second container.

See section above. The Accused Products satisfy this limitation.

Accordingly, a container assembly that satisfies all limitations of claim 1 is formed when any Accused Product is combined with a Second Container Accused Product (*i.e.*, any Accused Product except for the Rolling Toolbox (JPX-0002)).

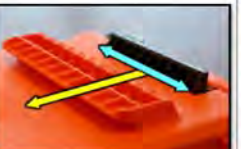
2. Claim 2

a) “The container assembly of claim 1, ”

As discussed above, all Accused Products can be paired in combinations that satisfy the limitations of claim 1.

b) “wherein the sliding path is perpendicular to the locking latch.”

Manipulation of the physical samples of the Accused Products shows they engage each other along a sliding path that is perpendicular to the locking latch. JPX-0001-10. As illustrated in the slide below prepared by Dr. Klopp, the sliding paths (yellow annotation) are in a direction perpendicular to the locking latches (blue annotation):

 The Accused Products Include Claims 2 And 3 Of The '026 Patent 				
2 The container assembly of claim 1, wherein the sliding path is perpendicular to the locking latch.				
3 The container assembly of claim 2, wherein the locking latch comprises a rear surface, wherein the sliding path is perpendicular to the rear surface.				
 Medium Toolbox 54803MB (JPX-0003)	 Small Toolbox 54804MB (JPX-0001)	 Full Width Tall Component Box 54806MB (JPX-0004)	 Full Width Short Component Box 54807MB (JPX-0005)	
 Half Width Tall Component Box 54808MB (JPX-0006)	 Half Width Short Component Box 54809MB (JPX-0007)	 Backpack Component Box 54812MB (JPX-0008)	 Cooler 62204MB (JPX-0010)	 Hybrid Toolbox 54824MB (JPX-0009)
JPX-0001; JPX-0003-10; CX-0349-356; CX-0375				
CDX-0003.286				

CDX-0003.0286; JPX-0001; JPX-0003-10; CX-0349-356; CX-0375.

Accordingly, a container assembly that satisfies all limitations of claim 2 is formed when any Accused Product is combined with a Second Container Accused Product (*i.e.*, any Accused Product except for the Rolling Toolbox (JPX-0002)).

3. Claim 3

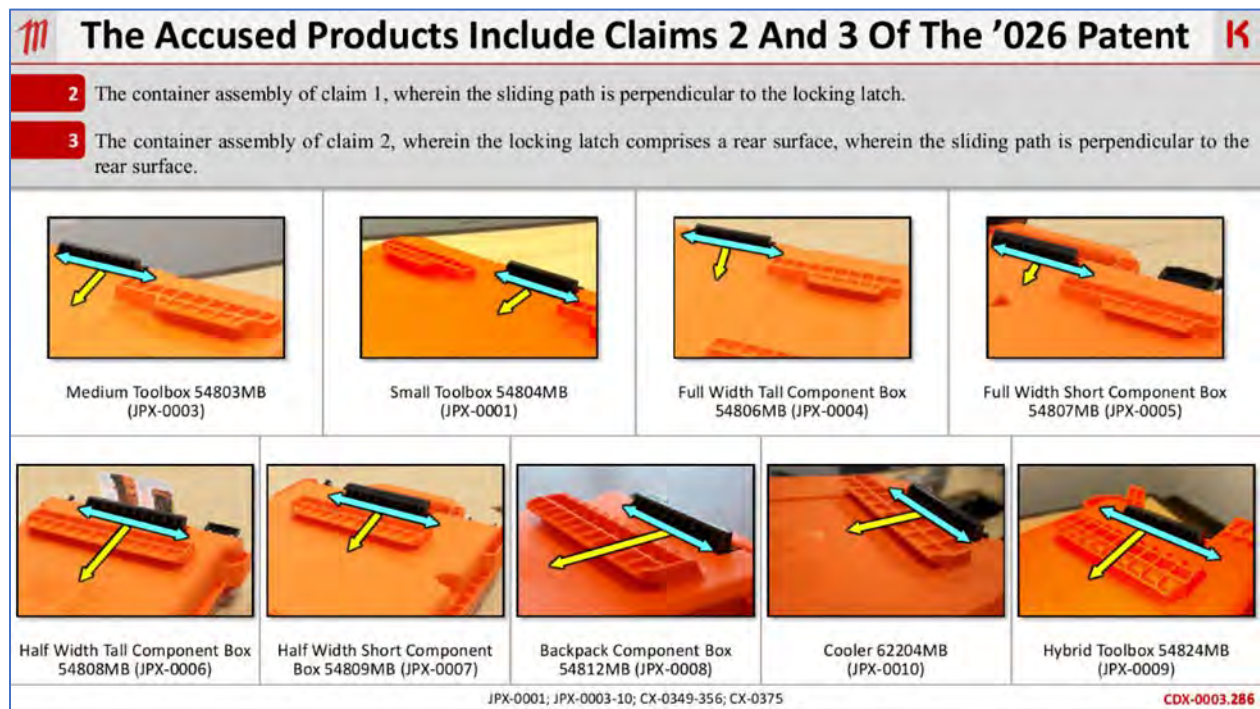
a) “The container assembly of claim 2,”

As discussed above, all Accused Products can be paired in combinations that satisfy the limitations of claim 2.

b) “wherein the locking latch comprises a rear surface, wherein the sliding path is perpendicular to the rear surface.”

Examination and manipulation of the physical samples of the Accused Products shows that the locking latches comprise a rear surface, and that the containers engage each other along a sliding path that is perpendicular to rear surface. JPX-0001-10. As illustrated in the slide below

prepared by Dr. Klopp, the sliding paths (yellow annotation) are in a direction perpendicular to the rear surfaces of the locking latches (blue annotation):



CDX-0003.0286; JPX-0001; JPX-0003-10; CX-0349-356; CX-0375.

Accordingly, a container assembly that satisfies all limitations of claim 3 is formed when any Accused Product) is combined with a Second Container Accused Product (i.e., any Accused Product except for the Rolling Toolbox (JPX-0002)).

4. Claim 4

a) “The container assembly of claim 3,”

As discussed above, the Accused Products can be paired in combinations that satisfy the limitations of claim 3.

b) “wherein the locking latch is spring biased to engage with the locking latch arresting location.”

This limitation is identical to one recited in claim 3 of the '952 patent. Thus, for the reasons discussed in section VI.A.2.b) above, the Accused Products satisfy this limitation.

PUBLIC VERSION

Accordingly, an infringing container assembly is formed when any Accused Product is combined with a Second Container Accused Product (*i.e.*, any Accused Product except for the Rolling Toolbox (JPX-0002)).

5. Claim 8

For purposes of the claim 8 analysis, the “first container” and “second container” limitations will be applied to the following products:

“first container”	“second container”
Full Width Short Component Box (JPX-0005)	Cooler (JPX-0010)
Full Width Tall Component Box (JPX-0004)	Half Width Short Component Box (JPX-0007)
Small Toolbox (JPX-0001)	Half Width Tall Component Box (JPX-0006)
Medium Toolbox (JPX-0003)	Hybrid Toolbox (JPX-0009)
Rolling Toolbox (JPX-0002)	

CIB at 101 (table of products for claim 8). For the claim 8 analysis, the products in the leftmost column will be referred to as the “Full Width Accused Products” and the products in the rightmost column will be referred to as the “Half Width Accused Products.”

a) “The container assembly of claim 1, ”

As discussed above, the Full Width Accused Products and Half Width Accused Products can be paired in combinations that satisfy the limitations of claim 1.

b) “wherein a width of the second container is half of a width of the first container, and the second container is located on top of the first container.”

See section VI.A.3.b). The Full Width Accused Products and the Half Width Accused Products satisfy this limitation for the reasons discussed above. Accordingly, an infringing container assembly is formed when a Full Width Accused Product is combined with a Half Width Accused Product.

6. '026 Patent Infringement Conclusions

In sum, the record evidence demonstrates that pairs of Accused Products arranged in various combinations satisfy all limitations of all asserted claims of the '026 patent. These combinations are summarized below:

- Claim 4: any Accused Product (“first container”) *plus* any Second Container Product (“second container”)
- Claim 8: any Full Width Accused Product (“first container”) *plus* any Half Width Accused Product (“second container”)

Klein infringes the asserted claims when it imports the above combinations of Accused Products into the United States (JX-0010 ¶ 3), resellers infringe the asserted claims when they sell these combinations of the Accused Products (CX-0012C (O’Flaherty Dep.) at 100:22-101:15; CX-0011C (Klein Dep.) at 168:1-169:14; Tr. (Klein) at 511:21-25), and sales teams demonstrating the Accused Products and customers using the Accused Products infringe the asserted claims when they use the combinations of the Accused Products identified above (CX-0012C (O’Flaherty Dep.) at 40:3-11, 68:3-14, 100:22-101:15, 207:19-209:11).

B. Technical Prong

Milwaukee asserts that the Domestic Industry Products “include each and every limitation of claims 4 and 8 of the '026 Patent both literally and under the doctrine of equivalents such that Complainants satisfy the technical prong of the domestic industry requirement.” CIB at 95.

The asserted claims of the '026 patent each recite a “container assembly” having a “first container” and “second container.” *See, e.g.,* '026 patent at claims 1, 4, 8. Accordingly, the technical prong analysis of any asserted '026 patent claim requires a pair of containers to be considered together. Milwaukee has identified a first set of Domestic Industry Products that can

PUBLIC VERSION

be considered the claimed first container and second set of Domestic Industry Products that can be considered the claimed second container. CIB at 95-96 (citing Tr. (Klopp) at 269:3-9, 269:15-21; CDX-0003.0146, 0148). Under Milwaukee's technical prong theory, multiple combinations of first and second Accused Products constitute the claimed "container assembly." The tables below summarize the groups of Domestic Industry Products that Milwaukee says can be the "first container" and "second container" in the asserted '026 patent claims:

Domestic Industry Products Alleged to Satisfy Claim 4 of the '026 Patent

"first container"	"second container"
PACKOUT Rolling Toolbox (JPX-0020)	Large Toolbox (JPX-0015)
Rolling Modular Tool Chest (JPX-0019)	Toolbox (JPX-0022)
Large Toolbox (JPX-0015)	XL Toolbox (JPX-0025)
Toolbox (JPX-0022)	Tool Case (JPX-0021)
XL Toolbox (JPX-0025)	Compact Toolbox (JPX-0013)
Tool Case (JPX-0021)	XL Cooler (JPX-0024)
Compact Toolbox (JPX-0013)	Vacuum (JPX-0023)
XL Cooler (JPX-0024)	Organizer (JPX-0018)
Compact Cooler (JPX-0011)	Deep Organizer (JPX-0014)
Vacuum (JPX-0023)	Compact Organizer (JPX-0012)
Organizer (JPX-0018)	Low-Profile Organizer (JPX-0017)
Deep Organizer (JPX-0014)	Low-Profile Compact Organizer (JPX-0016)
Compact Organizer (JPX-0012)	
Low-Profile Organizer (JPX-0017)	
Low-Profile Compact Organizer (JPX-0016)	

Domestic Industry Products Alleged to Satisfy Claim 8 of the '026 Patent

"first container"	"second container"
PACKOUT Rolling Toolbox (JPX-0020)	Compact Toolbox (JPX-0013)
Large Toolbox (JPX-0015)	Compact Cooler (JPX-0011)
Toolbox (JPX-0022)	Vacuum (JPX-0023)
XL Toolbox (JPX-0025)	Compact Organizer (JPX-0012)
Tool Case (JPX-0021)	Low-Profile Compact Organizer (JPX-0016)
XL Cooler (JPX-0024)	
Organizer (JPX-0018)	

PUBLIC VERSION

“first container”
Deep Organizer (JPX-0014)
Low-Profile Organizer (JPX-0017)

“second container”

See CIB at 95-96.

1. Claim 1

Although Milwaukee does not rely on independent claim 1 or dependent claims 2 and 3 of the '026 patent to show satisfaction of the technical prong of the domestic industry requirement, it does rely on claims 4 and 8, which depend from claims 1, 2, and 3. I thus make findings regarding whether the Domestic Industry Products satisfy the limitations of claims 1, 2, and 3.

For purposes of this analysis, the “first container” and “second container” limitations will be applied to the following products:

“first container”
PACKOUT Rolling Toolbox (JPX-0020)
Rolling Modular Tool Chest (JPX-0019)
Large Toolbox (JPX-0015)
Toolbox (JPX-0022)
XL Toolbox (JPX-0025)
Tool Case (JPX-0021)
Compact Toolbox (JPX-0013)
XL Cooler (JPX-0024)
Compact Cooler (JPX-0011)
Vacuum (JPX-0023)
Organizer (JPX-0018)
Deep Organizer (JPX-0014)
Compact Organizer (JPX-0012)
Low-Profile Organizer (JPX-0017)
Low-Profile Compact Organizer (JPX-0016)

“second container”
Large Toolbox (JPX-0015)
Toolbox (JPX-0022)
XL Toolbox (JPX-0025)
Tool Case (JPX-0021)
Compact Toolbox (JPX-0013)
XL Cooler (JPX-0024)
Vacuum (JPX-0023)
Organizer (JPX-0018)
Deep Organizer (JPX-0014)
Compact Organizer (JPX-0012)
Low-Profile Organizer (JPX-0017)
Low-Profile Compact Organizer (JPX-0016)

See CIB at 95-96 (table of products for claim 4). The products in the left column comprise the entire set of Domestic Industry Products. For purposes of the '026 patent technical prong analysis, the products in the right column will be referred to as the “Second Container Domestic Industry Products.”

PUBLIC VERSION

Claim 1 of the '026 patent addresses subject matter materially identical to that discussed with respect to claim 1 of the '952 patent in section VI.B above, and the Domestic Industry Products satisfy the limitations of claim 1 of the '026 patent for the same reasons discussed with respect to the '952 patent. For reference, all limitations of claim 1 of the '026 patent are reproduced below with an indication of the section above that discusses the evidence demonstrating that the Domestic Industry Products satisfy each particular limitation, while any new subject matter claimed in the '026 patent is discussed separately:

1. [Pre] A container assembly comprising:

See section VI.B.1.a) above. The Domestic Industry Products are containers that fit together in various combinations to form a container assembly.

[a] a first container comprising:

See section VI.B.1.a) above. Each Domestic Industry Product has been identified as the claimed first container.

[a.i] a first coupler extending from a first face of the first container, the first coupler comprising two sidewalls, a back wall, and a rib, the back wall located between the two sidewalls, the two sidewalls and the back wall projecting from a depressed surface of the first face, and the rib extending from the back wall in a first direction;

See section VI.B.1.b) above. The primary difference between the claim language in the '026 patent and the '952 patent is that the '026 patent claims a first coupler extending from a “first face,” whereas the '952 patent claims a first coupler extending from a “top face.” For purposes of the technical prong analysis, the “top face” equals the “first face,” and thus the Domestic Industry Products satisfy this limitation.

[a.ii] a lid pivotally attached to the first container; and

See section VI.B.1.c) above. All Domestic Industry Products satisfy this limitation.

PUBLIC VERSION

[a.iii] a toggle locking latch configured to latch the lid of the first container in a closed position;

See section VI.B.1.d) above. All Domestic Industry Products satisfy this limitation.

[b] a second container comprising:

See section VI.B.1.e) above. The Second Container Domestic Industry Products have been identified in the table above.

[b.i] a second coupler extending from a second face of the second container, the second coupler comprising a tongue offset from the second face, the tongue extends in a second direction opposite the first direction, the tongue of the second container is engageable with the rib of the first container;

See section VI.B.1.f) above. All Second Container Domestic Industry Products satisfy this limitation.

[b.ii] a lid pivotally attached to the second container; and

See section VI.B.1.g) above. All Second Container Domestic Industry Products satisfy this limitation.

[b.iii] a toggle locking latch configured to latch the lid of the second container in a closed position;

See section VI.B.1.h) above. All Second Container Domestic Industry Products satisfy this limitation.

[b.iv] wherein the first and second couplers of the first and second containers engage each other when the first and second containers are slid with respect to each other along a sliding path defined by the rib and the tongue;

See section VI.B.1.j) above. The Domestic Industry Products satisfy this limitation.

[c] a locking latch arresting location defined by one of the first container or the second container; and

See section VI.B.1.k) above. The Domestic Industry Products satisfy this limitation.

[d] a locking latch coupled to the other of the first container or the second container, the locking latch positionable in a locked position engaging the locking latch arresting location thereby limiting sliding displacement of the first container with respect to the second container.

See section VI.B.1.l) above. The Domestic Industry Products satisfy this limitation.

Accordingly, a container assembly that satisfies all limitations of claim 1 is formed when any Domestic Industry Product is combined with a Second Container Domestic Industry Product.

2. Claim 2

a) “The container assembly of claim 1, ”

As discussed above, all Domestic Industry Products can be paired in combinations that satisfy the limitations of claim 1.

b) “wherein the sliding path is perpendicular to the locking latch.”

Manipulation of the physical samples of the Domestic Industry Products shows they engage each other along a sliding path that is perpendicular to the locking latch. JPX-0011-25. The direction of the sliding path is illustrated in white annotation, and the location of the locking latch is illustrated in green annotation, in the below slide prepared by Dr. Klopp:

M		The DI Products Include Claims 2 And 3 Of The '026 Patent				K	
2		The container assembly of claim 1, wherein the sliding path is perpendicular to the locking latch.					
3		The container assembly of claim 2, wherein the locking latch comprises a rear surface, wherein the sliding path is perpendicular to the rear surface.					
							
Large Toolbox (JPX-0015)		Toolbox (JPX-0022)		XL Toolbox (JPX-0025)		Tool Case (JPX-0021)	
							
Compact Toolbox (JPX-0013)		XL Cooler (JPX-0024)		Compact Cooler (JPX-0011)		Vacuum (JPX-0023)	
							
Deep Organizer (JPX-0014)		Compact Organizer (JPX-0012)		Low-Profile Organizer (JPX-0017)		Low-Profile Compact Organizer (JPX-0016)	
JPX-0011-18; JPX-0022-25; CX-0664-676							
CDX-0003.143							

CDX-0003.0143; JPX-0011-18; JPX-0022-25; CX-0664-76.

Accordingly, a container assembly that satisfies all limitations of claim 2 is formed when any Domestic Industry Product is combined with a Second Container Domestic Industry Product.

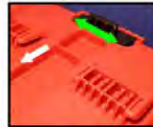
3. Claim 3

a) “The container assembly of claim 2, ”

As discussed above, the Domestic Industry Products can be paired in combinations that satisfy the limitations of claim 2.

b) “wherein the locking latch comprises a rear surface, wherein the sliding path is perpendicular to the rear surface.”

Examination of the physical samples of the Domestic Industry Products shows that the locking latch comprises a rear surface, and that the containers they engage each other along a sliding path that is perpendicular to the rear surface. JPX-0011-25. The direction of the sliding path is illustrated in white annotation, and the location of the rear surface of the locking latch is illustrated in green annotation, in the below slide prepared by Dr. Klopp:

 The DI Products Include Claims 2 And 3 Of The '026 Patent 				
2 The container assembly of claim 1, wherein the sliding path is perpendicular to the locking latch.				
3 The container assembly of claim 2, wherein the locking latch comprises a rear surface, wherein the sliding path is perpendicular to the rear surface.				
				
Large Toolbox (JPX-0015)	Toolbox (JPX-0022)	XL Toolbox (JPX-0025)	Tool Case (JPX-0021)	
				
Compact Toolbox (JPX-0013)	XL Cooler (JPX-0024)	Compact Cooler (JPX-0011)	Vacuum (JPX-0023)	Organizer (JPX-0018)
				
Deep Organizer (JPX-0014)	Compact Organizer (JPX-0012)	Low-Profile Organizer (JPX-0017)	Low-Profile Compact Organizer (JPX-0016)	
JPX-0011-18; JPX-0022-25; CX-0664-676				CDX-0003.143

CDX-0003.0143; JPX-0011-18; JPX-0022-25; CX-0664-76.

Accordingly, a container assembly that satisfies all limitations of claim 3 is formed when any Domestic Industry Product is combined with a Second Container Domestic Industry Product.

4. Claim 4

a) “The container assembly of claim 3,”

As discussed above, the Domestic Industry Products can be paired in combinations that satisfy the limitations of claim 3.

b) “wherein the locking latch is spring biased to engage with the locking latch arresting location.”

This limitation is identical to one recited in claim 3 of the '952 patent. Thus, for the reasons discussed in section VI.B.2.b) above, the Domestic Industry Products satisfy this limitation.

Accordingly, a container assembly that satisfies all limitations of claim 4 is formed when any Domestic Industry Product is combined with a Second Container Domestic Industry Product.

5. Claim 8

For purposes of the claim 8 analysis, the “first container” and “second container” limitations will be applied to the following products:

“first container”	“second container”
PACKOUT Rolling Toolbox (JPX-0020)	Compact Toolbox (JPX-0013)
Large Toolbox (JPX-0015)	Compact Cooler (JPX-0011)
Toolbox (JPX-0022)	Vacuum (JPX-0023)
XL Toolbox (JPX-0025)	Compact Organizer (JPX-0012)
Tool Case (JPX-0021)	Low-Profile Compact Organizer (JPX-0016)
XL Cooler (JPX-0024)	
Organizer (JPX-0018)	
Deep Organizer (JPX-0014)	
Low-Profile Organizer (JPX-0017)	

See CIB at 95-96. For the claim 8 analysis, the products in the leftmost column will be referred to as the “Full Width Domestic Industry Products” and the products in the rightmost column will be referred to as the “Half Width Domestic Industry Products.”

a) “The container assembly of claim 1, ”

As discussed above, the Domestic Industry Products can be paired in combinations that satisfy the limitations of claim 1.

b) “wherein a width of the second container is half of a width of the first container, and the second container is located on top of the first container.”

This limitation is identical to one recited in claim 4 of the ’952 patent. Thus, for the reasons discussed in section VI.B.3.b) above, the Domestic Industry Products satisfy this limitation.

Accordingly, a container assembly that practices claim 8 is formed when a Full Width Domestic Industry Product is combined with a Half Width Domestic Industry Product.

6. '026 Patent Technical Prong Conclusions

In sum, the record evidence demonstrates that pairs of Domestic Industry Products arranged in various combinations satisfy all limitations of all asserted claims of the '167 patent. These combinations are summarized below:

- Claim 4: any Domestic Industry Product (“first container”) *plus* any Second Container Product (“second container”)
- Claim 8: any Full Width Domestic Industry Product (“first container”) *plus* any Half Width Domestic Industry Product (“second container”)

As summarized in the list above, claim 4 is practiced by all Domestic Industry Products, whereas claim 8 is practiced by only a subset of the Domestic Industry Products. *Cf. Certain Multiple Mode Outdoor Grills and Parts Thereof*, Inv. No. 337-TA-895, Final Initial Determination at 62-63 (Sept. 26, 2014) (finding that even though individual grill components did not infringe the asserted patent, they nevertheless infringed when assembled together), *unreviewed in relevant part*, Comm’n Op. (Feb. 20, 20215); *Certain Infotainment Sys., Components Thereof, and Automobiles Containing the Same*, Inv. No. 337-TA-1119, Final Initial Determination at 43-46 (finding technical prong not satisfied when domestic industry product did not practice the patent by itself and complainant did not adduce evidence showing that the domestic industry product practiced the patent when combined with additional component items) (Nov. 13, 2019), *aff’d*, Comm’n Op. at 22-23 (May, 28, 2020), *aff’d*, *Broadcom Corp. v. Int’l Trade Comm’n*, 28 F.4th 240, 249-50 (Fed. Cir. 2022).

IX. INDIRECT INFRINGEMENT

Liability for induced infringement attaches when the respondent knew of the patent and induced acts that constitute patent infringement. *See Limelight Networks, Inc. v. Akamai Techs.*,

PUBLIC VERSION

Inc., 134 S. Ct. 2111, 2118-19 (2014); *Global-Tech Appliances, Inc. v. SEB S.A.*, 131 S. Ct. 2060, 2068 (2011). Milwaukee asserts Klein is liable for induced infringement of the '952, '167, and '026 patents. CIB at 65, 95, 104. Milwaukee lists three reasons Klein should be found liable for induced infringement:

First, third-party retailers and other end users have committed acts of direct infringement by using, offering for sale, and selling the Accused Products in the United States. These retailers include: Lowe's Home Improvement, Amazon, GrayBaR, City Electric Supply, and Platt Electric Supply. CX-0011C (Klein Dep.), 168:1-168:15, 169:7-14; CX-0012C (O'Flaherty Dep.), 102:13-15, 104:21-24; Tr. (Klein), 511:21-25.

Second, Respondent has admitted in an interrogatory response that it "was aware of the Asserted Patents at least on or about May 28, 2024, when it was served with the Complaint" in the related district court action. CX-1316C.0214-215. The Complaint in the district court action included the same infringement allegations as the Complaint in this Investigation. Thus, Respondent has admitted that it has had knowledge of its infringement of the Asserted Patents since at least May 28, 2024. Moreover, by responding to the Complaint in this Investigation, Respondent has further conceded to having knowledge of the infringement allegations therein.

Third, Respondent's fact witnesses have admitted that Respondent specifically intends for third-party retailers and end-users to infringe by, for example, purchasing and using multiple of the Accused Products and connecting them together. *See, e.g.*, CX-0012C (O'Flaherty Dep.), 66:3-14; Tr. (Klein) at 516:14-517:1. Respondent's advertising further shows that Respondent intends for third-parties to use, offer for sale, and sell multiple of the Accused Products together. CX-0054C; CX-0063; CX-0923; Tr. (Klein) at 502:7-14.

CIB at 64 (emphasis in original).

Klein argues that Milwaukee has failed to prove it is liable for indirect infringement. RRB at 42-47. Klein initially argues that Milwaukee has not shown that "any third party directly infringed any Asserted Claim because the Accused Products do not fall within the scope of the claims," CIB at 43, but this argument fails in view of the determination of direct infringement in sections VI.A, VII.B, and VIII.A above. I find non-party retailers and other end users have

PUBLIC VERSION

committed acts of direct infringement by using, offering for sale, and selling the Accused Products in the United States. CX-0011C (Klein Dep.) at 168:1-168:15 (“we sell in the what would be called big box retail through Lowe’s, and we also sell to wholesale partners”), 169:7-14 (resellers include City Electric Supply, Garybar, and Platt Electric); Tr. (Klein) at 511:21-25 (same); CX-0012C (O’Flaherty Dep.) at 40:3-11 (“It was clear to us at the time that these things needed to lock together in order to be moved about as one single unit once assembled”), 68:3-14 (“it is our assumption that connectible boxes will be connected together by consumers”), 207:19-209:11 (Klein knows from customer research that customers use the Accused Products to “dock the boxes in a single action”).

Klein also argues that Milwaukee has failed to show Klein possessed the “specific intent” to induce others to infringe any asserted claim. RRB at 43. Regarding Klein’s advertising, Klein argues that its hang-tags (*e.g.*, CX-0063C), marketing sell-sheet (CX-0054C), and public website (CX-0923) are nothing more than “mere pictorial advertisements of the capabilities of the products, which are not limited to just the ability to interconnect.” RRB at 43-44.

To the extent Klein contends that it does not instruct users to couple its containers together to form an infringing container assembly, Klein’s position strains credulity. The following is an excerpt from Klein’s website:



CX-0923. As can be seen, Klein instructs customers to “build” a container assembly and illustrates how to do so with multiple containers. *Id.* Moreover, witness testimony establishes that Klein knows its MODbox users will connect multiple containers together. Sean O’Flaherty, Klein’s Vice President of Product, testified, “[I]t is our assumption that connectible boxes will be connected together by consumers.” CX-0012C (O’Flaherty Dep.) at 68:3-14; *see also id.* at 40:3-11 (“It was clear to us at the time that these things needed to lock together in order to be moved about as one single unit once assembled”). The record also establishes that Klein knows from customer research that customers “dock the boxes” in the MODbox system. *Id.* at 207:19-209:11.

Additionally, Klein instructed their field sales team on how the MODbox system works and encouraged its sale. CX-0012C (O’Flaherty Dep.) at 100:22-101:15. And Klein sells wholesale with the intention that others will offer and sell the Accused Products. CX-0011C (Klein Dep.) at 168:1-168:15 (“we sell in the what would be called big box retail through Lowe’s, and we also sell to wholesale partners”), 169:7-14 (resellers include City Electric Supply, Garybar, and Platt Electric); Tr. (Klein) at 511:21-25 (same).

PUBLIC VERSION

I therefore conclude that Klein intentionally encouraged others to offer and sell the Accused Products and intentionally encouraged MODbox customers and its sales team to interconnect the Accused Products in ways that infringe the Asserted Patents. *See* CX-0054C; CX-0063; CX 0923; Tr. (Klein) at 502:7-14.

Klein also argues it is not liable for induced infringement because it had a good-faith belief of noninfringement. RRB at 45-47. *Koninklijke Philips N.V. v. Zoll Med. Corp.*, 656 F. App'x. 504, 523 (Fed. Cir. 2016) (“The Supreme Court has explained that if an accused infringer ‘reads the patent’s claims differently from the plaintiff,’ and if ‘that reading is reasonable,’ then the accused infringer should not be liable for indirect infringement.”) (citing *Commil USA, LLC v. Cisco Sys., Inc.*, 575 U.S. 632, 644-45 (2015)). Klein argues that it “adopted the Auer Packaging design into its MODbox products, believing it to be distinct from the Milwaukee Packout products.” RRB at 47.

For the reasons discussed below, I find Klein has failed to show it has actually relied on a good-faith basis for believing its products did not infringe the Asserted Patents.

First, evidence kept by Klein in the ordinary course of business undercuts a conclusion that Klein “adopted the Auer Packaging design into its MODbox products.” Klein’s [REDACTED] development document for the MODbox system [REDACTED], and states that the “[o]rigin of [the] idea” was a “[c]ompetitive analysis of Milwaukee and DeWalt.” CX-0051.0001-2. The record shows that idea for MODbox originated with an analysis of Milwaukee products, not Auer.

As for Klein’s assertion that it believed the Accused Products “to be distinct from the Milwaukee Packout products,” RRB at 47, the only evidence Klein cites for that point is its own interrogatory responses in this investigation. *See id.* (citing CX-1316C). Those responses identify

PUBLIC VERSION

two declarations, one from Philipp Auer and another from Michale Perl. CX-1316C at 101-102; RX-0176; RX-0167. The interrogatory response states that “each declaration establishes” that “the Auer Packaging Toolbox System pre-dates the earliest possible priority date of the Asserted Patents and it included all of the patented features.” CX-1316C at 102.²⁰ The response also states that Klein designed “the structure and functionality of the coupling mechanism on the lid of the MODbox to match Auer Packaging’s coupling mechanism.” *Id.*

Klein’s showing amounts to an argument that Klein’s MODbox copied the Auer system, and the Auer system included all of the patented features of the Asserted Patents. The problem with Klein’s argument, of course, is that it amounts to an admission that Klein’s Accused Products are *not* distinct from the invention in the Asserted Patents: MODbox = Auer = Asserted Patents. Because Klein’s briefing identifies no specific distinction between the Accused Products and Milwaukee’s patent claims, RRB at 45-47, there is no basis to conclude Klein relied on a distinction in good faith.

To the extent that Klein’s assertion is that it had a good faith belief that the Auer system predated the Asserted Patents and therefore rendered them invalid, such a belief is not a defense to inducement of infringement, as Klein acknowledges. RRB at 45 n.14 (citing *Commil*, 575 U.S. at 644-45). And in any event, as I heard Mr. Klein testify, he did not use wording that led me to conclude that he or his company actually believed the Auer system was on sale or in public use before the priority date of the Asserted Patents. He couched his answers as being based on what

²⁰ To be clear, after studying these declarations in the context of Klein’s invalidity defenses, I find that the declarations do not show that the Auer System included all of the patented features in the Asserted Patents. I further find that the Auer System has not been proved to be prior art to the Asserted Patents. See section XI.A below. The analysis in this section is only evaluating the evidence of Klein’s subjective belief that it was not inducing infringement with its sales of the Accused Products, not the validity of the Asserted Patents.

PUBLIC VERSION

lawyers told him they had seen on social media, and his answers spanned a range of dates from 2015 to 2016 that might or might not have predated the May 2, 2016, priority date for the Asserted Patents. Tr. (Klein) at 509:3-9, 572:14-573:5.

A party asserting a good-faith belief of non-infringement must demonstrate not only that there existed a potential good-faith basis for believing non-infringement, but that it actually relied upon that purported basis. *Applied Med. Res. Corp. v. U.S. Surgical Corp.* 435 F.3d 1356, 1365 (Fed. Cir. 2006). I find Klein's showing does not meet this standard. Klein did not "provide evidence to explain what legal and factual basis" supports a belief that the accused products do not induce infringement. See *Certain Beverage Brewing Capsules, Components Thereof, & Prods. Containing the Same*, Inv. No. 337-TA-929, Comm'n Op. at 21 (Apr. 5, 2016) ("*Beverage Brewing Capsules*").

Moreover, Klein received detailed allegations of infringement mapping the Asserted Patents to the MODbox products when Milwaukee served the complaint in this investigation. Despite this knowledge of the Asserted Patents²¹ and the allegations of infringement, Klein nevertheless persisted in selling the accused MODbox products in the United States. This affirms Klein's intent to induce infringement of the Asserted Patents. See *In re Bill of Lading Transmission & Processing Sys. Pat. Litig.*, 681 F.3d 1323, 1345-46 (Fed. Cir. 2012) (service of a complaint with pointed factual allegations of inducement provided the requisite knowledge for inducement liability); *Certain Beverage Brewing Capsules, Components Thereof, & Prods. Containing the*

²¹ Klein does not appear to dispute that it knew of the Asserted Patents as early as 2020. Mr. Klein gave testimony supporting the conclusion that Klein became aware of the Asserted Patents in 2020 when developing its MODbox. Tr. (Klein) at 506:3-509:3, 572:14-19. Moreover, Milwaukee marks the Domestic Industry Products with "USA PATENTS" and "milwaukeeetool.com/pat," a website that identifies the list of patents protecting each product. See, e.g., JPX-0012. I find that Klein became aware of the Asserted Patents when studying the PACKOUT system in 2020.

Same, Inv. No. 337-TA-929, Comm’n Op. at 19, 20-21 (Apr. 5, 2016) (finding of intent to cause infringement affirmed where “Respondents knew that their acts constituted infringement based on ARM’s complaints, which include allegations explaining how Respondents induce infringement and provide claim charts explaining such infringement”).

Viewing the record as a whole, I find that Milwaukee has proved that Klein is liable for inducing infringement of the Asserted Patents and that Klein has imported and sold articles that infringe those patents in violation of section 337. *See Suprema, Inc. v. Int’l Trade Comm’n*, 796 F.3d 1338, 1352–53 (Fed. Cir. 2015) (*en banc*) (section 337 allows the Commission to prohibit the importation goods used “to directly infringe post-importation as a result of the seller’s inducement”). Klein had knowledge of the Asserted Patents and encouraged others to commit acts with the Accused Products that Klein knew would directly infringe the asserted patent claims.

X. ECONOMIC PRONG OF THE DOMESTIC INDUSTRY REQUIREMENT

Section 337(a)(3) sets forth the following economic criteria for determining the existence of a domestic industry in such investigations:

(3) For purposes of paragraph (2), an industry in the United States shall be considered to exist if there is in the United States, with respect to the articles protected by the patent, copyright, trademark, mask work, or design concerned –

(A) significant investment in plant and equipment;

(B) significant employment of labor or capital; or

(C) substantial investment in its exploitation, including engineering, research and development, or licensing.

19 U.S.C. § 1337(a)(3). Because the statutory criteria are listed in the disjunctive, satisfaction of any one of them will be sufficient to meet the economic prong of the domestic industry requirement. *See InterDigital Commc’ns*, 707 F.3d at 1303 n.4; *Certain Variable Speed Wind*

Turbines and Components Thereof, Inv. No. 337-TA-376, Comm’n Op. at 15, USITC Pub. No. 3003 (Nov. 1996).

Milwaukee argues it satisfies the domestic industry requirement under all three prongs of section 337 because it has made “significant investments in plant and equipment, significant employment of labor or capital, and substantial investments in the exploitation of the Asserted Patents through engineering, research, and development (collectively, ‘ER&D’).” CIB at 104.

A. Milwaukee’s Domestic Activities

The record shows that Milwaukee maintains a principal place of business in Brookfield, Wisconsin, as well as several facilities dedicated in part to the Domestic Industry Products, including the following:

- An engineering, design, and development facility located at 551 N 5th Street, Milwaukee, Wisconsin 53203 (the “Milwaukee Facility”);
- A domestic manufacturing facility located at 1400 Salem Road, Cookeville, Tennessee 38506 (the “Cookeville Facility”); and
- A distribution facility located at 12385 Crossroads Drive, Olive Branch, Mississippi 38654 (the “Olive Branch Facility”).

Compl. ¶ 9.

Matthew Vargo, Milwaukee’s vice president of product marketing for its storage business unit, testified that the Milwaukee Facility comprises approximately [REDACTED] square feet, with approximately [REDACTED] square feet—or [REDACTED]—dedicated to engineering and design. Tr. (Vargo) at 63:2-5, 81:5-20. The Milwaukee Facility is used, in part, to perform engineering, research, design, development, testing, and prototyping on the Domestic Industry Products. Tr. (Vargo) at 74:11-22. Milwaukee’s ER&D teams for the PACKOUT product line are located in the Milwaukee Facility

PUBLIC VERSION

and perform work on the Domestic Industry Products related to industrial design, engineering, mechanical engineering, testing, and quality planning. Tr. (Vargo) at 77:8-79:23. The Milwaukee Facility houses [REDACTED] engineers working on PACKOUT projects, and most of these engineers work solely on PACKOUT projects. Tr. (Vargo) at 80:21-81:4; RX-1120C (Albrecht Dep.) at 16:19-17:8. The engineering groups working on the Domestic Industry Products include Design and Project Engineering, Value and Packaging Engineering, Quality Engineering, Concept Engineering, Industrial Design, Design Research, and the New Product Innovation team. Tr. (Vargo) at 74:8-78:13; RX-1120C (Albrecht Dep.) at 16:1-13. The Milwaukee Facility also houses equipment used by the engineering teams, including testing equipment. Tr. (Vargo) at 76:9-79:12.

Milwaukee's Cookeville Facility comprises approximately [REDACTED] square feet. Tr. (Vargo) at 86:3-20. Approximately [REDACTED] square feet of the Cookeville Facility is used to manufacture [REDACTED] PACKOUT organizers, which are used in kits versions of the Domestic Industry Products.²² Tr. (Vargo) at 86:5-11. The Cookeville Facility includes dedicated machinery used to manufacture raw materials into a finished product, such as Computer Numerical Control equipment grinders, milling machines, lathes, polishing stations, and welders. JX-0055C; Tr. (Vargo) at 86:3-20. The Cookeville Facility also includes lab space used for quality control activities, such as checking the material and dimensions of the PACKOUT organizers in the Domestic Industry Products and for testing the PACKOUT organizers that are manufactured in Cookeville. Tr. (Vargo) at 94:3-14.

²² The products manufactured in Cookeville are discussed in detail in section I.D.2 above.

Milwaukee's activities at the Olive Branch Facility include distribution, warehousing, quality testing, customer services, servicing warranty claims, and light remanufacture work associated with the Domestic Industry Products. Tr. (Vargo) at 96:3-13.

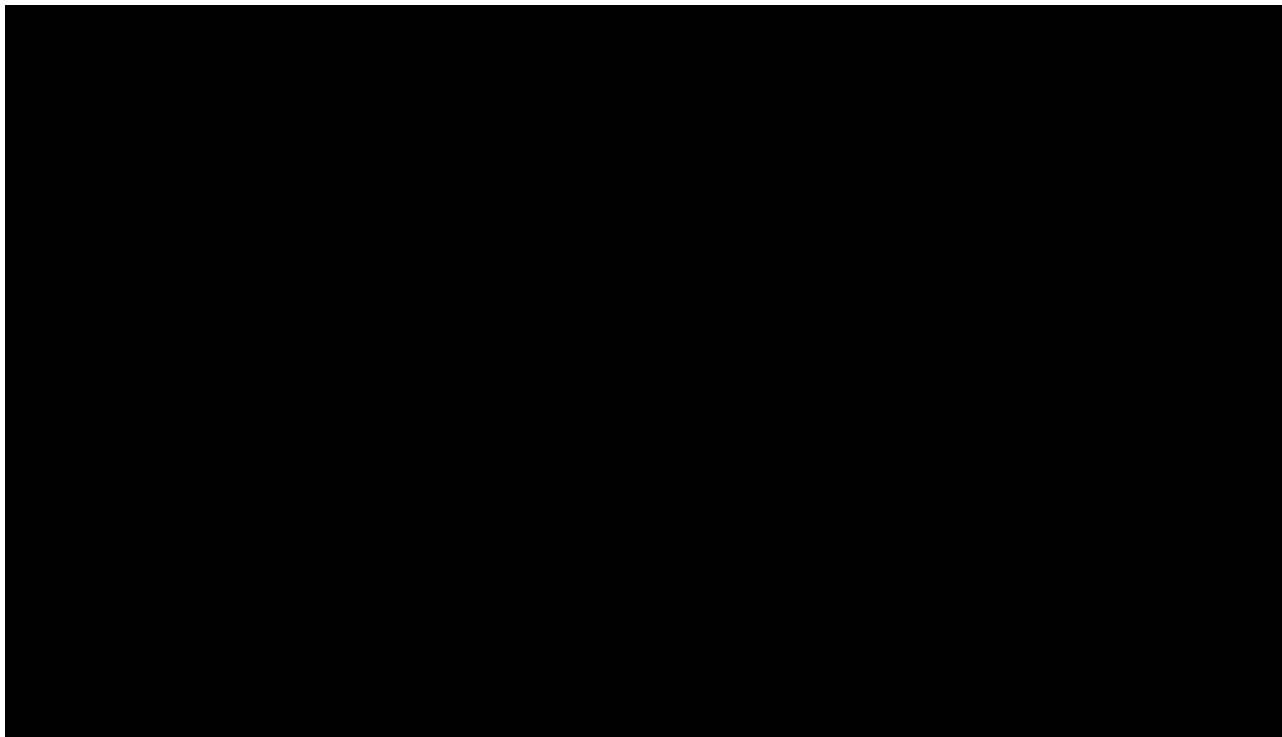
B. Milwaukee's Domestic Investments

To prove satisfaction of the economic prong, Milwaukee relies on what it has termed "direct expenses" and "indirect expenses" attributable to engineering, research, and development relating to the Domestic Industry Products. *See, e.g.*, CIB at 105-06. Mr. Vargo testified that Milwaukee tracks both types of expenses in the ordinary course of business using Microsoft Dynamics AX. Tr. (Vargo) at 98:11-21. According to Mr. Vargo, direct expenses are those that can be tied specifically to a product or group of products, whereas indirect expenses are those relating to "overarching high-level projects" or "high-level expenses that go across multiple products or projects." *Id.*

For the direct expenses, Milwaukee introduced into evidence a spreadsheet marked as exhibit number JPX-0041C, which contains financial information relating to all PACKOUT-related products that Milwaukee worked on "over the past couple years." Tr. (Vargo) at 98:22-6. The spreadsheet lists approximately ■ projects relating to PACKOUT "as a whole." *Id.* Mr. Vargo testified that not all of the projects listed in JPX-0041C are focused on Domestic Industry Products. Tr. (Vargo) at 99:15-100:3. Milwaukee relies on a subset of projects "directly related to and directly focused on the [Domestic Industry] Products" to show satisfaction of the economic prong. *Id.* This subset of projects is listed in demonstrative slide CDX-0001C.0018, reproduced below. *Id.* Mr. Vargo testified that Milwaukee chose these specific projects to support their economic prong position because "these are the ones that are focused on [Domestic Industry

PUBLIC VERSION

Products]. So the scope of these projects was [Domestic Industry Products] and how do we grow the sales of the [Domestic Industry Products].” Tr. (Vargo) at 102:25-103:10.



CDX-0001C.018.

Mr. Vargo provided more detail about six of the projects listed on slide CDX-0001C.18:

- The [REDACTED] researched ways for users to use the Domestic Industry Products “inside of a vehicle so inside of a transit van, for example, inside of a truck or a trailer.” Tr. (Vargo) at 100:10-22. With this project, Milwaukee explored making it easier for users to use the Domestic Industry Products inside vehicles and how to “enhance the versatility of those products.” See Tr. (Vargo) at 100:23-101:1.
- The [REDACTED] was a follow-on project to the transit storage solutions project and “focused on getting [Domestic Industry Products] into

PUBLIC VERSION

vans and adding the versatility to allow . . . users to use [Domestic Industry Products] in that new environment of a van, truck, trailer.” Tr. (Vargo) at 101:2-9.

- The [REDACTED] was focused on the following Domestic Industry Products: the PACKOUT Rolling Toolbox, the XL Toolbox, the Large Toolbox, and the Compact Toolbox. Tr. (Vargo) at 101:10-22. The scope of the project was working on modifying the interior of those projects to enhance their versatility for users. *See id.*
- The [REDACTED] supported Milwaukee’s efforts to manufacture Domestic Industry Products at the Cookeville Facility. Tr. (Vargo) at 101:23-102:6. The project focused on “resourcing, scoping, and developing the capability of manufacturing the bins that go inside of those organizers.” *Id.*
- The [REDACTED] involved making sure Milwaukee had all the documentation and information needed to go forward with additional manufacturing of Domestic Industry Products at the Cookeville Facility. Tr. (Vargo) at 102:7-14.
- The [REDACTED] involved documenting “key features and the key tolerance stacks of the dimensions of the locking cleats” of the Domestic Industry Products. Tr. (Vargo) at 102:15-24.

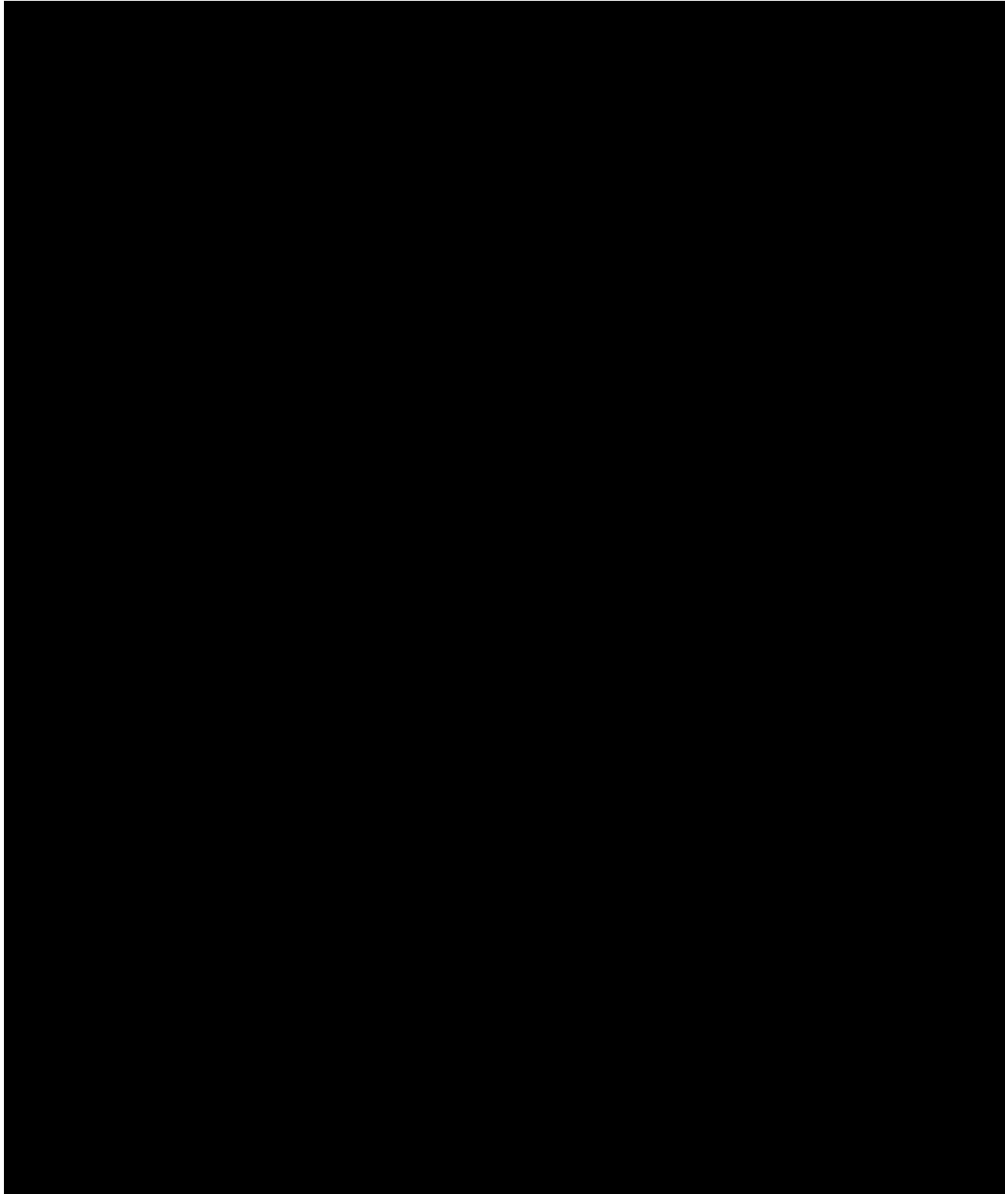
In addition to direct expenses and indirect expenses relating to engineering, research, and development for the Domestic Industry Products, Milwaukee also relies on expenses relating to manufacturing the Domestic Industry Products at the Cookeville Facility. *See CIB* at 105-13. The expenses relied on by Milwaukee are quantified below.

1. Plant and Equipment

Milwaukee's direct investment costs in plant and equipment relating to ER&D are tracked by project in the "Common Costs" and "Supply Costs" categories in the spreadsheet marked as exhibit JPX-0041C. Tr. (Harvey) at 390:7-17. From 2021 through June 2024, Milwaukee claims direct ER&D plant and equipment domestic investments in the Domestic Industry Products totaling [REDACTED] Tr. (Harvey) at 390:7-17; *see* CDX-0019C. Milwaukee's economic expert Bonnie Harvey opined that, because these costs are tracked directly by project and related to the Domestic Industry Products, no further allocation of these expenses is necessary. Tr. (Harvey) at 386:23-387:20.

Milwaukee's indirect ER&D investments in plant and equipment, which are tracked in spreadsheet JPX-0041C using the categories "Common Costs," "Allocated Costs," "Depreciation," "Occupancy Costs," and "Supply Costs," totaled approximately [REDACTED] for the period from 2021 through June 2024. Tr. (Harvey) at 389:20-390:17; *see* CDX-0004C.0010; CDX-0019C. To allocate these costs to the Domestic Industry Products, Ms. Harvey used an allocation based on the percentage of direct ER&D plant and equipment expenses in the Domestic Industry Products compared to the total direct ER&D plant and equipment expenses. Tr. (Harvey) at 389:20-390:17. Using this allocation method, Milwaukee claims domestic indirect ER&D plant and equipment investments in the Domestic Industry Products totaling [REDACTED] for the period from 2021 through June 2024. Tr. (Harvey) at 392:5-393:13; *see* CDX-0004C.15.

Milwaukee provides the following summary of its claimed direct and indirect domestic investments relating to ER&D plant and equipment:

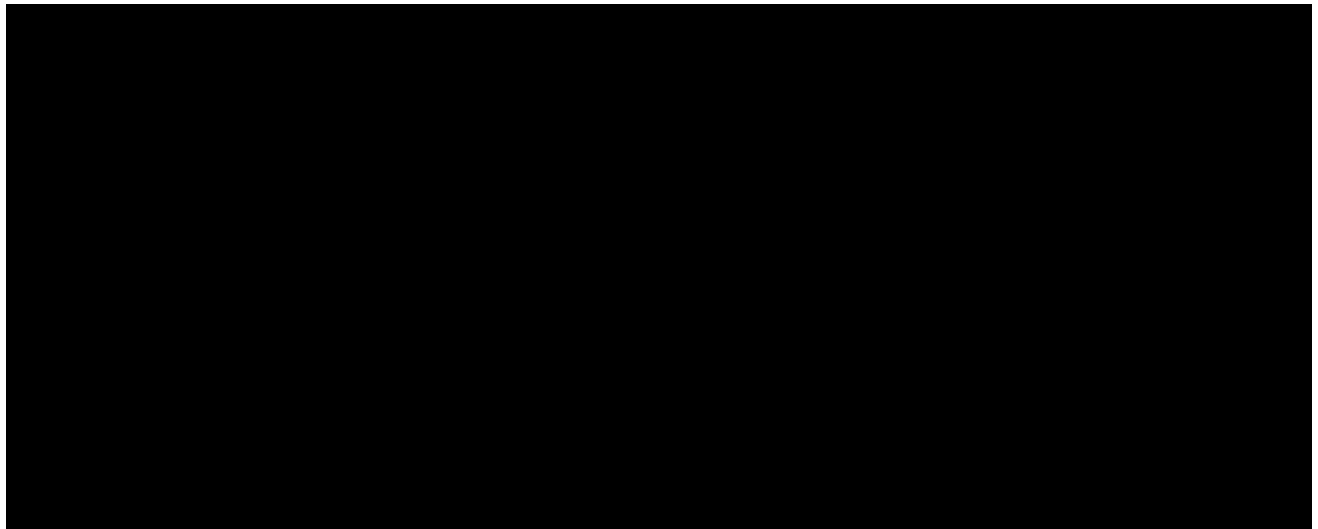


CIB at 106-07 (citing CDX-0004C.0012-15; CDX-0019C; JPX-0041C).

PUBLIC VERSION

Since September 2023, Milwaukee has incurred investments in plant and equipment at its Cookeville Facility for manufacturing its [REDACTED] PACKOUT organizers with [REDACTED] [REDACTED] discussed in section I.D.2 above. JPX-0042C; Tr. (Vargo) at 92:8-18. Mr. Vargo testified that Milwaukee tracks these manufacturing costs in the ordinary course of business. Tr. (Vargo) at 98:11-21. And Ms. Harvey opined that, because these expenditures are associated with organizers used exclusively in the Domestic Industry Products, these expenditures do not need to be allocated further. Tr. (Harvey) at 396:12-21. As shown in the record evidence, Milwaukee's costs to manufacture the PACKOUT organizers relating to plant and equipment between 2023 and June 2024 totaled [REDACTED] Tr. (Harvey) at 396:12-397:18; JPX-0042C; *see also* CDX 0004C.0021; CDX-0021C.

Milwaukee provides the following detail summary of its plant and equipment expenditures relating to manufacturing the PACKOUT organizers:



CIB at 108-09.

As summarized in the table below, Milwaukee identifies approximately [REDACTED] [REDACTED] of investment in domestic plant and equipment relating to ER&D and manufacturing for the Domestic Industry Products from 2021 through June 2024.

[REDACTED]

CIB at 109.

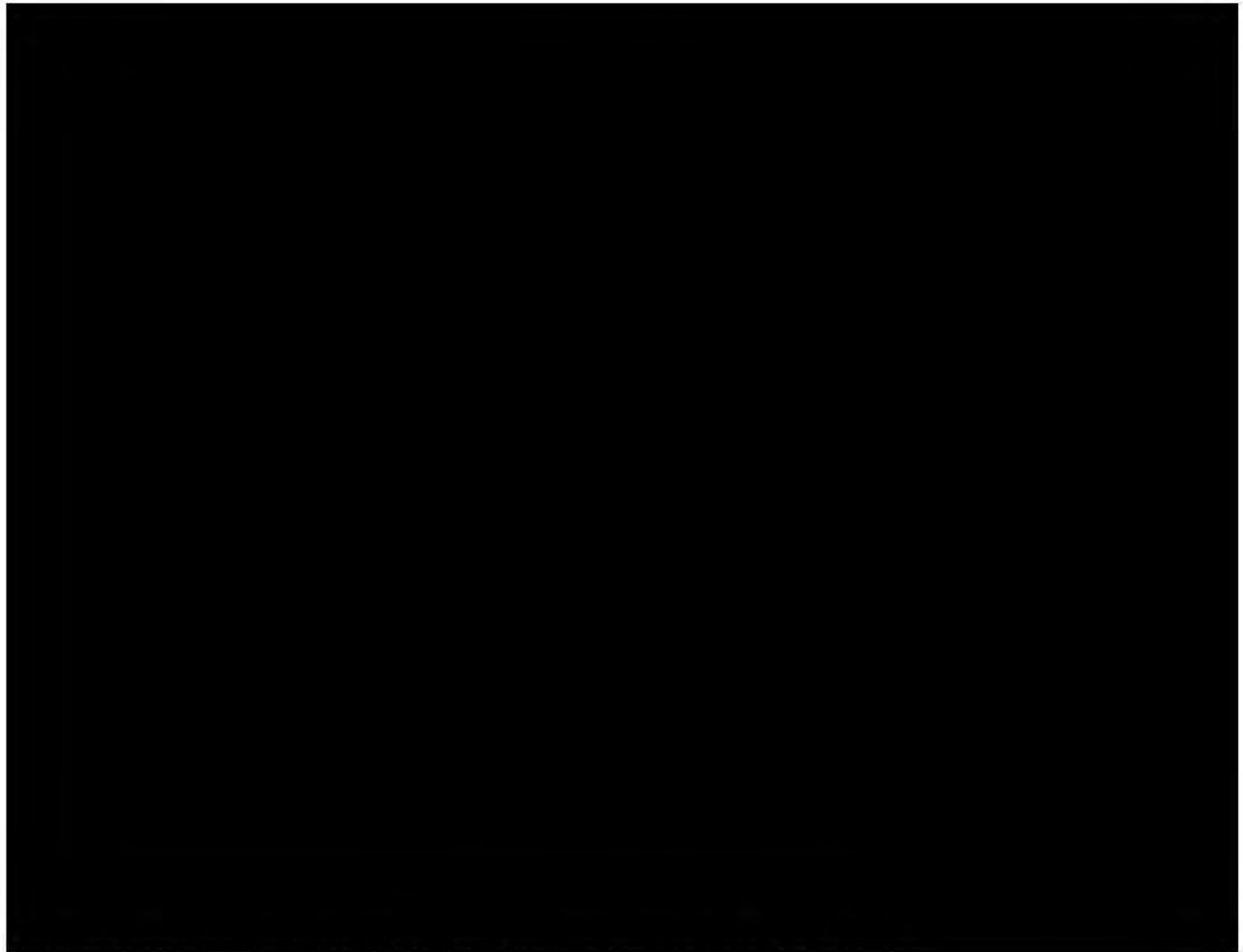
Milwaukee claims additional domestic investments related to the Domestic Industry Products for activities that occur at Milwaukee's Olive Branch Facility, which include distribution, warehousing, quality testing, customer services, servicing warranty claims, and light remanufacture work associated with the Domestic Industry Products. CIB at 124 (citing Tr. (Vargo) at 96:3-13). From 2021 through June 2024, Milwaukee incurred approximately [REDACTED] in plant and equipment costs related to activities occurring at the Olive Branch Facility. Tr. (Harvey) at 420:21-421:21; JPX-0042C; RX-0850C; *see also* CDX-0004C.0050-51; CDX-0015C; CDX-0028C-29C. Because Milwaukee does not track these investments by product, Ms. Harvey allocated these investments to the Domestic Industry Products using a two-step allocation process. Tr. (Harvey) at 421:10-422:20. Ms. Harvey first performed a square footage allocation based on the space allocated to activities related to the PACKOUT product line and then followed it with a second, revenue-based sales allocation because the activities at the Olive Branch Facility generally align with sales. *Id.* After applying these allocations, Ms. Harvey concluded that Milwaukee's domestic plant and equipment investments incurred at the Olive Branch Facility on the Domestic Industry Products totaled approximately \$[REDACTED] from 2021 through June 2024. *Id.*; JPX-0042C; *see also* CDX-0004C.0051; CDX-0015C; CDX-0028C-29C.

2. Employment of Labor

Milwaukee's direct investments in labor relating to ER&D are tracked by project in a spreadsheet marked as exhibit JPX-0041C under the "Compensation and Benefits" category and include benefits related to IAS Labor, Eng Exp Labor, and Outside Labor. JPX-0041C; *see also* CDX-0004C.0024. From 2021 to June 2024, Milwaukee claims direct ER&D domestic labor investments totaling approximately [REDACTED]. Tr. (Harvey) at 399:15-21; *see also* CDX-0004C.0024. Ms. Harvey opined that, because these costs are tracked directly by project and related to the Domestic Industry Products, no further allocation of these expenses is necessary. Tr. (Harvey) at 386:23-387:20.

Milwaukee's indirect ER&D investments in labor, which are tracked in spreadsheet JPX-0041C using the categories "Compensation and Benefits" and "Other Benefits," totaled approximately [REDACTED] for the period from 2021 through June 2024. JPX-0041C; *see also* CDX-0004C.0027; CDX-0022C. To allocate these costs to the Domestic Industry Products, Ms. Harvey used an allocation based on the percentage of direct ER&D labor expenses in the Domestic Industry Products compared to the total direct ER&D labor. Tr. (Harvey) at 400:8-1. Using this allocation method, Milwaukee claims domestic indirect ER&D labor investments for the Domestic Industry Products totaling approximately [REDACTED] for the period from 2021 through June 2024. Tr. (Harvey) at 400:20-401:12; *see* CDX-0004C.27.

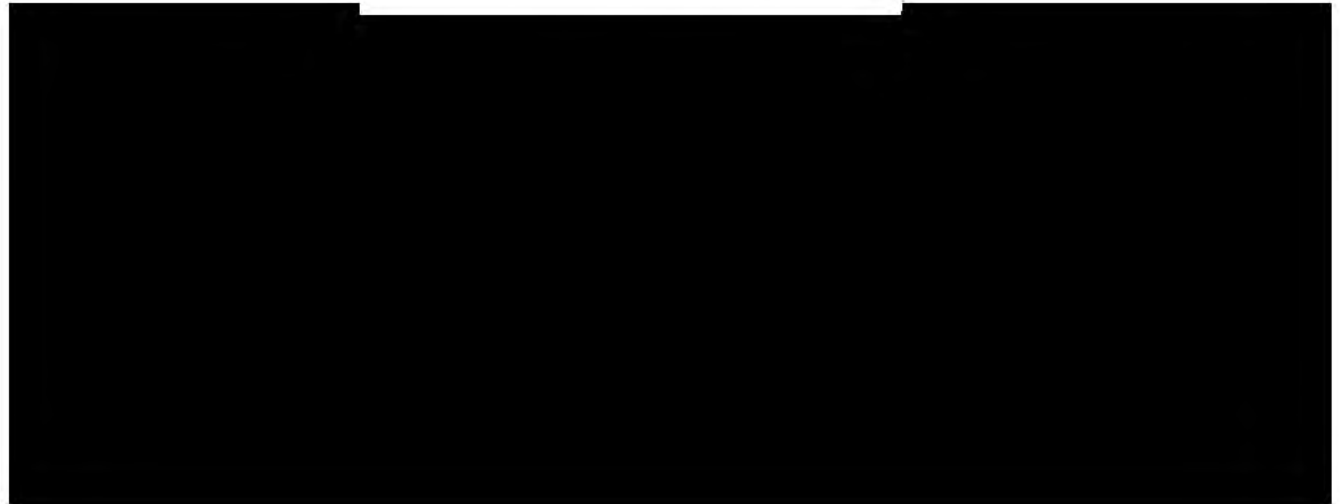
Milwaukee provides the following detail summary of its claimed direct and indirect domestic investments relating to ER&D labor:



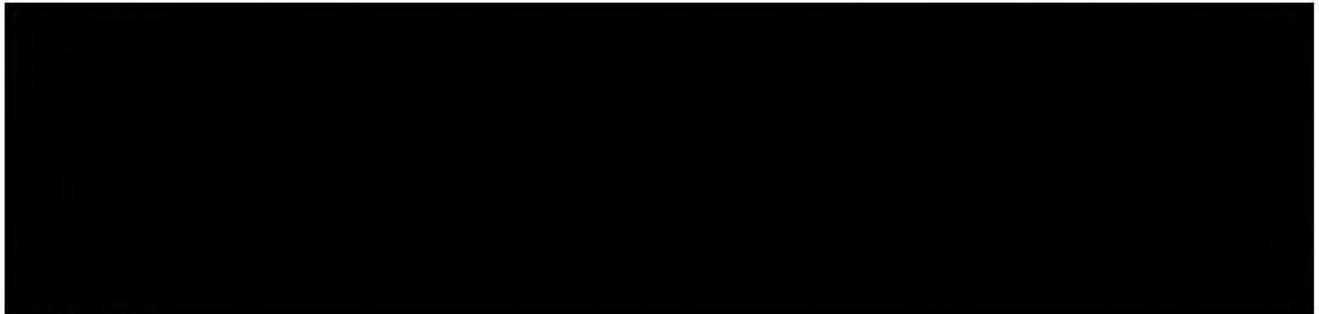
CIB at 110-11 (citing CDX-0004C.0024-27; CDX-0022C; JPX-0041C).

The record evidence shows that Milwaukee has also incurred labor investments at its Cookeville Facility for manufacturing its [REDACTED] PACKOUT organizers with [REDACTED] [REDACTED]. Milwaukee's costs to manufacture the PACKOUT organizers relating to labor between 2023 and June 2024 totaled approximately [REDACTED]. Tr. (Harvey) at 402:3-18; JPX-0042C; *see also* CDX-0004C.0030; CDX-0024C.

Milwaukee provides the following detail summary of its labor expenditures relating to the manufacture of the PACKOUT organizers:



As summarized in the table below, Milwaukee identifies approximately [REDACTED] of investment in labor relating to ER&D and manufacturing for the Domestic Industry Products from 2021 through June 2024.



CIB at 112.

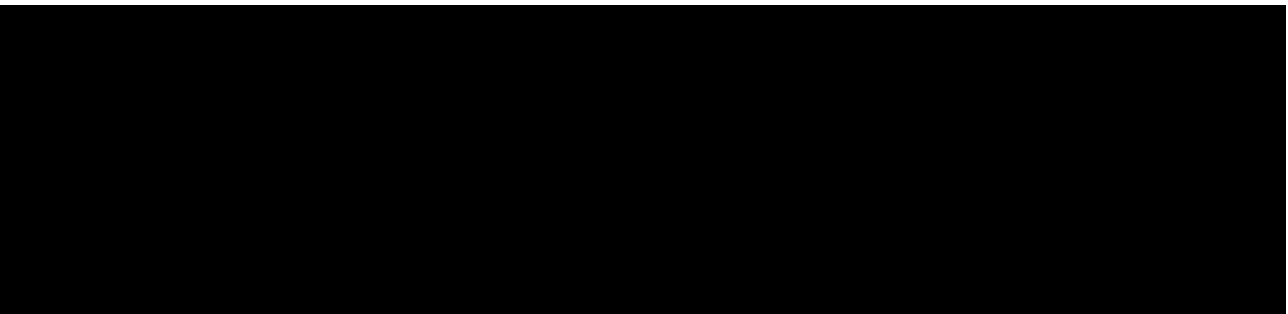
Milwaukee claims additional domestic investments related to the Domestic Industry Products for activities that occur at Milwaukee's Olive Branch Facility, which include distribution, warehousing, quality testing, customer services, servicing warranty claims, and light remanufacture work associated with the Domestic Industry Products. CIB at 124 (citing Tr. (Vargo) at 96:3-13). From 2021 through June 2024, Milwaukee incurred approximately [REDACTED] [REDACTED] in labor costs related to activities occurring at the Olive Branch Facility. Tr. (Harvey) at 420:21-421:21; JPX-0042C; RX-0850C; *see also* CDX-0004C.0050-51; CDX-0015C; CDX-0028C-29C. Because Milwaukee does not track these investments by product, Ms. Harvey

PUBLIC VERSION

allocated these investments to the Domestic Industry Products using a two-step allocation process. Tr. (Harvey) at 421:10-422:20. Ms. Harvey first performed a square footage allocation based on the space allocated to activities related to the PACKOUT product line and then followed it with a second, revenue-based sales allocation because the activities at the Olive Branch Facility generally align with sales. *Id.* After applying these allocations, Ms. Harvey concluded that Milwaukee's domestic warehousing and distribution labor investments in the Domestic Industry Products totaled approximately [REDACTED] from 2021 through June 2024. Tr. (Harvey) at 421:10-422:20; JPX-0042C; *see also* CDX-0004C.0051; CDX-0015C; CDX-0028C-29C.

3. Exploitation of the Asserted Patents

Milwaukee combined its total domestic plant and equipment ER&D investments and its total domestic labor ER&D investments to arrive at its domestic investments in the exploitation of the Asserted Patents. CIB at 112-13. Thus, Milwaukee asserts that from 2021 through June 2024, its domestic ER&D investments in the Domestic Industry Products that exploit the Asserted Patents totaled approximately [REDACTED]. Tr. (Harvey) at 403:4-14; JPX-0041C; *see also* CDX-0004C.0032; CDX-0018C-19C; CDX-0022C. The table below summarizes these investments.



CIB at 113.

Milwaukee argues that “[a] nexus exists between Milwaukee’s domestic investments and activities, and the Asserted Patents” because the Domestic Industry Products “are the physical

embodiment of the Asserted Patents.” See CIB at 113 (citing CDX-0009C-11C). As discussed in the sections above, Milwaukee’s claimed direct ER&D expenses are tracked by project and include only projects related to Domestic Industry Products, and Milwaukee’s claimed indirect ER&D expenses are allocated to the Domestic Industry Products based on the percentage of direct expenses in the Domestic Industry Products compared to the total direct ER&D expenses. See *supra* sections and . Milwaukee thus argues that “a nexus may be inferred here.” CIB at 113 (citing *Certain Non-Volatile Memory Devices & Prods. Containing Same*, Inv. No. 337-TA-1046, Comm’n Op. at 41 (Oct. 26, 2018); *Certain Integrated Circuit Chips & Prods. Containing Same*, Inv. No. 337-TA-859, Comm’n Op. at 40-41 (Aug. 22, 2014)).

C. Critiques of Milwaukee’s Investment Allocation

Klein does not contest the accuracy of the financial data moved into evidence by Milwaukee in this investigation. See RRB at 47-61. Klein does, however, argue that the domestic expenditures Milwaukee claims are overstated because they include “investments related to non-[Domestic Industry] products” and that Milwaukee failed to allocate the claimed expenditures to specific Domestic Industry Products. *Id.* Klein’s critiques are addressed below.

1. Milwaukee’s ER&D Expenses

Klein argues that Milwaukee’s “direct ER&D investment calculations are inflated and unreliable because they include expenditures related to non-[Domestic Industry] products. When a complainant relies on investments that ‘relate to products alleged to practice the asserted patent[s] and other products that undisputedly do not practice the asserted patent[s],’ it must ‘allocate expenses to account for nondomestic industry products that do not practice the patent[s].’” RRB at 49 (citing *Certain Subsea Telecomm. Sys. & Components Thereof*, Inv. No. 337-TA-1098, Comm’n Op., 2019 WL 9596565, at *24-26 (Oct. 21, 2019); *Certain Electronic Candle Products*

PUBLIC VERSION

and Components Thereof (“*Elec. Candle Prods. (I)*”), Inv. No. 337-TA-1195, Comm’n Op., 2021 WL 4205637, at *5 (Sep. 13, 2021) (“When a complainant has investments or employment that are not **solely** directed to the domestic industry articles, the Commission requires that the complainant allocate the portion of those investments that are attributable to those domestic industry products.”); *Certain Smart Thermostats, Smart Hvac Sys., & Components Thereof* (“*Smart Thermostats*”), Inv. No. 337-TA-1185, Final Initial Determination, 2021 WL 1997747, at *353-55 (Apr. 20, 2021) (investment in platform service that was used predominately with non-DI products must be allocated to exclude expenses supporting those non-DI products)).

Klein further contests Milwaukee’s assertion that costs associated with select ER&D projects are directly related to the Domestic Industry Products so no allocation is necessary. RRB at 49-50 (citing CIB at 106, 110). Klein explains that Milwaukee’s assertion is incorrect because “the evidentiary record is clear that the ER&D projects upon which Complainants rely include expenditures associated with [Domestic Industry] Products as well as non-[Domestic Industry] products.” *Id.* at 50.

Klein identifies testimony elicited from Mr. Vargo on cross-examination regarding the Domestic Industry projects (discussed in section above and listed on CDX-0001C.0018) to support its argument:

- [REDACTED] [REDACTED]: Mr. Vargo testified that this project involves work on [REDACTED], which has not been not yet been launched by Milwaukee and is not an asserted Domestic Industry Product. Tr. (Vargo) at 159:22-160:21.
- [REDACTED] Mr. Vargo testified that testified that this project involved investigating storage racks that are not themselves Domestic

PUBLIC VERSION

Industry Products and can be used with soft-sided Packout products that are not Domestic Industry Products. Tr. (Vargo) at 152:25-155:7.

- [REDACTED] Mr. Vargo testified that this project involves storing side-load cases involving non-Packout products and developing non-Domestic Industry Product “racks.” Tr. (Vargo) at 157:11-158:11.
- [REDACTED]: Mr. Vargo testified that this project’s secondary scope involved a Packout rolling drawer, which is not a Domestic Industry Product. Tr. (Vargo) at 159:6-20.
- [REDACTED]: Mr. Vargo testified that this project involved manufacturing bins used with certain Domestic Industry Products, but that were not themselves Domestic Industry Products. Tr. (Vargo) at 158:12-22.

See RRB at 50-52.

Klein argues that these five projects “alone comprise approximately [REDACTED] of Complainants’ purported direct ER&D labor investments” and that Milwaukee’s claimed investments are therefore inflated. See RRB at 52. Klein’s economic expert Michael Akemann performed “partial corrections” of Milwaukee’s direct investments to account for the alleged allocation errors. Tr. (Akemann) at 1017:22-1018:13. Dr. Akemann used a sales-based allocation method and concluded that, at most, Milwaukee’s domestic plant and equipment investments total [REDACTED] its domestic labor investments total [REDACTED] and its domestic ER&D indirect investments total [REDACTED] Tr. (Akemann) at 1016:4-1017:21; *see also* RDX-0001C.0010-12.²³

²³ Dr. Akemann did not provide corrections to Milwaukee’s expenditures at the Olive Branch Facility.

PUBLIC VERSION

Klein also faults Milwaukee for “improperly attribut[ing] the ER&D project expenses equally to all [Domestic Industry] Products.” RRB at 54-55 (citing CIB at 128). Klein argues this attribution is flawed because, “[l]egally, this type of approach is insufficient when [domestic industry] products receive varying levels of benefit from asserted expenditures.” *Id.* at 54 (citing *Certain Power Semiconductors, & Mobile Devices & Computers Containing Same (“Power Semiconductors”)*, Inv. No. 337-TA-1308, Final Initial Determination, 2023 WL 4045379, at *57 (May 18, 2023)).

Klein’s critiques are not persuasive. Although Mr. Vargo did testify on cross-examination that certain Domestic Industry projects listed on CDX-0001C.0018 encompassed products that were not specifically identified as Domestic Industry Products in this investigation, he also testified that “[t]he focus of every one of these projects was driving additional sales on our core Packout products,” and that “[a]ll of the [Domestic Industry Products] are core products to Milwaukee and to Packout.” Tr. (Vargo) at 174:13-23. I find that Milwaukee has adduced evidence showing the investments tracked by project that are listed on slide CDX-0001C.0018 specifically relate to the Domestic Industry Products and need not be further allocated to specific products. *See* Tr. (Vargo) at 99:21-100:9; JPX-0041C.

In addition, the entirety of the investments in these projects should be considered in the domestic industry analysis because the project investment would have been the same no matter how many Domestic Industry Products were implicated in the project, so long as the projects were directed to some of the Domestic Industry Products. *See* Tr. (Harvey) at 387:8-20. And there is no dispute that these projects were directed to at least some of the Domestic Industry Products.

PUBLIC VERSION

For these reasons, I find that Milwaukee's claimed ER&D costs for the period starting 2023 through June 2024 relating to (1) plant and equipment and (2) labor are all cognizable towards satisfaction of the economic prong.

2. Milwaukee's Manufacturing Expenses

Klein argues that Milwaukee's claimed expenses relating to manufacturing at the Cookeville Facility are improper because they have not been allocated to specific Domestic Industry Product kits. RRB at 57-58. Klein argues that Milwaukee "contend[s] that the organizers can be used with 12 kits . . . but not all kits use the domestically-produced organizers . . . and [Milwaukee] could not identify which models of kits use domestic organizers and which kits use foreign organizers. *Id.* (citing CIB at 108; Tr. (Vargo) at 175:12-17; Tr. (Harvey) at 471:6-473:11, 471:21-472:9. Accordingly, Klein argues that Milwaukee's "failure to allocate [its] manufacturing expenses to specific kits is improper" because "Commission precedent requires that expenses be allocated to each of the products covered by the asserted patents." *Id.* at 58 (quoting *Forensic Devices & Prods. Containing the Same*, Inv. No. 337-TA-799, Final Initial Determination, 2012 WL 5942392, at *8 (Oct. 26, 2012)).

Klein's critique is not persuasive. As discussed in section I.D.2 above, it is uncontested that the [REDACTED] organizers manufactured in Cookeville with model numbers [REDACTED] [REDACTED] are kit versions of the standalone organizers with model numbers [REDACTED]. The organizers are identical except that the kit versions have debossed identifiers, and the standalone versions have embossed identifiers. As the standalone versions have been shown to practice the asserted patents, the kit versions also practice the asserted patents. Thus, regardless of whether some of the kits in question have been identified as a Domestic Industry Products for some aspects of this litigation, the record

demonstrates the Cookeville organizers themselves are “articles protected by the patent” as recited in section 337(a)(3).

Accordingly, I find that Milwaukee’s claimed costs to manufacture the PACKOUT organizers between 2023 and June 2024 relating to (1) plant and equipment and (2) labor are all cognizable towards satisfaction of the economic prong.

3. Nexus With Respect to Subprong (C) Expenditures

Klein argues that Milwaukee cannot demonstrate satisfaction of the economic prong under subprong (C) because it failed to establish a nexus between the Asserted Patents and the claimed ER&D investments in the exploitation of the Asserted Patents. RRB at 58-61. I need not address Klein’s critique regarding nexus. As discussed below, Milwaukee has demonstrated that it has significant domestic investment in plant and equipment and employment of labor with respect to articles protected by the Asserted Patents under subprongs (A) and (B). An analysis under subprong (C) is therefore unnecessary.

D. Significance of Milwaukee’s Domestic Investments

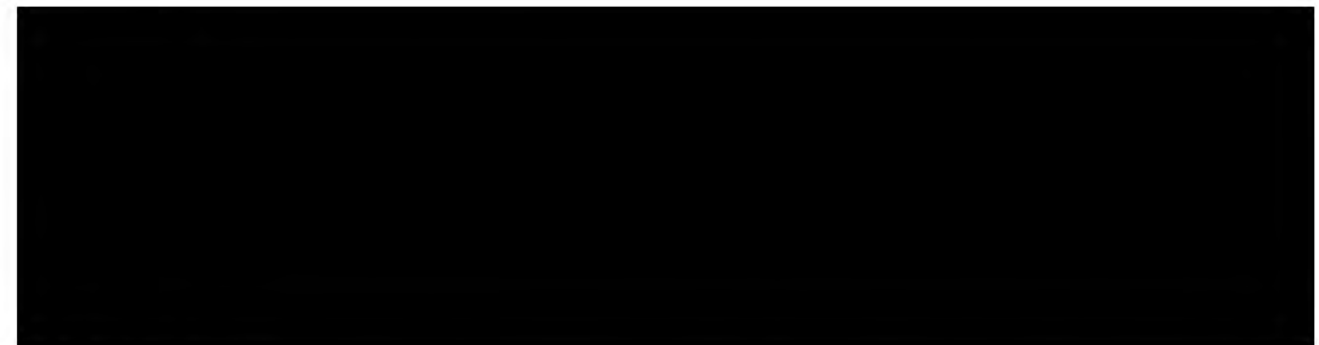
Milwaukee has made cognizable domestic investments in plant and equipment and labor related to the Domestic Industry Products. I now turn to “a holistic review of all relevant considerations” to determine whether those investments are significant. *Wuhan Healthgen Biotechnology Corp. v. Int’l Trade Comm’n*, 127 F.4th at 1334, 1339 (Fed. Cir. 2025). As discussed below, I find the record evidence demonstrates that these investments are significant.

The record evidence shows that Milwaukee’s domestic activities were vital to the development and commercialization of the Domestic Industry Products. Milwaukee employees in the United States were involved in the conception of the inventions described in the Asserted Patents and in the engineering, design, research, and development of the Domestic Industry

PUBLIC VERSION

Products. Tr. (Vargo) at 65:23-70:11, 74:13-22; *see also* CDX.0001C.0003-06. Moreover, most of Milwaukee's ER&D work associated with the Domestic Industry Products has been performed in the United States. Tr. (Vargo) at 80:3-12; *see also* CDX-0004C.0017.

The Domestic Industry Products are important to Milwaukee's overall business, and this importance continues to increase over time. Sales of the Domestic Industry Products totaled approximately [REDACTED] from 2021 through June 30, 2024, which represents approximately [REDACTED] of total PACKOUT sales during this period. Tr. (Harvey) at 394:8-21; JPX-0059C; *see also* CDX-0004C.0017; CDX-0013C; CDX-0015C; CDX-0019C; CDX-0022C. Sales of the Domestic Industry Products have increased over time, including as a percentage of Milwaukee's total company-wide sales. Tr. (Harvey) at 405:5-21; JPX-0059C; *see also* CDX-0004C.0035-36; CDX-0015C; CDX-0025C. As illustrated in the table below, from 2021 through 2023, the year-over-year growth of Domestic Industry Product sales has been higher than Milwaukee's total U.S. sales growth, thus demonstrating the importance of the Domestic Industry Products to Milwaukee's U.S. business overall.



CDX-0004C.36.

The record also shows that the Domestic Industry Products and the features claimed in the Asserted Patents are important in the U.S. marketplace. Milwaukee's Group President, Tim Albrecht, testified about the importance of the functionality of the Domestic Industry Products.

PUBLIC VERSION

RX-1120C (Albrecht Dep.) at 117:22-118:20. He noted that “the quality of the product is very robust,” “the way that the product interacts and inter-latches with each other is very unique on the market,” and “[t]he ability to get multiple different widths attached to our system is unique.” *Id.* Mr. Albrecht also testified that Milwaukee hears “feedback nonstop about how users love the product” and that “they love the sound of how it clicks together.” RX-1120C (Albrecht Dep.) at 124:7-15. Mr. Vargo testified that the features claimed in the Asserted Patents are integral to the Domestic Industry Products. Tr. (Vargo) at 70:2-11, 114:17-115:8.

Milwaukee’s PACKOUT product line, which includes the Domestic Industry Products, is also significant in the context of the storage market. While the Pro Modular Storage Market had a compound annual growth rate (“CAGR”) of [REDACTED] between 2018 and 2024, Milwaukee’s PACKOUT product line had a CAGR of [REDACTED] Tr. (Vargo) at 107:13-108:18; Tr. (Harvey), 407:8-24; CX-0115C; *see also* CDX-0001C.19. Sean O’Flaherty, Klein’s Vice President of Product, testified that Milwaukee’s PACKOUT product line has the largest market share in the hard-sided storage space in North America based on his “experience in the segment and understanding of what [he] hear[s] from customers and what [he] observe[s] when conducting research personally.” CX-0012C (O’Flaherty Dep.) at 29:5-18, 54:12-14; *see also* JX-0034C (Klein slide deck labeling PACKOUT as the “best” amongst competitors).

Milwaukee adduced evidence showing that the success of the Domestic Industry Products has led to Milwaukee’s development of domestic manufacturing activities. Since September 2023, [REDACTED] Milwaukee organizers used in its core PACKOUT product offerings have been manufactured at the Cookeville Facility, with more PACKOUT manufacturing expected in the future. Tr. (Vargo) at 86:3-20, 93:11-23; JX-0055C. The domestic PACKOUT manufacturing operations are significant when viewed in the context of other manufacturing that occurs at the Cookeville

Facility. For example, as of 2024, PACKOUT represents [REDACTED] of the standard cost of production at the entire Cookeville Facility. Tr. (Vargo) at 117:2-21; JX-0039C; Tr. (Harvey) at 406:14-407:7; CX-0117C. Milwaukee expects that PACKOUT will assume most direct labor hours, process hours and shared overhead at the Cookeville Facility, or approximately [REDACTED] of the projected standard cost of production, by 2026. JX-0039C. Milwaukee's domestic manufacturing operations are also significant to the continued success of the Domestic Industry Products. Mr. Albrecht testified that Milwaukee decided to make additional SKUs in the United States for "two main reasons": (1) "to fulfill orders when you don't have to ship a product overseas is much faster" and (2) "the cost of shipping these products across the United States is extremely high" so "localizing manufacturing is important." RX-1120C (Albrecht Dep.) at 38:25-39:15. Mr. Albrecht also testified that this is why Milwaukee has "invested so much money [in] United States . . . manufacturing." *Id.*

1. Plant and Equipment

The record evidence demonstrates that Milwaukee's domestic expenditures in plant and equipment relating to products that practice the Asserted Patents are significant. For instance, from 2021 through June 2024, Milwaukee's domestic plant and equipment investments for ER&D in the Domestic Industry Products totaled approximately [REDACTED] of Milwaukee's foreign ER&D expenditures in the **entire** PACKOUT product line (including plant, equipment, labor, and capital). Tr. (Harvey) at 412:3-413:5; JPX-0028C; JPX-0041C; *see also* CDX-0004C.0042; CDX-0019C; CDX-0026C.

In addition, from September 2023 through June 30, 2024, Milwaukee's domestic manufacturing plant and equipment investments in the organizers produced at the Cookeville Facility represented [REDACTED] of Milwaukee's total cost to manufacture those organizers. Tr. (Harvey)

at 417:1-9; JPX-0042C; *see also* CDX-0004C.0046; CDX-0017C; CDX-0021C; CDX-0024C; CDX-0027C. And from September 2023 through June 30, 2024, Milwaukee's domestic manufacturing plant and equipment investments in the organizers produced at the Cookeville Facility represented [REDACTED] of Milwaukee's total cost to manufacture the identified Domestic Industry Products that can incorporate those organizers. JPX-0042C; CDX-0004C.0046; CDX-0017C; CDX-0021C; CDX-0024C; CDX-0027C.

Moreover, the record demonstrates that Milwaukee's domestic plant and equipment investments incurred at the Olive Branch Facility for distribution, warehousing, quality testing, customer services, servicing warranty claims, and light remanufacture work for the Domestic Industry Products totaled approximately [REDACTED] from 2021 through June 2024. Tr. (Harvey) at 421:10-422:20; JPX-0042C; *see also* CDX-0004C.0051; CDX-0015C; CDX-0028C-29C.

2. Employment of Labor

The record evidence demonstrates that Milwaukee's domestic expenditures in labor relating to products that practice the Asserted Patents are significant. For example, from 2021 through June 2024, Milwaukee's domestic labor investments for ER&D in the Domestic Industry Products totaled approximately [REDACTED] of Milwaukee's foreign ER&D expenditures in the *entire* PACKOUT product line. Tr. (Harvey) at 414:10-20; JPX-0028C; JPX-0041C; *see also* CDX-0004C.0043; CDX-0019C; CDX-0022C; CDX-0026C.

In addition, from September 2023 through June 30, 2024, Milwaukee's domestic manufacturing labor investments in the organizers produced at the Cookeville Facility represented [REDACTED] of Milwaukee's total cost to manufacture those organizers. Tr. (Harvey) at 416:17-25; JPX-0042C; *see also* CDX-0004C.0047; CDX-0017C; CDX-0021C; CDX-0024C; CDX-0027C. And from September 2023 through June 30, 2024, Milwaukee's domestic manufacturing labor

PUBLIC VERSION

investments in the organizers produced at the Cookeville Facility represent [REDACTED] of Milwaukee's total cost to manufacture the identified Domestic Industry Products that can incorporate those organizers. Tr. (Harvey) at 417:1-9; JPX-0042C; *see also* CDX-0004C.0047; CDX-0017C; CDX-0021C; CDX-0024C; CDX-0027C.

Moreover, the record demonstrates that Milwaukee's domestic labor investments incurred at the Olive Branch Facility for distribution, warehousing, quality testing, customer services, servicing warranty claims, and light remanufacture work for the Domestic Industry Products totaled approximately [REDACTED] from 2021 through June 2024. Tr. (Harvey) at 421:10-422:20; JPX-0042C; *see also* CDX-0004C.0051; CDX-0015C; CDX-0028C-29C.

E. Summary

For the above reasons, I find that Milwaukee has shown satisfaction of the economic prong of the domestic industry requirement through significant investment in plant and equipment and significant employment of labor.

XI. VALIDITY

Klein argues that all asserted claims of all three Asserted Patents are invalid as obvious in view of the following five alleged pieces of prior art:

- Auer Packaging Toolbox Pro System (RPX-0001-07) (“the Auer System”);
- U.S. Patent No. 10,750,833 (RX-0724) (“Burchia”);
- U.S. Patent Application Publication No. 2013/0127129 (RX-0729) (“Bensman”);
- U.S. Patent No. 8,657,307 (RX-0720) (“Lifshitz”); and
- U.S. Patent Application Publication No. 2003/0139080 (RX-0725) (“Lafragette”).

PUBLIC VERSION

RIB at 10-114.²⁴

Under 35 U.S.C. § 103, a patent may be found invalid as obvious if “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” 35 U.S.C. § 103(a). Because obviousness is determined at the time of invention, rather than the date of litigation, “[t]he great challenge of the obviousness judgment is proceeding without any hint of hindsight.” *Star Scientific, Inc. v. R.J. Reynolds Tobacco Co.*, 655 F.3d 1364, 1375 (Fed. Cir. 2011).

When a patent is challenged as obvious, the critical inquiry in determining the differences between the claimed invention and the prior art is whether there is an apparent reason to combine the known elements in the fashion claimed by the patent at issue. *See KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 417-18 (2007). Thus, based on a combination of several prior art references, “the burden falls on the patent challenger to show by clear and convincing evidence that a person of ordinary skill in the art would have had reason to attempt to make the composition or device, or carry out the claimed process, and would have had a reasonable expectation of success in doing so.” *PharmaStem Therapeutics, Inc. v. ViaCell, Inc.*, 491 F.3d 1342, 1360 (Fed. Cir. 2007) (cleaned up).

Obviousness is a determination of law based on underlying determinations of fact. *Star Scientific*, 655 F.3d at 1374. The factual determinations behind a finding of obviousness include: (1) the scope and content of the prior art, (2) the level and content of the prior art, (3) the differences

²⁴ On April 10, 2025, Klein filed a notice stating that the Patent Trial and Appeal Board instituted inter partes reviews (IPR2024-01401 and IPR2024-01400) with respect to the ’026 and ’952 patents on April 8, 2025.

between the claimed invention and the prior art, and (4) objective indicia of non-obviousness. *KSR*, 550 U.S. at 399 (citing *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966)). These factual determinations are referred to collectively as the “*Graham* factors.” Objective indicia of non-obviousness include commercial success, long felt but unresolved need, and the failure of others. *Id.* When present, those objective indicia “give light to the circumstances surrounding the origin of the subject matter sought to be patented,” but they are not dispositive on the issue of obviousness. *Geo. M. Martin Co. v. Alliance Mach. Sys. Int’l*, 618 F.3d 1294, 1304-06 (Fed. Cir. 2010). For evidence of objective indicia of non-obviousness to be given substantial weight in the obviousness determination, the proponent of that evidence must establish a nexus between the evidence and the merits of the claimed invention. *See W. Union Co. v. MoneyGram Payment Sys. Inc.*, 626 F.3d 1361, 1372-73 (Fed. Cir. 2010) (citing *In re GPAC Inc.*, 57 F.3d 1573, 1580 (Fed. Cir. 1995)).

Facts underlying a determination of obviousness must be proved by clear and convincing evidence. *Carella v. Starlight Archery & Pro Line Co.*, 804 F.2d 135, 138 (Fed. Cir. 1986).

A. All Asserted Claims Compared with the Auer System

Klein contends a set of products called the Auer System renders obvious all asserted claims of all Asserted Patents when that system is viewed in combination with various other prior art. RIB at 10-28, 33-53, 70-83, and 93-103. According to Klein, the Auer System is a “stackable storage container system comprised of the Auer Regular Width container (Model 43XX, reflecting different height 40x30 CM containers), the Auer Extended Width container (Model 64XX,

PUBLIC VERSION

reflecting different height 60x40 CM containers) and Auer SK 43/64 hand trolley.” RIB at 10 (citing RPX-0001-07);²⁵ *see also* CRB at 7.

Klein contends the Auer System was in public use and on sale before the priority date for the Asserted Patents. RIB at 11. All parties agree the Asserted Patents have a priority date of May 2, 2016. CIB at 5; RIB at 10.

When it comes to the public use and on-sale bars under section 102 of the Patent Act, courts have “looked with disfavor upon invalidating patents on the basis of mere testimonial evidence absent other evidence that corroborates that testimony.” *Finnigan Corp. v. Int’l Trade Comm’n*, 180 F.3d 1354, 1366 (Fed. Cir. 1999); *see also Juicy Whip, Inc. v. Orange Bang, Inc.*, 292 F.3d 728, 737-38 (Fed. Cir. 2002) (“[O]ral testimony of prior public use must be corroborated in order to invalidate a patent.”); *Deering v. Winona Harvester Works*, 155 U.S. 286, 300-01 (1894) (“[O]ral testimony, unsupported by patents or exhibits, tending to show prior use of a device,” is “open to grave suspicion.”); *Washburn & Moen Mfg. Co. v. Beat ’Em All Barbed-Wire Co.*, 143 U.S. 275, 284 (1892) (“Witnesses whose memories are prodded by the eagerness of interested parties to elicit testimony favorable to themselves are not usually to be depended upon for accurate information.”). I view Klein’s arguments about the Auer System with those admonitions in mind.

For the reasons discussed below, I find that Klein has not established that the Auer System is prior art to the Asserted Patents.

²⁵ RPX-0001 (Auer Regular Width Toolbox (TB 4322 F1)); RPX-0002 (Auer Regular Width Toolbox (TB 4322 F1)); RPX-0003 (Auer Extended Width (TB 6422 F1)); RPX-0004 (Auer Extended Width (TB 6422 F1)); RPX-0005 (Auer Regular Width Toolbox (TB 4333 F1) (w Klein label)); RPX-0006 (Auer Regular Width Toolbox (TB 4322 F1)); and RPX-0007 (Auer Extended Width (TB 6416 F1)).

1. Public Use

Klein argues the Auer System was in public use before May 2, 2016, because the “Auer System was publicly displayed, available for use and its interlocking system was demonstrated at a trade fair, FachPack 2015, which took place from September 29-October 1, 2015.” RIB at 11.²⁶ But the containers that were allegedly displayed at FachPack 2015 are not in evidence, even though there is some evidence that Auer still possesses those containers. *See* RX-0167 (Perl Decl.) ¶ 29. Instead, Klein has submitted testimony from two people who stated that they attended the FachPack 2015 event: Michael Perl, designer of the Auer system, and Phillip Auer, chief marketing officer of Auer Packaging GmbH. RX-0167 (Perl Decl.) ¶¶ 15-22; RX-0176 (Auer Decl.) ¶¶ 30-37.

The declarations of Mr. Perl and Mr. Auer have only scant details about the features of the devices that they say were publicly demonstrated at FachPack 2015. Both say that a “bayonet” fitting or closure was demonstrated at the event, and both say that the containers displayed were the commercial embodiments of containers in two German patents that were published in October 2015. RX-0167 (Perl Decl.) ¶¶ 23-25, 27; RX-0176 (Auer Decl.) ¶¶ 37, 61-64. But neither declaration describes the structure of a “bayonet” fitting or closure, let alone structures that correspond to all of the elements of the asserted claims for which Klein cites Auer. And Mr. Perl admitted in deposition testimony that the bayonet closure is “very difficult to describe” and he

²⁶ Klein asserts in a one-sentence footnote that the Auer System was also displayed at three other trade shows before the May 2016 priority date. *See* RIB at 11, n.3. Because Klein provided no details in its post-hearing brief explaining how the other trade shows constitute an invalidating prior public use or offer for sale, those arguments have been abandoned. *See* Order No. 2 at G.R. 14.1.

PUBLIC VERSION

didn't know any specific name for features on Auer containers that receive the bayonet. JX-0012 (Perl Dep.) at 33:5-14, 68:17-22.

Under section 102 of the Patent Act, a prior public use “must exhibit all of the claim limitations” in the same device or in an obvious variation of the claimed invention. *See Star Sci., Inc. v. R.J. Reynolds Tobacco Co.*, 655 F.3d 1364, 1377 (Fed. Cir. 2011) (citing *Clock Spring, L.P. v. Wrapmaster, Inc.*, 560 F.3d 1317, 1325-26 (Fed. Cir. 2009) (“We have held that the public use bar applies to obvious variants of the demonstrated public use.”). I find that the testimony of record from Mr. Perl and Mr. Auer, and Klein’s argument about that testimony, fails to show that Klein has met the legal standard for prior public use.

Klein claims that Mr. Auer “introduced and authenticated” photographs taken at FachPack 2015.” RIB at 12-13 (citing RX-0182 (undated and unlabeled photographs) and RX-0176 (Auer Decl.)). But Klein cites in its brief no testimony from Mr. Auer or anyone else identifying the photographs in RX-0182 as having been taken at FachPack 2015. The Auer declaration makes reference to certain exhibits, but those exhibits are not in the record of this investigation. *See* RX-0176.²⁷ There is no basis in the record, other than Klein attorney argument, to conclude that the photographs in RX-0182 were taken at FachPack 2015. I decline to find that the photographs in RX-0182 were taken at FachPack 2015.

But even if the photographs in RX-0182 were taken at FachPack 2015, those images do not show sufficient detail to identify the features of the asserted patent claims. For example, with respect to any potential coupling features at the top of the containers, the photographs show only partial views of the container tops or angled views that obscure features on the container tops. *Cf.*

²⁷ The Auer declaration appears to have been signed in 2021, before the institution of this investigation.

PUBLIC VERSION

RX-0182. No photographs show any features on the bottom of any containers. *Cf. id.* Additionally, there are no photographs showing couplers from two containers engaging with each other. *Cf. id.* I find the photographs do not show the claim limitations for which Klein cites the Auer System and for at least that reason do not show a prior public use. *See Star Sci., Inc.*, 655 F.3d at 1377; *Clock Spring, L.P.*, 560 F.3d at 1325-26.

Klein cites declaration testimony from Mr. Perl and Mr. Auer stating that the products shown at FachPack 2015 are described in two German patents. RIB at 22. The declarations in question essentially incorporate by reference details from the German patents to describe what was shown. *Cf.* RX-0167 (Perl Decl.) ¶¶ 23-25, 27; RX-0176 (Auer Decl.) ¶¶ 37, 61-64. Such incorporation by reference does not turn the German patents into corroborating evidence; instead, the contents of the patents just add to the list of testimony details about the 2015 event that must be corroborated. *See Juicy Whip, Inc.*, 292 F.3d at 737-38 (“[O]ral testimony of prior public use must be corroborated in order to invalidate a patent.”).²⁸

Even if the German patents were examined for potential corroborating evidence, they provide none. *See* RX-0186-87. The patents contain no indicia of what the public saw at the trade show in 2015. Additionally, even presuming the photographs in RX-0182 were taken at the trade show, those photographs do not show the details found in the German patents. *Compare* RX-0182 *with* RX-0186 and RX-0187. Klein’s brief does not cite a specific sentence, paragraph, or diagram from the German patents to show that the patents reflect the same content as the Perl testimony,

²⁸ Klein also claims “Mr. Perl confirmed the same interlocking feature used in Auer Packaging physical product samples (RPX-0001-04), and illustrated in RPX-0185 and RPX-0077, was the same as that in public use and on sale at FachPack 2015.” RIB at 24. This testimony falls into the same category as testimony that two German patents reflect the products at FachPack 2015—it is merely testimony that needs to be corroborated; it is not itself corroboration.

PUBLIC VERSION

the Auer testimony, or the photographs in RX-0182. For all of these reasons, the two German patents cited by Klein do not corroborate the testimony from Mr. Perl and Mr. Auer about what the public saw at FachPack 2015.²⁹

Klein also cites an undated Auer video to corroborate the testimony of Mr. Perl or Mr. Auer. RIB at 33-53, 70-83, 93-103 (citing RPX-0077). But the video is not corroborating evidence. Mr. Perl testified that he did not know when the video was made and that he was “highly certain” the video was “a rendering” and did not show “real parts.” JX-0012 (Perl Dep.) at 109:17-110:12. I find that this undated video does not corroborate any date of public use in the testimony of Mr. Perl and Mr. Auer.

Klein also cites a CAD drawing, RX-0185, as corroborating evidence that the Auer System was disclosed to the public at the FachPack 2015 trade show. RIB at 23-24. No party disputes that Mr. Perl created the CAD drawing in January 2017, after both the FachPack 2015 trade show and the May 2016 priority date. See CRB at 8; JX-0012 (Perl Dep.) at 66:15-67:7. I find that testimony from Mr. Perl and Mr. Auer, which was given after the priority date, is not corroborated by this CAD drawing, which Mr. Perl also created after the priority date.

Klein further cites a March 2015 catalog from Auer as corroborating evidence that Auer attended the FachPack 2015 trade show. RIB at 18 (citing RX-0183). The catalog may corroborate a contention that Auer had a booth at FachPack 2015, but I find the catalog does not provide evidence that Auer “exhibit[ed] all of the claim limitations” at the trade show, or even evidence of the various features for which Klein cites the Auer System. See RX-0183.169

²⁹ Indeed, if the German patents in fact disclosed relevant claim features, it is unclear why Klein would not rely on those dated publications as the most pertinent prior art. Klein has now abandoned any arguments about what is shown in the German patents because it presented no developed argument to that effect in its post-hearing brief. See Order No. 2 at G.R. 14.1.

PUBLIC VERSION

(“FACHPACK . . . YOU CAN FIND US HERE”); *id.* at 54-55 (showing no couplers on the bottom of containers); *Star Sci., Inc.*, 655 F.3d at 1377 (public use “must exhibit all of the claim limitations”). In fact, when asked to confirm that the products in the Auer catalog were the same as the Auer products at the trade show, Mr. Perl could not do so, noting that, as far as he knew, the images in the catalog were only “renderings.” JX-0012 (Perl Dep.) at 96:20-97:6. Mr. Perl also testified that the design of the Auer products was not completed until June 2015, after the publication of the March 2015 catalog. *Id.* at 29:13-17. The Auer March 2015 catalog does not corroborate the testimony of Mr. Perl and Mr. Auer about what was shown at FachPack 2015.

There is also evidence that the Auer products have changed over time. For example, Klein’s expert witness admitted that the physical Auer products in the record of this investigation (RPX-0001 through RPX-0007) include a leaf spring on the corner of the lid that assists in opening the lid, but this leaf spring is absent from the device shown in the RPX-0077 video. Tr. (Cameron) at 925:1-926:1; Tr. (Nayfeh) at 1123:21-1124:8. That difference demonstrates that the collection of evidence upon which Klein relies does not uniformly describe the same Auer product.

Other evidence supports my finding that the design of the Auer products was evolving from 2015 to at least January 2017, well after the May 2016 priority date. Specifically, Auer’s March 2015 catalog generally advertised that certain Auer containers would be “[a]vailable starting in 2016.” RX-0183. But Mr. Perl, the designer of the Auer products, testified that he did not complete his design until months later, in June 2015. JX-0012 (Perl Dep.) at 29:13-17. And Mr. Auer testified that by April 29, 2016, more than a full year after the catalog advertisement and on the brink of the May 2, 2016, priority date, “the planned market launch of the Tool Box Pro containers” was yet to happen in the future. RX-0176.1-5 (Auer Decl.) ¶¶ 54-57.

PUBLIC VERSION

Moreover, although Mr. Perl testified that he completed his design of the Auer products in June 2015, he also admitted that “does not necessarily mean that there have not been any changes afterwards.” JX-0012 (Perl Dep.) at 29:19-22. In his December 2024 deposition, Mr. Perl testified that changes had not been made to products in the Auer System for the last six or seven years, which supports a conclusion that design changes could have been made as late as 2017 or 2018. *See id.* at 36:12-23. And the record contains a CAD drawing for the Auer products made by Mr. Perl in January 2017. RX-0185; JX-0012 (Perl Dep.) at 66:15-25. If the design of the Auer products had not changed after June 2015, the record contains no explanation as to why Mr. Perl would need to make a new CAD drawing of an Auer container design in January 2017.

That leaves seven undated physical samples of the Auer System that Klein entered into evidence. RPX-0001-07. Klein does not contend that the public has ever used these seven containers before the priority date. In fact, Klein cites no evidence showing if or when those containers were ever used by the public. Moreover, given the evidence of the evolution of the Auer products around the time of the FachPack 2015 trade show, there is no clear basis to conclude that these seven containers accurately reflect the products shown at FachPack 2015.

In response to Milwaukee’s criticism that the various pieces of allegedly corroborating evidence cited by Klein are not dated before the May 2016 priority date, Klein argues that it is “commonplace for multiple pieces of evidence, including those post-dating the alleged invention date (*e.g.*, RX-0170-75, RX-0185, RPX-0001-04), to be cited to establish or corroborate the prior art nature (and structure and function) of a publicly used or on sale system or article.” RIB at 26. That argument is not persuasive. Klein cites non-prior art evidence to corroborate Mr. Perl’s post-priority date testimony while at the same time citing Mr. Perl’s post-priority date testimony to explain or bolster that non-prior evidence. *See, e.g.*, RIB at 27-28 (arguing Mr. Perl “is uniquely

PUBLIC VERSION

positioned to confirm that the interlocking system of the [post priority date] CAD drawing (RX-0185), [undated] Auer video (RPX-0077) and [undated] physical exhibits (RPX-0001-04) accurately describe and illustrate the interlocking system of the Auer System products in public use at FachPack 2015”). Such circular corroboration is not clear and convincing evidence. *See Phillip Morris Prod. S.A. v. Int’l Trade Comm’n*, 63 F.4th 1328, 1355 (Fed. Cir. 2023) (addressing the same type of circular corroboration to hold the administrative law judge “reasonably rejected” the argument).

Viewing the record evidence as a whole, I find that the Auer System was still under development and products pertaining to that system were not ready for commercial sale until after the FachPack 2015 event. *See, e.g.*, RX-0176.1-5 (Auer Decl.) ¶¶ 54-57 (as of Apr. 29, 2016, “the planned market launch of the Tool Box Pro containers” had yet to happen). I also find that the design of the Auer System reflected in the 2017 CAD drawing (RX-0185) likely is not identical to the products on display at the FachPack 2015 trade show. *See, e.g.*, JX-0012 (Perl Dep.) at 29:19-22 (completion of the original Auer design “does not necessarily mean that there have not been any changes afterwards”), *id.* at 36:12-23 (because changes stopped six or seven years prior, design changes could have been made as late as 2017 or 2018). The testimony from Mr. Perl and Mr. Auer about what was shown at the trade show is not corroborated by the evidence described by Klein in its post-hearing brief. For at least that reason, any invalidity argument based on the Auer System as public use prior art has not been proved by clear and convincing evidence.

As an alternative and independent conclusion, I find that Klein has failed to meet its burden to show that whatever Auer products were shown at the FachPack 2015 trade show were ready for patenting. *See Barry v. Medtronic, Inc.*, 914 F.3d 1310, 1322 (Fed. Cir. 2019) (the Supreme Court’s “ready for patenting test” applies to the public use bar, citing *Invitrogen Corp. v. Biocrest Mfg.*,

PUBLIC VERSION

L.P., 424 F.3d 1374, 1379 (Fed. Cir. 2005)). As I found above, even more than six months after the FachPack 2015 trade show ended on October 1, 2015, Auer was still not able to commercially launch the products in question. See RX-0176.1-5 (Auer Decl.) ¶¶ 54-57 (as of Apr. 29, 2016, “the planned market launch of the Tool Box Pro containers” had yet to happen). This evidence undercuts Klein’s statement that “the Auer System was ready for patenting at the time of its public use and availability for purchase as of September 29, 2015.” See RIB at 22. Klein also implies that the two German patents, filed in July 2015, prove that the Auer products were ready for patenting. See *id.* Klein’s cursory argument fails to meet its burden to show by clear and convincing evidence that a device with all limitations of the asserted patent claims, or an obvious variant of the claimed invention, was ready for patenting. See *Allen Eng’g Corp. v. Bartell Indus., Inc.*, 299 F.3d 1336, 1352 (Fed. Cir. 2002). As noted above, Klein has not cited a single passage or figure from the German patents to show they demonstrate Auer possessed a device ready for patenting. See, e.g., RIB at 22. Given the uncontradicted evidence of Auer’s inability to commercially launch its products until more than six months after the FachPack 2015 event, Klein’s ready for patenting argument fails. For this additional and independent reason, Klein has not shown clear and convincing evidence of any invalidity argument based on the Auer System as public use prior art.

2. On Sale

Klein also argues that the “Auer System components were . . . on sale before May 2, 2016” in the Auer Packaging catalog dated March 2015. RIB at 11, 18, citing RX-0183. An invention is “on sale” when it is (i) the subject of a “commercial offer for sale,” not primarily for experimental purposes; and (ii) ready for patenting. See *Pfaff v. Wells Elecs., Inc.*, 525 U.S. 55, 67 (1998). Klein’s evidence fails both requirements.

PUBLIC VERSION

As to a commercial offer for sale, the catalog does not include prices for the containers that Klein relies upon to show the elements of the claims, despite including prices for other products. *Compare* RX-0183.18 (listing prices) *with id.* at 54-55 (listing no prices); Tr. (Cameron) at 921:1-922:8. The catalog also states that the containers relied upon by Klein will only be “[a]vailable starting in 2016” without stating when in 2016 the products might actually be available. *See* RX-0183.54-55. In fact, Phillip Auer submitted a written declaration admitting that even as late as April 29, 2016, a full year after the March 2015 catalog, “the planned market launch of the Tool Box Pro containers” had not yet happened. RX-0176.1-5 (Auer Decl.) ¶¶ 54-57.

Viewing the record evidence as a whole, I find that the March 2015 catalog in evidence is at best a general advertisement for an anticipated product. As such, I find the catalog is not evidence of a prior art commercial offer for sale of the Auer System. *See Smith v. Garlock Equip. Co.*, 658 F. App’x. 1017, 1029 (Fed. Cir. 2016) (unpublished) (where the record contained a general advertisement of a product but no evidence an offeror had “issued price quotations to specific customers for the sale,” the jury could not find the advertisement was an invalidating offer for sale); *see also MEMC Elec. Materials, Inc. v. Mitsubishi Materials Silicon, Corp.*, 420 F.3d 1369, 1376 (Fed. Cir. 2005) (a party offers to sell an infringing product when it communicates a “willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it” (citation omitted)). Any invalidity argument based on the on-sale bar has not been proved by clear and convincing evidence for at least this reason.

Additionally, Klein has failed to show the Auer System was ready for patenting at the time of the alleged offer for sale. To show the Auer products were ready for patenting, Klein again points to the same German patent applications it relied upon for its public use argument. RIB

PUBLIC VERSION

at 22. But, as noted above, the record contains no comparison of the disclosures in the patents to the features of the allegedly on-sale products or to the asserted patent claims. Any such arguments have been abandoned by Klein. *See* Order No. 2 at G.R. 14.1. The record thus contains no basis to conclude that the products in the patents are the same as the products allegedly offered for sale and that the products allegedly offered for sale are the claimed invention or an obvious variation of them. Additionally, as has been noted, the catalog states that the containers cited by Klein will only be “[a]vailable starting in 2016,” and even more than a year after the March 2015 catalog was published, Auer was still not able to commercially launch the products in question. *See* RX-0176.1-5 (Auer Decl.) ¶¶ 54-57 (as of Apr. 29, 2016, “the planned market launch of the Tool Box Pro containers” had yet to happen). Moreover, Mr. Perl testified that the images in the March 2015 catalog were only “renderings”; he did not state they were photographs of existing products. JX-0012 (Perl Dep.) at 96:20-97:6.

Viewing the record evidence as a whole, I find Klein has not shown that the Auer System it relies upon to invalidate the asserted claims was ready for patenting at the time of the alleged offer for sale. For this additional and independent reason, Klein has not shown clear and

convincing evidence of any invalidity argument based on the Auer System as prior art under the on-sale bar.³⁰

3. Auer System and Bensman

Toggle locking latches are required by all asserted claims of the '952 and '026 patents and claim 8 of the '167 patent. CIB at v-x. Klein admits the Auer System containers do not incorporate toggle locking latches. RIB at 31. To supply the missing toggle locking latches, Klein relies on a prior art reference called Bensman. *Id.* at 39-40. Bensman was filed on November 19, 2012, and published on May 23, 2013. RX-0729.1. No party disputes that Bensman is prior art to the Asserted Patents under 35 U.S.C. § 102(a)(1). *See* CRB at 14-54. Klein argues that an ordinary artisan “would have known the benefits of using toggle locks and would have been capable of incorporating them with little difficulty.” *Id.* at 40.

Klein’s argument that the combination of the Auer System and Bensman renders obvious all asserted claims of the '952 and '026 patents and claim 8 of the '167 patent fails at least because Klein has not convincingly demonstrated that the Auer System is prior art. But in the interest of thoroughness, I address below other reasons Klein’s showing is unconvincing.

³⁰ Klein’s post-hearing brief mingles arguments about the “public use” and “on sale” bar. *See, e.g.*, RIB at 11-12, 18, 21-22, 24. But those two bars are different bases for invalidity under the Patent Act. *See* 35 U.S.C. § 102; *Invitrogen Corp. v. Biocrest Mfg., L.P.*, 424 F.3d 1374, 1379 (Fed. Cir. 2005) (describing policies common to both the “on sale” and “public use” bars as well as differing considerations for each). Klein’s failure to present detailed argument for each distinct statutory bar not only undermines the credibility of Klein’s showing, but it also violates the Ground Rules for this investigation. *See* Order No. 2 at G.R. 14.1 (requiring contentions to be set forth in detail in the post-hearing brief). Klein’s briefing also ignores my express instruction at trial that it was incumbent upon Klein to separately argue in its post-hearing brief that “this was a prior offer for sale in combination with this or this was a prior public use in combination with that.” Tr. at 60:16-61:2. Accordingly, as an independent and alternative basis for rejecting Klein’s invalidity defenses based on the Auer system, I find Klein’s failure to clearly articulate how the evidence meets each distinct statutory bar thwarts a conclusion that invalidity has been shown by clear and convincing evidence.

PUBLIC VERSION

Klein's argument about putting toggle locking latches on the Auer System may have superficial appeal: there is no question that toggle locking latches were known before the claimed invention, and most people are familiar with them. Would it not be obvious, then, "to address the known problem of securing the lid of a toolbox" using toggle locks, as Klein argues? *See* RIB at 42.

Milwaukee's expert Dr. Nayfeh provides an insightful answer: "Toggle locking latches were known, but that doesn't provide on its own a motivation to incorporate them into the Auer system." Tr. (Nayfeh) 1130:12-19.³¹

Requiring objective evidence of a motivation to combine known elements diminishes the risk of obviousness arguments based on impermissible hindsight. *See KSR*, 550 U.S. at 418, 127 S.Ct. 1727 ("[I]t can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does . . . because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known."). To show a motivation to combine the Auer System and the Bensman reference, Klein argues that an ordinary artisan at the time of the invention "would have known the benefits of using toggle locks" and "if there's a known technique to address a known problem using prior art elements according to their established functions, then there is a motivation to

³¹ Because Klein contends the law does not require a respondent "to prove obviousness by starting with a prior art commercial embodiment and then providing motivation to alter that commercial embodiment," RIB at 40, I emphasize that my analysis here places no such burden on Klein. Rather, I have considered the Auer System and the Bensman reference cited by Klein and have compared all that is disclosed thereby to the claimed invention, bearing in mind the level of ordinary skill in the art and objective evidence of non-obviousness. *See Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17-18 (1966).

PUBLIC VERSION

combine” (quoting *Intel Corp. v. PACT XPP Schweiz AG*, 61 F.4th 1373, 1380 (Fed. Cir. 2023) (cleaned up)). RIB at 40-41. Klein then lists the following benefits as being known advantages of toggle locking latches: “(1) a robust connection, including a compressive force, for securing the lid to the container; (2) durability; (3) one-handed operation; (4) tactile feedback; and (5) resistance to sheer forces while a container is moving.” RIB at 40-41 (citing Tr. (Cameron) at 693:15-695:7, 758:7-22, 761:19-762:8). Klein’s argument fails for several reasons, detailed below.

First, Klein’s only support for these supposedly known advantages is the testimony of its expert Dr. Cameron. *See id.* Expert testimony is to “help the trier of fact to understand *the evidence*” and must be “based on sufficient *facts*.” *See* Fed. R. Evid. 702(a) (emphasis added)). Because Dr. Cameron was not explaining any evidence from the time of the invention when she gave her list of advantages, her opinion listing advantages has little probative value.

Next, Klein’s argument does not address the claimed invention as a whole. In fact, Klein appears to suggest it is “unnecessary” to show how all of the features of a claimed invention would have been obvious “in combination.” *See* RIB at 75 n.15. Such a position is incorrect as a matter of law. Section 103 of the Patent Act requires “the invention as a whole” to be obvious in view of the prior art. 35 U.S.C. § 103. An analysis that does not explain “why a person of ordinary skill in the art would have combined elements from specific references *in the way the claimed invention does*” is not convincing. *See ActiveVideo Networks, Inc. v. Verizon Commc’ns, Inc.*, 694 F.3d 1312, 1328 (Fed. Cir. 2012) (emphasis in original).

Here, all asserted claims require a coupler on the “top face” or “first face” of one container and a mating coupler on the “bottom face” or “second face” of another container. ’952 patent at claims 1 and 9; ’167 patent at claims 1 and 15; ’026 patent at claim 1. The claims also require the couplers to “engage each other when the first and second containers are slid with respect to each

PUBLIC VERSION

other.” *Id.* In addition to these features, all asserted claims of the ’952 and ’026 patents and claim 8 of the ’167 patent require a lid secured by a toggle locking latch. ’952 patent at claims 1 and 9; ’167 patent at claim 8; ’026 patent at claim 1. Thus, the claims reciting a toggle locking latch are not directed to securing just *any* toolbox lid. Instead, they recite an invention having a particular type of sliding coupler in addition to a lid secured by a toggle locking latch.

With respect to toggle locking latches, neither Klein nor its expert addressed the claimed combination of features as a whole. The testimony of Klein’s expert Dr. Cameron rested on an assertion that toggle locking latches are simply a routine design choice among many possibilities for securing a toolbox lid. *See* Tr. (Cameron) at 699:8-16 (“whether you have a corner bumper or not, whether you want to use a toggle latch or a different kind of latch, [these are] really routine design choices that are made”), 759:18-761:10. At no point in her testimony did Dr. Cameron specifically explain whether the toggle locking latches of Bensman would or would not be appropriately combined with the sliding coupler mechanism required by the invention.³²

I find evidence in the record does not convincingly show that an ordinary artisan would have found the combination of Bensman’s external toggle locking latches with Auer’s sliding couplers to be obvious. In the Auer System, the lid latch mechanism is *inside* the container, giving the container “smooth outline contours” that facilitate Auer’s *external* sliding coupler engagement. *See* Tr. (Nayfeh) at 1126:3-14; *see also* Tr. (Cameron) at 925:10-17 (“the spring is inside . . . you can’t see it from the outside”). The mechanism that secures the lid in the Auer system requires

³² Dr. Cameron admitted on cross-examination that another element she cited as a being a routine design choice—a prior art corner bumper—actually would prevent the kind of sliding engagement necessary for the couplers in the claimed invention. *See id.* at 907:10-13. That testimony underscores the fact that a commonly known feature might not be suitable in the context of the invention as a whole.

PUBLIC VERSION

user action on the sides of the container, away from the direction of movement required to engage the couplers. *See* Tr. (Nayfeh) at 1123:14-1124:8 (in the Auer System, “two buttons on the sides” are used to release an internal lid latch). Thus, the arrangement in Auer keeps lid latch operations from interfering with the sliding action that engages the couplers and connects the containers.

In contrast to Auer’s internal lid latch, Dr. Cameron described the way an external toggle locking latch works: “you have the hook or the kind of latching location at the top, and then it has like a lever mechanism to kind of snap it shut.” Tr. (Cameron) at 693:3-14. Dr. Cameron admitted that manipulating a toggle locking latch requires a range of motion: “you have to rotate the lever around” in order to close the latch. *See id.* at 761:19-762:8.

Without knowledge of the claimed invention, it is not at all clear why an ordinary artisan looking at the Auer System and Bensman would be motivated to place external toggle locking latches near the surface of a lid having couplers that engage by sliding, as Dr. Cameron suggests. *Cf.* Tr. (Cameron) at 694:4-9 (suggesting it would be obvious to place “two toggle latches near – on the front face towards the corners”); *see also id.* at 763:11-15 (suggesting it would be obvious to place toggle locking latches “in a similar location, just in from the corners” of the Auer box). Such an arrangement would put the latches themselves, and the user action required to operate the latches, in the same area that must be unobstructed for the sliding engagement of the couplers. Dr. Cameron thus has not explained “why a person of ordinary skill in the art would have combined elements from specific references *in the way the claimed invention does*,” as required by section 103. *See ActiveVideo Networks*, 694 F.3d at 1328 (emphasis in original).

Even if Dr. Cameron’s list of the known advantages of toggle locking latches were well supported in the record, it would at best be a neutral factor in the obviousness inquiry. Dr. Nayfeh credibly testified the automatic lid closing mechanism of Auer provides substantially the same

PUBLIC VERSION

advantages, including a robust connection for securing the lid to the container, strength and durability (which includes resistance to sheer forces), tactile feedback, and simple operation. *Compare* RIB at 40-41 with Tr. (Nayfeh) at 1127:5-11; *see also* RX-0183.40, .42, .44, .46, .48, .54 (the Auer System features an “[a]utomatic lid lock” with “[s]pring-loaded lid”), RX-0184.40, .42, .44, .48, .54 (the Auer System features an “[a]utomatic lid locking” with “[s]pring-loaded lid”). Dr. Cameron’s list of advantages therefore does not weigh in favor of a conclusion that an ordinary artisan would be motivated to incorporate toggle locking latches with the Auer sliding couplers to arrive at the claimed invention.

Dr. Cameron’s conclusion that toggle locking latches are an obvious design choice sounds like testimony rejected by the Federal Circuit in *ActiveVideo Networks*. There, an expert testified that a certain set of claimed components were “modular,” and the inclusion of one component “doesn’t change the way the other one works.” *See ActiveVideo Networks*, 694 F.3d at 1327. But the expert did not explain “how specific references could be combined, which combination(s) of elements in specific references would yield a predictable result, or how any specific combination would operate or read on the asserted claims.” *Id.* The court concluded the expert’s testimony was “fraught with hindsight bias.” *Id.*

So here. While Dr. Cameron testified that toggle locking latches were a routine design choice, she also testified that a system using corner bumpers would influence the choice to use toggle latches. *Compare* Tr. (Cameron) at 699:8-16 (“whether you have a corner bumper or not, whether you want to use a toggle latch or a different kind of latch, [these are] really routine design choices that are made”) with *id.* at 769:6-14 (“And, in fact, for the Auer system, you would really choose to use toggle latches if you’re going to use a bumper, because then you don’t have the latch on the corner at all so you can have a longer part of the corner protected by the bumper.”). If the

PUBLIC VERSION

choice of one component leads to the choice of another, then the various aspects of the invention (like toggle locking latches) are not arbitrary design choices. In the words of *ActiveVideo Networks*, the claimed features are not modular. *See ActiveVideo Networks*, 694 F.3d at 1327. Dr. Cameron’s reasoning is more consistent with an analysis that started with the hindsight of the claimed invention and worked backward. *See id.*

In contrast to Dr. Cameron’s testimony, the record contains some objective evidence about whether people in the field would have found it obvious to combine in the sliding couplers of Auer with a lid secured by external toggle locking latches. Recall that just before the May 2, 2016, priority date for the Asserted Patents, the Auer company had yet to begin commercial sales of toolboxes with a sliding coupler system. *See* RX-0176.1-5 (Auer Decl.) ¶¶ 54-57 (as of Apr. 29, 2016, “the planned market launch of the Tool Box Pro containers” had yet to happen). But the evidence shows that around that time, engineers at Auer knew about sliding couplers as well as external toggle locking latches. Auer published a catalog in February 2016 showing one product with sliding couplers and another product with external toggle locking latches. *See* RX-0184.18, .38, .54; *see also* RX-0183.18, .22, .54. But the two distinct products do not couple to each other.

Milwaukee’s expert Dr. Nayfeh noted from this evidence that Auer engineers “themselves are aware of toggle locking latches and use them in some situations, but in another box they use something quite different, integral to the design and advertised the features of that [other box].” Tr. (Nayfeh) 1126:15-1127:4. Dr. Nayfeh testified that such evidence shows an ordinary artisan would not have arrived at the claimed invention when viewing the Auer System and Bensman. *Id.* at 1130:12-1131:3.

I find Dr. Nayfeh’s testimony on this point to be more credible than Dr. Cameron’s. Dr. Nayfeh’s testimony is based on real-world evidence that engineers at Auer knew about sliding

PUBLIC VERSION

couplers and external toggle locking latches but did not implement them in the same system of stacking containers. *See* RX-184.18, .38, .54.

Other objective evidence of non-obviousness, delineated separately below, also supports my conclusion that Klein has failed to show that a person of skill in the art at the relevant time would have found the invention obvious in view of the Auer System and Bensman.

In sum, Klein has not put forward clear and convincing evidence that a person of ordinary skill—knowing of the Auer System and the Bensman reference—would have had reason to attempt to make the claimed invention. *See PharmaStem Therapeutics, Inc.*, 491 F.3d at 1360 (“the burden falls on the patent challenger to show by clear and convincing evidence that a person of ordinary skill in the art would have had reason to attempt to make the composition or device, or carry out the claimed process, and would have had a reasonable expectation of success in doing so”) (cleaned up). Thus, even if the Auer System were prior art, the asserted claims of the ’952 and ’026 patents and claim 8 of the ’167 patent would not be invalid for obviousness under 35 U.S.C. § 103.

4. Auer System, Bensman, and Lifshitz

All asserted claims of the ’952 patent and all asserted claims of the ’167 patent require corner bumpers. Klein asserts these claims are invalid as obvious in view of the Auer System, the Bensman reference already discussed, and another patent to Lifshitz. Lifshitz was filed on June 22, 2011, and issued on February 25, 2014. Lifshitz is therefore prior art to the Asserted Patents under 35 U.S.C. § 102(a)(1). RX-0720.1. Milwaukee does not dispute the prior art status of Lifshitz. *See* CRB at 33-57.

Klein’s argument that the combination of the Auer System, Bensman, and Lifshitz renders obvious all asserted claims of the ’952 and ’026 patents fails at least because Klein has not

PUBLIC VERSION

convincingly demonstrated that the Auer System is prior art. But in the interest of thoroughness, I address below other reasons Klein’s showing is unconvincing.

Klein concedes the Auer System did not incorporate corner bumpers. RIB at 74. Klein argues an ordinary artisan “would have known to use corner bumpers to protect the corners of a container from impact in the May 2016 time frame, and would have been motivated to combine corner bumpers, as disclosed in Lifshitz, with the teachings of Auer.” *Id.* As it did with toggle locking latches, Klein characterizes corner bumpers as a “routine design choice.” *Id.* at 76.

I find that Klein has not met its burden to show by clear and convincing evidence that the Lifshitz reference discloses corner bumpers. *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 292 (Fed. Cir. 1985) (“Each fact forming the factual foundation upon which the court bases its ultimate conclusion regarding the obviousness of the claimed subject matter as a whole must be established by clear and convincing evidence.”). As noted in the claim construction section above, there is no dispute between the parties that a corner bumper absorbs or dissipates energy and is resistant to damage from impact. *See* section V.B.1 above. The Lifshitz reference does not include the words “bumper,” “protect,” “damage,” or “impact.” It doesn’t even use the word “corner.” In fact, Klein does not dispute the testimony from Milwaukee’s expert that “if you read Lifshitz end-to-end, you don’t find any teaching of these [structures identified by Dr. Cameron] being used as corner protection.” *Compare* RIB at 75 *with* Tr. (Nayfeh) at 1137:7-18.

I find the structures identified by Dr. Cameron and Klein as corner bumpers are called “connection portions” in Lifshitz. *See, e.g.*, RX-0720 (Lifshitz) at 10:51-53, Figures 8a, 8b. I further find credible Dr. Nayfeh’s testimony that “those structures actually serve as the connecting columns for building” the container assembly disclosed in Lifshitz. *Compare* Tr. (Nayfeh) at 1135:24-1137:9 *with* RX-0720 (Lifshitz) at 10:51-53. I additionally find, based on Dr.

PUBLIC VERSION

Nayfeh’s credible testimony, that the connection portions of Lifshitz do not accomplish the purpose of protecting the container against impact. Tr. (Nayfeh) at 1137:1-8 (“these are the primary structures where you couple . . . if they were to be damaged, it would actually inhibit the structural connection between this module and those above and below it”). In sum, I find that Klein has not shown convincing evidence that the connection portions in Lifshitz are corner bumpers. Klein’s attempt to show obviousness based on Auer, Bensman, and Lifshitz fails for at least this reason.

Even if Lifshitz did convincingly disclose corner bumpers, Klein’s corner bumper arguments do not address the claimed invention as a whole. As noted already, Klein’s suggestion that it is “unnecessary” to show how all of the features of a claimed invention would have been obvious “in combination” is erroneous. *Compare* RIB at 75 n.15 with *ActiveVideo Networks*, 694 F.3d at 1328 (an analysis that does not explain “why a person of ordinary skill in the art would have combined elements from specific references *in the way the claimed invention does*” is not convincing (emphasis in original)).

I find evidence in the record does not convincingly show that an ordinary artisan would have found the combination of the sliding couplers of the Auer System, Bensman’s external toggle locking latches, and Lifshitz’s corner bumpers to be obvious. The record contains evidence that the structures from Lifshitz identified by Klein protrude above the container top and below the container bottom. Tr. (Nayfeh) at 1177:18-1179:6. Dr. Nayfeh explained that incorporating these structures onto a container with a sliding coupler would make it difficult to slide containers in and out of the coupler in the manner required by the claimed invention. *Id.* That evidence points away from the obviousness of the combination suggested by Klein.

Klein’s expert Dr. Cameron admitted on cross-examination that another prior art corner bumper—in a reference called Welsh—actually would prevent the kind of sliding engagement

PUBLIC VERSION

necessary for the couplers in the claimed invention. *See id.* at 907:10-13. That testimony raises a question as to whether an ordinary artisan would have understood corner bumpers to be suitable in the context of the invention as a whole.

Additionally, in the Auer System, the lid latch mechanism is controlled by two buttons, one on each of the top front corners of the container. *See* Tr. (Nayfeh) at 1123:14-1124:8. This is the same location where the claimed invention uses corner bumpers. Without knowledge of the claimed invention, it is not at all clear why an ordinary artisan looking at the Auer System and Lifshitz would be motivated to place corner bumpers where the lid latch buttons are in the Auer System. Even Klein's expert Dr. Cameron recognized the conflict that corner bumpers would pose to the Auer system. *See* Tr. (Cameron) at 769:6-14. While Dr. Cameron explained *how* to modify various features to arrive at the claimed invention, any objective evidence or reasoning for *why* an ordinary artisan would have been motivated to do so is lacking.

Klein's expert Dr. Cameron asserted at trial that corner bumpers are simply a routine design choice among many possibilities for securing a toolbox lid. *See* Tr. (Cameron) at 699:8-16 ("whether you have a corner bumper or not, whether you want to use a toggle latch or a different kind of latch, [these are] really routine design choices that are made"), 759:18-761:10. As has been noted in connection with the Auer System and Bensman, I find the record does not support a conclusion that an ordinary artisan could put corner bumpers on any box without consideration of the other elements of the invention. For example, Dr. Cameron testified that "for the Auer system, you would really choose to use toggle latches if you're going to use a bumper, because then you don't have the latch on the corner at all so you can have a longer part of the corner protected by the bumper." Tr. (Cameron) at 769:6-14. But if the choice of one component leads to the choice of another, then the various aspects of the invention (like corner bumpers and toggle locking

PUBLIC VERSION

latches) are not arbitrary design choices. In the words of *ActiveVideo Networks*, the claimed features are not modular. *See ActiveVideo Networks*, 694 F.3d at 1327. Dr. Cameron’s reasoning is more consistent with an analysis that started with the hindsight of the claimed invention and worked backward. *See id.*

In contrast to Dr. Cameron’s testimony, the record contains some objective evidence about whether people in the field would have found it obvious to combine in the sliding couplers of Auer with toggle locking latches and corner bumpers. Recall that just before the May 2, 2016, priority date for the Asserted Patents, the Auer company had yet to begin commercial sales of toolboxes with a sliding coupler system. *See* RX-0176.1-5 (Auer Decl.) ¶¶ 54-57 (as of Apr. 29, 2016, “the planned market launch of the Tool Box Pro containers” had yet to happen). But the evidence shows that around that time, engineers at Auer knew about sliding couplers, external toggle locking latches, and reinforced corners. Auer published a catalog in February 2016 showing one product with sliding couplers and another product with external toggle locking latches and reinforced corners. *See* RX-0184.18, .38, .54; *see also* RX-0183.18, .22, .54. But the two distinct products do not couple to each other.

Milwaukee’s expert Dr. Nayfeh noted from this evidence that Auer engineers were “aware of one of these design elements and chose not to incorporate it into their system. So often we think of the hypothetical person of ordinary skill and whether they would be motivated to combine something. Here we have actually a real-world example.” Tr. (Nayfeh) 1133:15-1134:7. Dr. Nayfeh testified that such evidence shows an ordinary artisan would not have arrived at the claimed invention when viewing the Auer System, Bensman, and Lifshitz. *Id.* at 1131:4-1134:17.

I find Dr. Nayfeh’s testimony on this point to be more credible than Dr. Cameron’s. Dr. Nayfeh’s testimony is based on real-world evidence that engineers at Auer knew about sliding

PUBLIC VERSION

couplers, external toggle locking latches, and corner reinforcement, but did not implement them in the same system of stacking containers. See RX-184.18, .38, .54; RX-0183.18, .22, .54.

Other objective evidence of non-obviousness, delineated separately below, also supports my conclusion that Klein has failed to show that a person of skill in the art at the relevant time would have found the invention obvious in view of the Auer System, Bensman, and Lifshitz.

In sum, Klein has not put forward clear and convincing evidence that a person of ordinary skill—knowing of the Auer System, the Bensman reference, and the Lifshitz reference—would have had reason to attempt to make the claimed invention. See *PharmaStem Therapeutics, Inc.*, 491 F.3d at 1360 (“the burden falls on the patent challenger to show by clear and convincing evidence that a person of ordinary skill in the art would have had reason to attempt to make the composition or device, or carry out the claimed process, and would have had a reasonable expectation of success in doing so”) (cleaned up). Thus, even if the Auer System were prior art, the asserted claims of the ’952 and ’026 patents and claim 8 of the ’167 patent would not be invalid for obviousness under 35 U.S.C. § 103.

B. ’026 Patent Claims Compared with Burchia and Bensman

Klein argues that all the asserted claims of the ’026 patent are invalid as obvious in view of prior art references Burchia and Bensman. RIB at 54-68.

Burchia was filed on August 18, 2016, under the Patent Cooperation Treaty, and it claims priority to the August 18, 2015, filing date of a German application, which predates the May 2, 2016, priority date for the Asserted Patents. RX-0724.1; ’026 patent at .0057; ’952 patent at .0057; ’167 patent at .0057. No party disputes that Burchia is prior art to the Asserted Patents under 35 U.S.C. §§ 102(a)(2) and (d)(2). See CRB at 24-57. Each of the Asserted Patents cites Burchia

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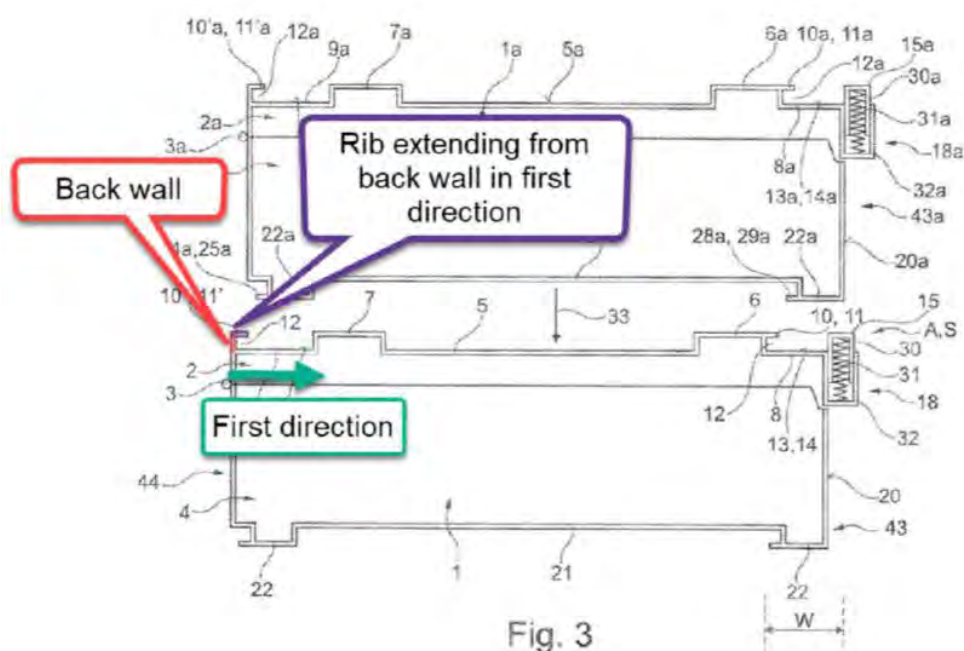
on its face and thus it was considered by the Patent Office before each Asserted Patent issued. '026 patent at .0005; '952 patent at .0005; '167 patent at .0005.

As noted above in connection with the Auer System, Bensman was filed on November 19, 2012, and published on May 23, 2013. RX-0729.1. No party disputes that Bensman is prior art to the Asserted Patents under 35 U.S.C. § 102(a)(1). *See* CRB at 14-54.

For the reasons discussed below, Klein has not shown by clear and convincing evidence that a person of ordinary skill in the art at the time of the invention would have had reason to attempt to combine Burchia and Bensman to arrive at the invention disclosed in the asserted claims of the '026 patent. A discussion of a subset of claim limitations is dispositive.

1. Limitation 1[a][i]: “a rib”

Klein argues that Burchia discloses “a rib” in accordance with claim 1 of the '026 patent. RIB at 55-57. Klein cites the testimony of its expert Dr. Cameron for support. *See id.* (citing Tr. (Cameron) 824:4-826:23, 827:9-828:11). At trial, Dr. Cameron identified in the Burchia reference a “female coupler with the rib” in purple:



See Tr. (Cameron) at 830:21-22, 831:1-2; RDX-0003C.80; RX-0724 at Fig. 3.

I find the weight of the evidence does not support Dr. Cameron's opinion that elements 10' and 11' in Burchia correspond to the rib of the claimed invention. Dr. Cameron's contention that elements 10' and 11' are each a rib is heavily based on the cross-sectional images of Burchia shown in Figures 3, 4, and 5 of that reference. See Tr. (Cameron) at 827:8-828:11; RDX-0003.75, .77, .80. That cross-sectional view makes element 10' appear as a cantilever, which is more suggestive of the kind of rib disclosed in the '026 patent. But such views ignore other aspects of the three-dimensional structure of element 10' and 11' disclosed in Burchia. The "whole prior art structure" of Burchia must be considered in an obviousness analysis. See *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1566, 1568 (Fed. Cir. 1987) ("[A] prior patent must be considered in its entirety.").

A more complete view of elements 10' and 11' is shown in Figure 1:

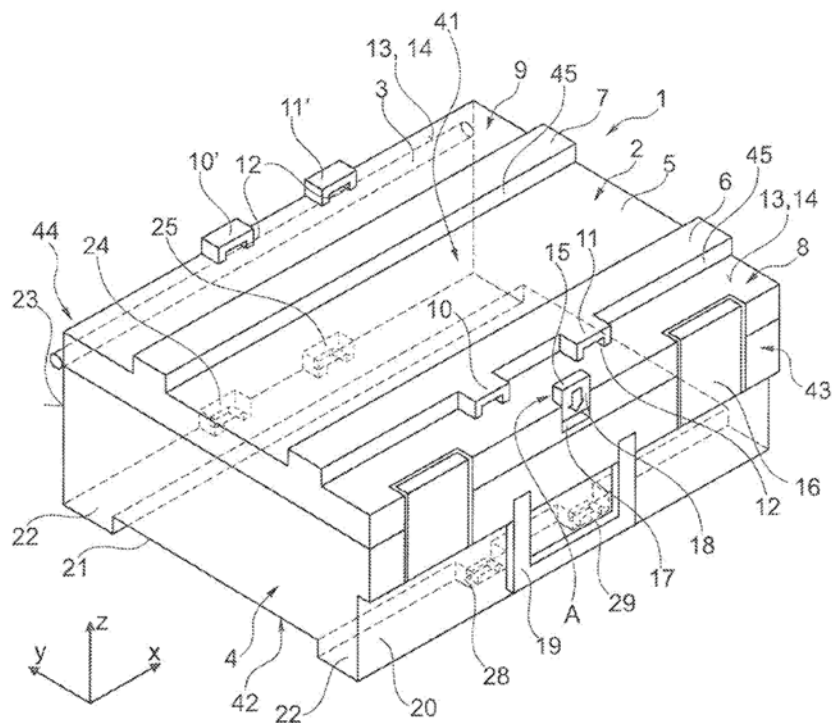


Fig. 1

RX-0724 (Burchia) at Fig. 1. Burchia describes elements 10 and 11 (which are similar to elements 10' and 11')³³ as “plug-in holder[s]” configured to receive “plug-in element[s]” 28a and 29a “through a plug-in opening 12.” RX-0724 (Burchia) at 9:57-65. Burchia never describes elements 10' and 11' as ribs. In contrast, Burchia describes entirely different elements 6 and 7 as “cross ribs.” *Id.* at 10:21-26, 33-36. In fact, Burchia explains that “the coupling parts 10, 11 are each *connected with* the cross-rib 6 or formed onto the cross-rib 6,” while “two further coupling parts 10', 11' are provided” but are not connected to a cross rib. RX-0724 at 10:35-39 (emphasis added).

³³ While Dr. Cameron's invalidity illustration points to elements 10' and 11' in Burchia, Dr. Cameron relies on passages of Burchia describing elements 10 and 11 to characterize elements 10' and 11'. See RDX-0003.80 (quoting RX-0724 (Burchia) at 9:57-65).

PUBLIC VERSION

Burchia's description of plug-in holders 10 and 11 as structures "connected with" a rib teaches away from Dr. Cameron's conclusion that such elements are themselves a rib, and neither Klein nor Dr. Cameron addresses that point. *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 296 (Fed. Cir. 1985) (a prior art reference "should also have been considered for disclosures that taught away from the invention" (citing *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1550 (Fed. Cir. 1983))). That failure suggests that Dr. Cameron's analysis and Klein's argument was more guided by the hindsight provided by the claimed invention than by the content of the prior art. *See Ashland Oil*, 776 F.2d at 297 (where a district court did not consider prior art teachings leading away from the claimed invention, the appellate court concluded "the district court used [the claim] as a blueprint, and abstracted individual teachings from [the prior art] to create" the claimed invention).

For at least these reasons, Klein has not shown by clear and convincing evidence that Burchia discloses the rib of the invention required by limitation 1[a][i].

Klein does not argue that Bensman teaches the rib of the claimed invention.

A "rib" is required by all asserted claims of the '026 patent. Klein has not shown by clear and convincing evidence that an invention having the claimed "rib" would have been obvious to a person of ordinary skill in the art at the time of the invention. Klein's obviousness defense for the '026 patent fails for at least this reason.

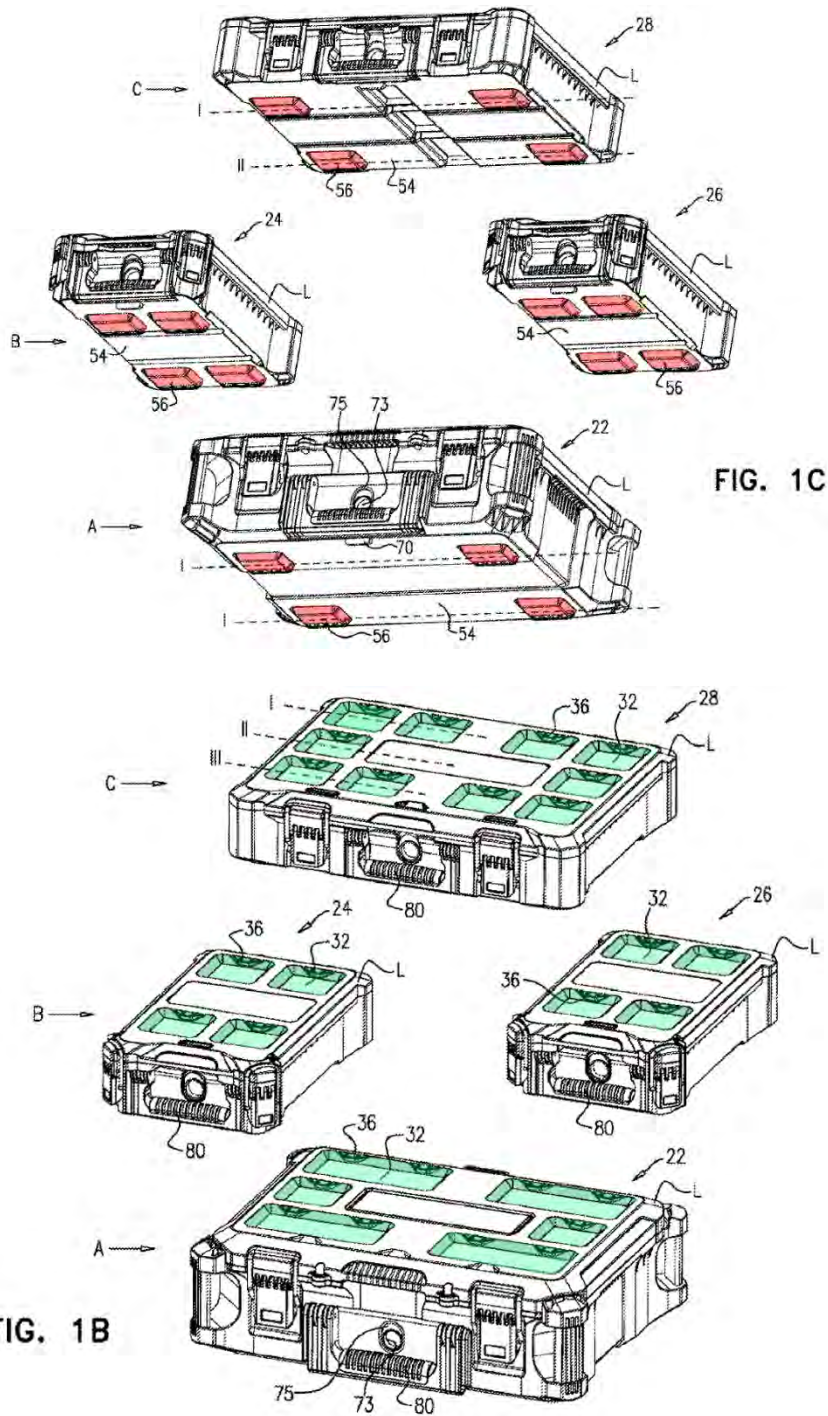
2. Limitation 1[a][i]: "a depressed surface of the first face"

Claim 1 of the '026 patent describes a coupler comprising two sidewalls and a back wall "projecting from a depressed surface." *See* '026 patent at claim 1, limitation 1[a][i]. By way of background, the '026 patent specification explains that one embodiment of the invention comprises a container with "a so-called female coupler" that "has a depressed locking location configured

PUBLIC VERSION

with at least one locking rib extending above a depressed surface.” ’026 patent at 19:10-14. Another container has “a so-called male coupler comprising a projecting locking location disposed in register with said depressed locking location and configured with at least one locking tongue.” *Id.* at 19:24-31. When a second container is placed over a first container, it results in “placing the projecting portions 56 within the depressed locking location 32.” ’026 patent at 17:22-28. The annotation of Figure 1B below illustrates the depressed locking locations 32 in green, while the annotation of Figure 1C shows corresponding projecting portions 56 in red:

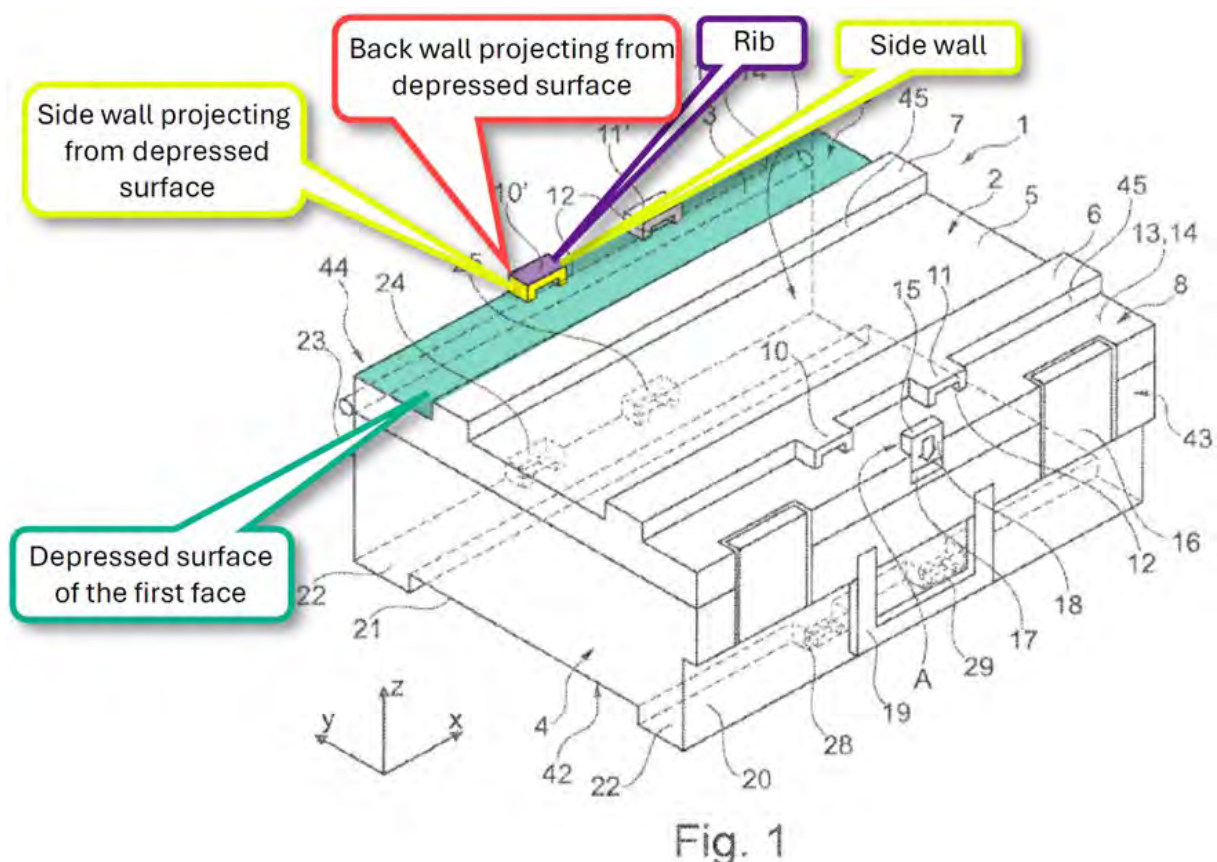
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'026 patent, Figs. 1B and 1C (annotated).

Klein argues the depressed surface required by claim 1 of the '026 patent is disclosed in the Burchia prior art reference. RIB at 56-57. Burchia discloses a stackable suitcase. RX-0724

at 1:15-16. Klein annotates Figure 1 of Burchia to illustrate its argument that Burchia discloses a “depressed surface”:



RIB at 56-57 (reproducing RDX-0003.77).

I find the weight of the record evidence shows an ordinary artisan would not consider the portion of the Burchia device highlighted by Klein in green to be a depressed surface corresponding to limitation 1[a][i]. I find Burchia describes the highlighted area as “receiving region 9” and states that the region “is disposed on top side 21” of the suitcase. RX-0724 (Burchia) at 10:57-58. Burchia teaches that top side 41 has a lid 2 that is “essentially flat.” *Id.* at 10:21-25. Burchia further teaches that this “essentially flat” lid has “cross-ribs 6, 7, which are configured to be *elevated*.” *Id.* (emphasis added). These teachings provide an objective point of reference for the ordinary artisan: Burchia’s features are described in relation to the “essentially flat” lid 2.

PUBLIC VERSION

Thus, an ordinary artisan would have understood that cross-ribs 6 and 7 are “elevated” from the “essentially flat” lid 2, *not* that receiving region 9 is a “depressed surface.”

Milwaukee’s expert Dr. Nayfeh confirmed a person of skill would not consider the surface highlighted by Klein to be a depressed surface. *See* Tr. (Nayfeh), 1171:13-1173:14. Dr. Nayfeh explained that to give meaning to the words of the claim, the “depressed surface” of the invention necessarily means there must be “portions of the first face that are not depressed.” *Id.* at 1172:5-1173:14. Dr. Nayfeh credibly testified that Region 9 of Burchia “runs all the way to the edges” of the top of the suitcase, so “it is just simply not a depressed surface of the first face.” *Id.* at 1172:1-7. Dr. Nayfeh’s testimony is corroborated by the teachings of Burchia, which instruct the ordinary artisan that the lid of Burchia is “essentially flat” and cross-ribs 6 and 7 are “elevated” from that flat surface. RX-0724 (Burchia) at 10:21-25. Because Dr. Nayfeh’s testimony is consistent with the disclosures of Burchia, I give significant weight to Dr. Nayfeh’s testimony about what an ordinary artisan at the time of the invention would have understood Burchia to disclose.

Klein’s argument ignores the relational teachings in Burchia and instead arbitrarily chooses a different point of reference for measuring depression—the top of cross-ribs. Thus, under Klein’s reading, receiving region 9 is a depression from the top surface of Burchia’s rib. But Klein cites no evidence in Burchia describing region 9 as a depressed surface. Nor am I persuaded by Klein’s showing that an ordinary artisan at the time of the invention would have understood the figures in Burchia to disclose the depressed surface of the claimed invention. I find region 9 of Burchia could only be understood to be a depressed surface—if at all—when viewed in hindsight, after seeing and understanding the claimed invention.

Klein’s argument is akin to the argument rejected in *Application of Meng*, 492 F.2d 843 (C.C.P.A. 1974). There, the claimed invention was directed to a package of cheese slices in which

slices were stacked with alternating offsets to make it easier to grip the edge of an individual slice from the stack. The Patent Office rejected the claim as obvious in view of a prior art diagram of stacked slices that showed random offsets between the slices. The appellate court reversed. The court acknowledged the well-established principle that a claimed invention may be “rendered obvious by a drawing in a reference, whether the drawing disclosure be accidental or intentional.” *Id.*, 492 F.2d at 847. But the court also held that under 35 U.S.C. § 103, a claimed invention is only “illustrated” by a prior art drawing “which, independently of an applicant’s disclosure, would lead those skilled in the art to recognize the claimed invention as the solution to the problem it solved, *i.e.*, by a drawing which renders the invention ‘obvious.’” *Id.* The court determined the prior art figure “simply would not, in our view, teach or suggest the claimed invention to those who had never seen appellants’ disclosure.” *Id.* So here. An ordinary artisan at the time of the invention would not have understood region 9 in Figure 1 of Burchia to teach or suggest the depressed surface of the claimed invention.

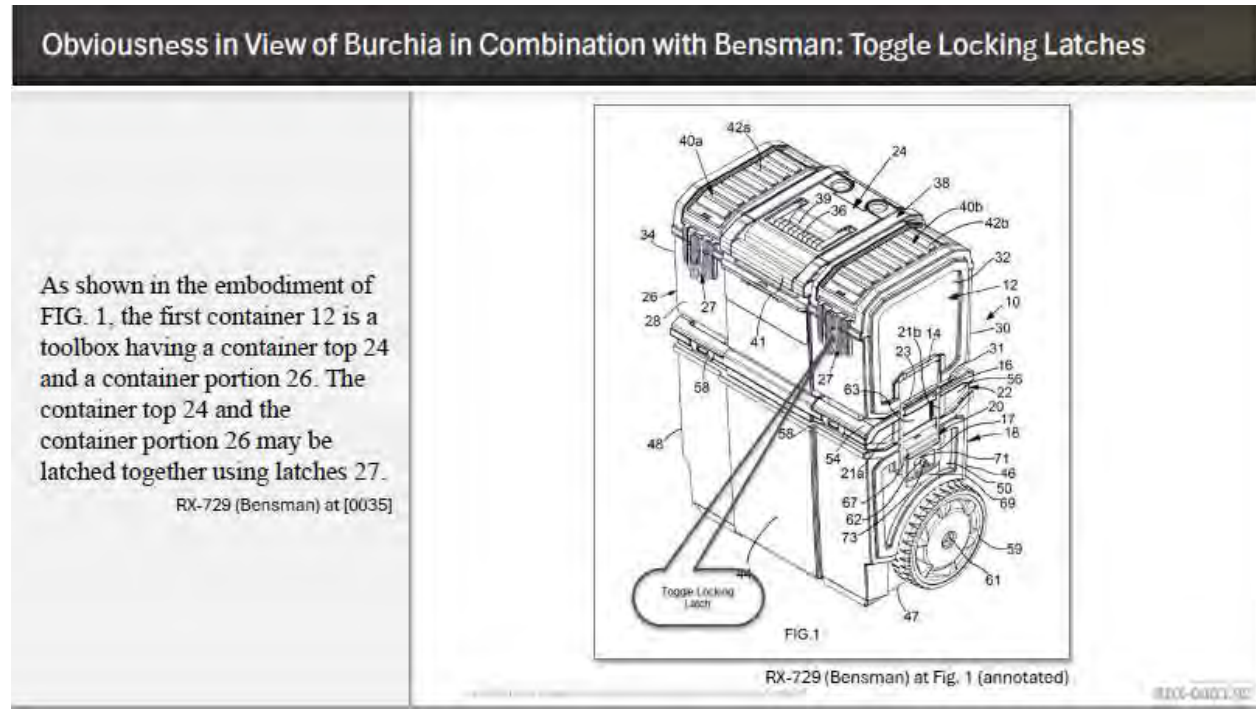
Klein does not argue that Bensman teaches a depressed surface.

A “depressed surface” is required by all asserted claims of the ’026 patent. Klein has not shown by clear and convincing evidence that an invention having the claimed “depressed surface” would have been obvious to a person of ordinary skill in the art at the time of the invention. Klein’s obviousness defense for the ’026 patent fails for this additional reason.

3. Limitation 1[a][iii]: “a toggle locking latch”

All asserted claims of the ’026 patent require toggle locking latches. Klein contends “Burchia discloses ‘closure latches’—of which toggle-locking latches are one example—that secure the lid of the container in a closed position.” RIB at 57. Klein then reproduces a slide that shows two sentences from Bensman and a figure from Bensman and argues, in cursory fashion,

that this limitation “is rendered obvious by the combination of the teachings of Burchia with those of Bensman”:



RIB at 57-58 (reproducing RDX-0003.92).

I find Klein’s scant showing is not “clear and convincing evidence that a person of ordinary skill in the art would have had reason to attempt to make the composition or device, or carry out the claimed process, and would have had a reasonable expectation of success in doing so.” See *PharmaStem Therapeutics, Inc.*, 491 F.3d at 1360 (cleaned up). To the extent that Klein’s string citation incorporates by reference its argument that the combination of the Auer System and Bensman render the claimed invention obvious, those arguments have been rejected in section XI.B.2 above. Additionally, Klein has not compared the similarities and differences between the claimed invention and the combination of Burchia and Bensman, nor has Klein explained a motivation to combine those references, as was its burden. See *Graham*, 383 U.S. at 13-17; *KSR*, 550 U.S. at 418.

PUBLIC VERSION

“Toggle locking latches” are required by all asserted claims of the ’026 patent. Klein has not shown by clear and convincing evidence that an invention having the claimed “toggle locking latches” would have been obvious to a person of ordinary skill in the art at the time of the invention. Klein’s obviousness defense for the ’026 patent fails for this additional reason.

4. Claim 4

Claim 4 of the ’026 patent ultimately depends from claim 1. Because Klein did not prove that the invention of claim 1 would have been obvious for the reasons discussed above, Klein also did not show that the invention of claim 4 would have been obvious.

5. Claim 8

Claim 8 of the ’026 patent requires that “a width of the second container is half of a width of the first container, and the second container is located on top of the first container.” Klein concedes that Burchia does not disclose this limitation. RIB at 65 (“Burchia does not teach that the second container can be ‘half a width’ of the first container.”). Instead, Klein argues that a person of ordinary skill “would have understood that it was possible to stack different sized containers on top of each other as exemplified by the Auer system, the Systainer system, Williams, and Ruggerone.” *Id.* at 65-66.

Klein’s argument regarding claim 8 violates the ground rules for this investigation, which require a contention for which a party has the burden of proof to be “set forth in detail in the post-hearing initial brief” in order to preserve the contention. *See* Order No. 2 at G.R. 14.1 (July 30, 2024). Specifically, the ground rules require defenses of patent invalidity under 35 U.S.C. § 103 to “address the factors of *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966), separately for each unique combination of prior references relied upon.” *See id.* Klein did not provide a

PUBLIC VERSION

legally sufficient obviousness analysis for each combination of references cited in connection with claim 8. For at least this reason, Klein's invalidity defense for claim 8 of the '026 patent fails.

Even if I were to consider Klein's argument about claim 8 on the merits, it would fail. Claim 8 depends from claim 1. Because Klein did not prove that the invention of claim 1 would have been obvious for the reasons discussed above, Klein also did not show that the invention of claim 8 would have been obvious.

Additionally, Klein's showing for claim 8 relies on (1) a video of a MAXI-systainer product (JPX-0027) that Klein did not prove to be dated before the priority date of the '026 patent, (2) the Auer System, which I have already determined that Klein did not prove to be prior art, (3) a reference called Williams with no date asserted in Klein's brief, and (4) a reference called Ruggerone with no date asserted in Klein's brief. *See* RIB at 65-66. Any contention about the alleged date of the MAXI-systainer video, the Williams reference, and the Ruggerone reference has been abandoned because Klein did not identify the relevant dates in its initial post-hearing brief. *See* Order No. 2 at G.R. 14.1 (July 30, 2024). Klein has not met its burden to show the invalidity of claim 8 for these additional reasons.

Furthermore, even if Klein had shown the Auer system, the Systainer system, Williams, and Ruggerone to be prior art, Klein has not shown a convincing reason a skilled artisan would have combined them with Burchia and Bensman to arrive at the claimed invention. While Klein's expert Dr. Cameron testified that an ordinary artisan would have known that "you could stack different size containers on top of one another," that is not legally sufficient. *See InTouch Techs., Inc. v. VGO Commc'ns, Inc.*, 751 F.3d 1327, 1352 (Fed. Cir. 2014) (rejecting "conclusory references to [expert's] belief that one of ordinary skill in the art *could* combine these references,

PUBLIC VERSION

not that they *would* have been motivated to do so” (emphasis in original)). Klein did not meet its burden to show a motivation to combine references at the time of the invention.

Klein has also failed to show that an ordinary artisan would have a reasonable expectation of success in modifying Burchia to develop a stacking system that accommodates half-width suitcases. See RIB at 66-67; RDX-0003C.104. In offering opinions on that point, Klein’s expert Dr. Cameron relied upon a set of computer-generated, hypothetical modifications of Burchia reproduced in part below:



RDX-0003.104.

But Milwaukee’s expert Dr. Nayfeh convincingly explained that Dr. Cameron’s hypothetical modifications would not result in the claimed invention. For example, given the positioning of the locking latches, suitcases in some stacking configurations could not be unstacked by a single person. Specifically, the top left arrangement above shows a full-width suitcase having two separate locking elements in red. If another full-width suitcase were stacked

PUBLIC VERSION

directly on top of that suitcase, a person would need to use two hands to release the two locking elements on the bottom suitcase simultaneously but would have no free hand left to grasp the upper suitcase to slide the two suitcases apart. Tr. (Nayfeh) at 1183:18-1184:23. The same problem occurs in the top right and bottom left hypotheticals. *Id.* at 1185:7-1187:11. If Dr. Cameron, having the hindsight of the patent, could not from Burchia's teachings produce a functional hypothetical container system having all of the elements of claim 8 for this litigation, that is strong evidence that a person of ordinary skill in the art at the time of the invention in 2016 would not have been able to either.

Finally, because claim 8 depends from independent claim 1, it was Klein's burden to show why a skilled artisan would have been motivated to combine and modify the disclosures of Burchia, Bensman, and the four alleged half-width references, to arrive at a claimed invention having all of the elements of claim 8, including a rib, a depressed surface, toggle locking latches, etc. Klein has not met that burden.

In sum, Klein has failed to show by clear and convincing evidence that claim 8 of the '026 patent is invalid as obvious in view of Burchia, Bensman, the Auer system, the Systainer system, Williams, and Ruggerone.

6. Conclusion

Viewing the record as a whole, including objective evidence of non-obviousness discussed below, I find Klein has not shown by clear and convincing evidence that any asserted claim of the '026 patent is invalid for obviousness under 35 U.S.C. § 103.

C. '952 Patent Claims Compared with Burchia, Bensman, and Lifshitz

Klein argues that the asserted claims of the '952 patent are invalid as obvious in view of Burchia, Bensman, and Lifshitz. RIB at 83-90, 110-11.

PUBLIC VERSION

1. All Asserted '952 Patent Claims

Independent claim 1 and independent claim 9 of the '952 patent, from which all other asserted '952 patent claims depend, both require a “rib” and a “depressed surface.” As discussed above in sections XI.B.1 and XI.B.2, Burchia fails to disclose the claimed rib and depressed surface. Klein makes no argument that these features are taught by Bensman or Lifshitz. Accordingly, Klein has not shown that any claim of the '952 patent is rendered obvious by the combination of Burchia, Bensman, and Lifshitz.

Additionally, all asserted claims of the '952 patent require toggle locking latches. As noted above in section XI.B.3, Klein has not convincingly shown that it would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of Burchia and Bensman to arrive at a container system having sliding couplers and toggle locking latches. Klein makes no assertion that Lifshitz would have made obvious a combination having toggle locking latches. Accordingly, Klein has not shown that any claim of the '952 patent is rendered obvious by the combination of Burchia, Bensman, and Lifshitz for this additional reason.

2. Claim 3

Claims 3 depends from independent claim 1. Because Klein did not prove that the invention of claim 1 would have been obvious for the reasons discussed above, Klein also did not show that the invention of claim 3 would have been obvious.

In the interest of thoroughness, I address below yet another reason Klein has failed to show that asserted claim 3 is obvious in view of the combination of Burchia, Bensman, and Lifshitz.

Claim 1, from which claim 3 depends, requires the second container in the system to have corner bumpers on each side of the front face. '952 patent at claim 1, limitation 1[b][vii] (“a first corner bumper coupled to the second container between the front face and the first side face),

PUBLIC VERSION

limitation 1[b][viii] (“a second corner bumper coupled to the second container between the front face and the second side face”).

Klein admits that “Burchia does not disclose corner bumpers.” RIB at 87. Klein argues that an ordinary artisan, “prior to May 2016, would also have been motivated to combine the teachings of Lifshitz regarding the use of corner bumpers with the teachings of Burchia.” *Id.* Klein incorporates its argument about the combination of the Auer System and Lifshitz by reference. *Id.* at 87-88. Klein does not argue that Bensman teaches corner bumpers. *See id.*

In connection with Klein’s arguments about the Auer System, I found that Lifshitz does not convincingly disclose corner bumpers. *See* section XI.A.4 above. I additionally find, for reasons similar to those explained in section XI.A.4 above, that Dr. Cameron’s opinion that adding corner bumpers to the Burchia suitcase would be simply a matter of design choice to be unconvincing.

Moreover, as Milwaukee’s expert Dr. Nayfeh testified, the structures from Lifshitz identified by Klein protrude above the container top and below the container bottom. Tr. (Nayfeh) at 1177:18-1179:6. Dr. Nayfeh explained that incorporating these structures onto a container with a sliding coupler would make it difficult to slide containers in and out of the coupler in the manner required by the claimed invention. *Id.* That evidence points away from the obviousness of the combination suggested by Klein.

I further find that the record contains objective evidence that actual engineers who knew about sliding couplers and corner reinforcement at the time of the invention did not produce a container having both sliding couplers and corner bumpers. *See* section XI.A.4 (citing RX-0184.18, .38, .54; RX-0183.18, .22, .54; Tr. (Nayfeh) at 1131:4-1134:7). That evidence again points away from the obviousness of the combination suggested by Klein.

PUBLIC VERSION

Other objective evidence of non-obviousness, delineated separately below, also supports my conclusion that Klein has failed to show that a person of skill in the art at the relevant time would have found the invention obvious in view of Burchia, Bensman, and Lifshitz.

In sum, Klein has not shown the invention of claim 3 to be obvious in view of Burchia, Bensman, and Lifshitz.

3. Claim 4

Claim 4 depends from independent claim 1. Because Klein did not prove that the invention of claim 1 would have been obvious for the reasons discussed above, Klein also did not show that the invention of claim 4 would have been obvious.

In the interest of thoroughness, I address below an additional reason Klein has failed to show that asserted claim 4 is obvious in view of the combination of Burchia, Bensman, and Lifshitz.

Claim 4 requires that “a width of the second container is half of a width of the first container.” ’952 patent at claim 4. Klein’s entire argument for the obviousness of this claim is this single sentence and cross-reference: “Stacking a half-width container is obvious in view of Burchia. *See* VI.B.3(e).” RIB at 88. Klein’s cross-reference to section VI.B.3(e) of its initial post-hearing brief refers to a combination of Burchia with “the Auer system, the Systainer system, Williams, and Ruggerone.” *See* RIB at 65-66. For the same reasons as discussed in section XI.B.5 herein, I find Klein’s obviousness argument regarding claim 4 of the ’952 patent violates the ground rules of this investigation and is not supported by convincing evidence. Klein does not argue that teachings from Bensman or Lifshitz would cure these deficiencies. Accordingly, Klein has not shown the invention of claim 4 to be obvious in view of Burchia, Bensman, and Lifshitz.

4. Claim 8

Claim 8 depends from independent claim 1. Because Klein did not prove that the invention of claim 1 would have been obvious for the reasons discussed above, Klein also did not show that the invention of claim 8 would have been obvious.

In the interest of thoroughness, I address below an additional reason Klein has failed to show that asserted claim 8 is obvious in view of the combination of Burchia, Bensman, and Lifshitz.

Claim 8 requires that “the first container further comprises a pair of rear wheels and a telescoping handle.” ’952 patent at claim 8. Klein argues that “for the reasons discussed above with respect to Auer, a POSITA, prior to May 2016, would have been motivated to combine integrated rear wheels and a telescoping handle, as disclosed in Lifshitz, with the teachings of Burchia to achieve a bottom container with rear wheels and a telescoping handle.” RIB at 89. In the section of the post-hearing brief referenced, Klein cites a March 2015 Auer catalog advertising Auer SK 43 and 64 trolleys that include wheels and a non-telescoping handle. *See* RIB at 78-79 (citing RX-0183.54-55, 59). The Auer trolleys are not part of a container; the trolleys couple to Auer containers. *Id.*

To the extent that Klein relies on arguments relating to the Auer System to show how combinations with Burchia are obvious, Klein’s argument fails. Klein has provided no explanation as to why the features of the Auer System would inform an obviousness analysis of a combination of references that does not include the Auer System (namely, the combination of Burchia, Bensman, and Lifshitz). Klein’s cross-reference attempt also violates the ground rules for this investigation and fails for that independent reason. *See* Order No. 2 at G.R. 14.1 (obviousness

PUBLIC VERSION

arguments must be addressed “separately for each unique combination of prior references relied upon”).

Regarding a combination of Burchia and Lifshitz, Klein asserts an ordinary artisan would have had a motivation to combine teachings from those references, but Klein never states what that motivation would have been. *See* RIB at 89. Klein cites a few lines of testimony from its expert Dr. Cameron, but in that passage Dr. Cameron only makes a conclusory assertion that “using a telescoping handle and wheels that extend past the rear wall is well known in the art and easy to implement onto a container like Burchia.” Tr. (Cameron) at 852:7-853:3. I find this scant record does not constitute clear and convincing evidence of obviousness. *See ActiveVideo Networks*, 694 F.3d at 1327 (obviousness not proven where expert did not explain “how specific references could be combined, which combination(s) of elements in specific references would yield a predictable result, or how any specific combination would operate or read on the asserted claims”).

Milwaukee’s expert Dr. Nayfeh gave more reasoned, and therefore more credible, testimony as to why an ordinary artisan would not have combined Burchia and Lifshitz to arrive at the claimed invention. The invention of claim 8 requires a pivoting lid. *See* ’952 patent at claim 1, limitations 1[a][ii] and 1[b][ii]. Dr. Nayfeh explained that to implement a telescoping handle with Burchia’s lid would require that the back wall of the suitcase be made thicker to accommodate the handle “or the dimensions of the lid changed or the location of the hinge changed . . . so that the rear handle doesn’t interfere with the lid as it’s raised.” Tr. (Nayfeh) at 1191:3-1192:13. Dr. Nayfeh explained that Lifshitz does not have a pivoting lid, so it gives no insight into how to address those issues. *Id.*

Viewing the record as a whole, I find Klein has not shown the invention of claim 8 to have been obvious in view of Burchia, Bensman, and Lifschitz.

5. Claim 16

Claim 16 depends from independent claim 9. Because Klein did not prove that the invention of claim 9 would have been obvious for the reasons discussed above, Klein also did not show that the invention of claim 16 would have been obvious.

Claim 16 requires that “the first container further comprises a pair of rear wheels and a telescoping handle.” Klein argues an invention with those features would have been obvious for the same reasons it gave in connection with claim 8. RIB at 90.

I find Klein has not shown the invention of claim 16 to have been obvious in view of Burchia, Bensman, and Lifshitz for the same reasons enumerated above in connection with claim 8.

6. Conclusion

Viewing the record as a whole, including objective evidence of non-obviousness discussed below, I find Klein has not shown by clear and convincing evidence that any asserted claim of the '952 patent is invalid for obviousness under 35 U.S.C. § 103.

D. '167 Patent Claims Compared with Burchia, Bensman, Lifshitz, and Lafragette

Klein argues that the asserted claims of the '167 patent are invalid as obvious in view of various combinations Burchia, Bensman, Lifshitz, and Lafragette.³⁴ RIB at 103-10.

For the reasons discussed below, Klein has not shown by clear and convincing evidence that a person of ordinary skill in the art at the time of the invention would have had reason to attempt to combine these references in the manner asserted by Klein to arrive at the invention disclosed in the asserted claims of the '167 patent.

³⁴ Lafragette is a prior art reference from 2003, as noted below in connection with claim 14 of the '167 patent. See RX-0725.

1. All Asserted '167 Patent Claims

Independent claim 1 and independent claim 15, from which all other asserted '167 patent claims depend, both require a “rib” and a “depressed surface.” As discussed above in sections XI.B.1 and XI.B.2, Burchia fails to disclose the claimed rib and depressed surface. Klein makes no argument that these features are taught by Bensman, Lifshitz, or Lafrayette. Accordingly, Klein has not shown that any claim of the '167 patent is rendered obvious by the combination of Burchia with any of Bensman, Lifshitz, or Lafrayette.

Additionally, independent claim 1 and independent claim 15 (and therefore all asserted claims of the '167 patent) require that the first container of a container assembly comprises corner bumpers. As determined above in section XI.C.2 above, neither Burchia, Bensman, nor Lifshitz disclose corner bumpers. I have also determined in section XI.C.2 above that Klein has not convincingly shown that it would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of Burchia, Bensman, and Lifshitz to arrive at a container system having sliding couplers and corner bumpers. Klein makes no assertion that Lafrayette would have made obvious a combination having corner bumpers. Accordingly, Klein has not shown that any claim of the '167 patent is rendered obvious by the combination of Burchia with any of Bensman, Lifshitz, or Lafrayette for this additional reason.

2. Claim 2

Klein contends claim 2 is invalid as obvious over Burchia in combination with the teachings of Lifshitz. RIB at 102.

Claim 2 depends from independent claim 1. Because Klein did not prove that the invention of claim 1 would have been obvious in view of Burchia and Lifshitz for the reasons discussed above, Klein also did not show that the invention of claim 2 would have been obvious.

PUBLIC VERSION

Additionally, claim 2 requires the first container comprise “a pair of rear wheels extending past the first rear wall” and “a telescoping handle extending upwards from the first rear wall of the first container.” ’167 patent at claim 2. As discussed in section XI.C.4 above, Klein has not shown convincing evidence that an invention having a pair of rear wheels, a telescoping handle, and the other elements required by claim 2 would have been obvious in view of Burchia and Lifschitz.

3. Claim 5

Claim 5 depends from independent claim 1 and requires the second container of the container assembly comprise corner bumpers. ’167 patent at claim 5. Klein contends that “Burchia in combination with Lifshitz renders obvious the corner bumpers required by this claim.” RIB at 108.

Because Klein did not prove that the invention of claim 1 would have been obvious in view of Burchia and Lifshitz for the reasons discussed above, Klein also did not show that the invention of claim 5 would have been obvious.

Additionally, as determined in section XI.C.2 above, neither Burchia nor Lifshitz disclose corner bumpers. I have also determined in section XI.C.2 above that Klein has not convincingly shown that it would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of Burchia and Lifshitz to arrive at a container system having sliding couplers and corner bumpers.

For all of these reasons, Klein has not shown convincing evidence that the invention of claim 5 would have been obvious in view of Burchia and Lifshitz.

4. Claim 8

Claim 8 depends from independent claim 1 and requires toggle locking latches. ’167 patent at claim 8. Klein’s argument with respect to claim 8 is unclear. In a header, Klein states that

PUBLIC VERSION

“Claim 8 Of The ’167 Patent Is Invalid As Obvious Under 35 U.S.C. § 103 Over Burchia In View Of Bensman And Lifshitz.” RIB at 110. But in body text below that header, Klein states only “Burchia discloses, or otherwise renders obvious in combination with Bensman, the use of two toggle-locking latches to secure the container’s lid.” *Id.* at 111. There is some question, therefore, whether Klein’s argument with respect to claim 8 does or does not depend on the teachings of Lifshitz. For that reason alone, Klein’s argument fails to amount to clear and convincing evidence.

In the interest of thoroughness, I have considered whether the invention of claim 8 would have been obvious in view of Burchia, Bensman, and Lifshitz. As determined in section XI.B.3 above, Klein has not shown by clear and convincing evidence that Burchia in view of Bensman would render obvious an invention having sliding couplers and toggle locking latches. Nowhere in the record does Klein suggest that Lifshitz discloses toggle locking latches or would make it obvious to implement toggle locking latches when considered with Burchia and Bensman.

Accordingly, I determine Klein has failed to show by clear and convincing evidence that Burchia in view of Bensman, or Burchia in view of Bensman and Lifshitz, renders asserted claim 8 obvious.

5. Claim 14

Claim 14 of the ’167 patent depends from unasserted claim 13, which in turn depends from unasserted independent claim 1. Claim 13 requires “a recess” that is a “locking latch arresting location” and claim 14 specifies further structural details about that recess.

Klein argues that claim 14 is invalid as obvious in view of Burchia, Lifshitz, and a published patent application of Lafragette. RIB at 111-14. Lafragette was filed on January 14, 2003, and published on July 24, 2003. RX-0725. Lafragette is therefore prior art to the Asserted

PUBLIC VERSION

Patents under 35 U.S.C. § 102(a)(1). Milwaukee does not dispute the prior art status of Lafragette. See CRB at 50-57.

As noted, claim 14 ultimately depends from independent claim 1. Claim 1 requires a “rib” and a “depressed surface.” As discussed above in sections XI.B.1 and XI.B.2, Burchia fails to disclose the claimed rib and depressed surface. Klein makes no argument that these features are taught by Lifshitz or Lafragette.

Additionally, claim 1 (and therefore claim 14) requires that the first container of a container assembly comprises corner bumpers. As determined in section XI.C.2 above, neither Burchia nor Lifshitz discloses corner bumpers. I have also determined in section XI.C.2 above that Klein has not convincingly shown that it would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of Burchia and Lifshitz to arrive at a container system having sliding couplers and corner bumpers. Klein makes no assertion that Lafragette would have made obvious a combination having corner bumpers on either the first container or the second container. Accordingly, Klein has not shown that claim 14 of the '167 patent is rendered obvious by the combination of Burchia, Lifshitz, and Lafragette.

6. Claim 15

Klein asserts that independent claim 15 of the '167 patent is invalid as obvious under 35 U.S.C. § 103 over Burchia in view of Lifshitz. RIB at 103-104, 108-110.

As has been noted, independent claim 15 requires a “rib” and a “depressed surface.” As discussed above in sections XI.B.1 and XI.B.2, Burchia fails to disclose the claimed rib and depressed surface. Klein makes no argument that these features are taught by Lifshitz. Accordingly, Klein has not shown that claim 15 is rendered obvious by the combination of Burchia and Lifshitz.

PUBLIC VERSION

Additionally, independent claim 15 requires that the first container of a container assembly comprises corner bumpers. As determined in section XI.C.2 above, neither Burchia nor Lifshitz discloses corner bumpers. I have also determined in section XI.C.2 above that Klein has not convincingly shown that it would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of Burchia and Lifshitz to arrive at a container system having sliding couplers and corner bumpers. Accordingly, Klein has not shown that claim 15 of the '167 patent is rendered obvious by the combination of Burchia and Lifshitz for this additional reason.

7. Conclusion

Viewing the record as a whole, including objective evidence of non-obviousness discussed below, I find Klein has not shown by clear and convincing evidence that any asserted claim of the '167 patent is invalid for obviousness under 35 U.S.C. § 103.

E. Objective Indicia of Non-obviousness

The obviousness inquiry can be informed by objective indicia, also known as “secondary considerations,” such as the commercial success of a product embodying the invention, a long-felt need for the solution provided by the invention, and the failure of others to find the solution provided by the invention. *Graham v. John Deere Co. of Kan. City*, 383 U.S. 1, 13-17 (1966); *Dystar Textilfarben GmbH & Co Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1361 (Fed. Cir. 2006). “Evidence arising out of the so-called ‘secondary considerations’ must always when present be considered en route to a determination of obviousness.” *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1538 (Fed. Cir. 1983) (cleaned up). When present, those objective indicia “give light to the circumstances surrounding the origin of the subject matter sought to be patented,” but they are not dispositive on the issue of obviousness. *Geo. M. Martin Co. v. Alliance Mach.*

PUBLIC VERSION

Sys. Int'l, 618 F.3d 1294, 1304-06 (Fed. Cir. 2010). For evidence of objective indicia of non-obviousness to be given substantial weight in the obviousness determination, the proponent of that evidence must establish a nexus between the evidence and the merits of the claimed invention. *See W. Union Co. v. MoneyGram Payment Sys. Inc.*, 626 F.3d 1361, 1372-73 (Fed. Cir. 2010) (citing *In re GPAC Inc.*, 57 F.3d 1573, 1580 (Fed. Cir. 1995)).

Milwaukee argues that it presented at trial “substantial evidence of secondary considerations, including commercial success, copying, industry praise, and long-felt but unmet need and failure of others.” CRB at 57. Milwaukee contends that this evidence shows that the prior art combinations asserted by Klein do not render obvious the invention described in the asserted claims. CRB at 57-76. I have weighed the evidence offered by Milwaukee, as well as any counter evidence offered by Klein, before reaching any conclusion about the obviousness of the asserted claims. *See Apple Inc. v. Samsung Elec. Co., Ltd.*, 839 F.3d 1034, 1048 (Fed. Cir. 2016) (*en banc*). I discuss that evidence below.

1. Nexus

The proponent of objective evidence of non-obviousness “bears the burden of showing that a nexus exists between the claimed features of the invention and the objective evidence offered to show non-obviousness.” *WMS Gaming, Inc. v. Int'l Game Tech.*, 184 F.3d 1339, 1359 (Fed. Cir. 1999). However, “there is a presumption of nexus for objective considerations when the patentee shows that the asserted objective evidence is tied to a specific product and that product is the invention disclosed and claimed in the patent.” *WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1329 (Fed. Cir. 2016) (cleaned up).

Milwaukee asserted that it is entitled to a presumption of nexus because its Domestic Industry Products embody the asserted claims. CRB at 58. Klein responds that a nexus cannot be

PUBLIC VERSION

presumed because the Domestic Industry Products “do not embody and are not coextensive with any of the recited combination of elements in the Asserted Claims.” RIB at 115.

Klein’s contention rests on two points, but neither is persuasive. First, Klein argues that the “rib” and “tongue” required by all asserted claims are not present in the Domestic Industry Products, so those products are not connected to the patented inventions. However, I have determined that Milwaukee’s Domestic Industry Products do embody the limitations disputed by Klein. *See supra* sections VI.B, VII.C, VIII.B (technical prong of the domestic industry requirement).

Second, Klein identifies several unclaimed features in the Domestic Industry Product to argue that a nexus between the claimed features of the invention and the objective evidence offered to show non-obviousness cannot be presumed. RIB at 116. The list includes “features such as ‘strong plastics,’ ‘[i]nterior organizer trays,’ ‘[a]n IP65 rated weather seal,’ a ‘transparent lid,’ ‘durable recessed latches,’ ‘reinforced side handles,’ ‘large robust wheels,’ and a ‘wide sturdy handle,’” all of which Klein contends “are not required by the Asserted Claims.” *Id.*

The list of features ginned up by Klein demonstrates nothing. Milwaukee’s use of “strong” plastic or “transparent” plastic to make the Domestic Industry Products does not result in an “unclaimed feature”; it results in lids, containers, and a system that *are* the claimed features of the Asserted Patents. Similarly, wheels and handles are also expressly required by some asserted claims. *See, e.g.,* ’952 patent at claim 4; ’167 patent at claim 2. And even if some of the Domestic Industry Products include some unclaimed features, those unclaimed features, standing alone, do not necessarily defeat a presumption of nexus. *See Fox Factory, Inc. v. SRAM, LLC*, 944 F.3d 1366, 1374 (Fed. Cir. 2019). The more important point is the fact that each Domestic Industry Product is a sellable unit designed as a whole for practicing the claims of the Asserted Patents.

PUBLIC VERSION

The technical prong analyses detailed above demonstrate overwhelming evidence that the invention protected by the asserted claims is not merely a small component of a larger final product—the Domestic Industry Products as a whole are the claimed invention. Accordingly, I find that Milwaukee is entitled to a presumption that a nexus between the claimed features of the invention and the objective evidence offered to show non-obviousness. *See Crocs, Inc. v. Int’l Trade Comm’n*, 598 F.3d 1294, 1310-11 (Fed. Cir. 2010) (“Because the Commission found, based on substantial evidence, that Crocs shoes practice the ’858 patent and that the Crocs shoes were commercially successful, Crocs established a *prima facie* case of nexus.”).

Moreover, even if a nexus were not presumed, I find Milwaukee’s objective evidence offered to show non-obviousness in fact relates to the features of the patented invention, as detailed further below.

2. Commercial Success

Milwaukee adduced evidence showing that the Domestic Industry Products have sold well since they were first commercialized in 2017, and that this success has continued through the date of the complaint. Tr. (Vargo) at 107:18-108:18. Milwaukee’s economic expert Bonnie Harvey testified that the success of the Domestic Industry Products can be evaluated by examining the revenue and unit sales of these products over time. Tr. (Harvey) at 1081:8-24; *see* CDX-0005C.0003. Ms. Harvey provided the following examples:

- Annual U.S. revenues and units sold for the Domestic Industry Products have increased each year since the products first launched in 2017. Tr. (Harvey) at 1081:8-18; JPX-0059C; *see* CDX-0015C.

PUBLIC VERSION

- U.S. revenues of the Domestic Industry Products totaled approximately [REDACTED] from 2017 to June 2024, constituting approximately [REDACTED] of Milwaukee's U.S. PACKOUT sales. Tr. (Harvey) at 1081:8-18; JPX-0059C; *see* CDX-0015C.
- U.S. unit sales of the Domestic Industry Products totaled approximately [REDACTED] from 2017 to June 2024, constituting approximately [REDACTED] of Milwaukee's U.S. PACKOUT unit sales. Tr. (Harvey) at 1081:19-1082:3; JPX-0059C; *see* CDX-0016C.
- Since 2017, year-over-year growth of Milwaukee's Domestic Industry Product revenues has exceeded overall growth of Milwaukee's total U.S. revenues. Tr. (Harvey) at 405:24-406:13; JPX-0059C; *see* CDX-0025C.
- The number of unique Domestic Industry Products sold has increased from [REDACTED] in 2017 to [REDACTED] by 2024. Tr. (Harvey) at 1082:9-16; JPX-0059C; *see* CDX-0015C.

The evidence also shows the Domestic Industry Products are profitable. From 2017 through June 2024, Milwaukee made approximately [REDACTED] in gross profit from its U.S. sales of the Domestic Industry Products and maintained average gross profit margins ranging from [REDACTED] to [REDACTED] or approximately [REDACTED] on average. Tr. (Harvey) at 1082:9-16, 1082:22-1083:2; JPX-0059C; *see* CDX-0034C; CDX-0035C; CDX-0005C.0004-5.

As a direct result of growing sales of the Domestic Industry Products, Milwaukee's market share of the Pro Modular Storage Market increased. While the Pro Modular Storage Market grew at a compound annual growth rate of [REDACTED] between 2018 and 2024, Milwaukee's product line that includes the Domestic Industry Products exceeded that growth and experienced a compound annual growth rate of [REDACTED]. Tr. (Vargo) at 107:18-109:13; Tr. (Harvey) at 407:11-24; CX-0115C; *see* CDX-0001C.0019. In 2018, the PACKOUT product line comprised only [REDACTED] of the Pro Modular Storage Market, but by 2024, it had grown to [REDACTED] of that market. CX-0115C; Tr.

(Harvey) at 407:11-24. In 2023, Milwaukee was the market leader with approximately [REDACTED] of the market share in the modular storage market, with its next closest competitor, Stanley Black & Decker, having an approximate [REDACTED] market share. Tr. (Harvey) at 1084:12-21; CPX-0053C; *see* CDX-0005C.0007. All other competitors in the modular storage market had market shares of [REDACTED] or less. Tr. (Harvey) at 1084:12-21; CPX-0053C.

Klein argues there is no nexus between the commercial success of the Domestic Industry Products and the Asserted Patents because the claimed features were known in the art. RIB at 121. As detailed in the obviousness findings above, Klein has failed to show several features of the claimed invention in any prior art, including, importantly, the specific sliding coupler of the claims.

Klein also argues that Milwaukee's commercial success is attributable to other factors, such as the "lock in effect" of the PACKOUT ecosystem and the strength of the Milwaukee brand. *Id.* at 124-25.

I find that any "lock in effect" of the PACKOUT ecosystem is tied to the patented invention. Mr. Klein testified that when making a purchase decision, customers examine whether a system has a variety of containers that can couple together. Tr. (Klein) at 505:11-20. The asserted patent claims require multiple containers, and several of the claims require containers of varying width. *See, e.g.*, '167 patent at claims 2, 5, 8, and 14; '026 patent at claim 8. These facts weigh in favor of a conclusion that the patented features are an important part of the PACKOUT ecosystem,. Accordingly, whatever portion of Milwaukee's commercial success is a result of effects of the PACKOUT ecosystem is also attributable to the patented invention.

As to the strength of the Milwaukee brand, I find the evidence supports a conclusion that customer preference for the features of the patented invention exists independently of that brand. Testimony from Mr. Vargo supports this conclusion. He described a Milwaukee-branded 26-inch

PUBLIC VERSION

toolbox, which was released before the Domestic Industry Products at issue in this investigation. Tr. (Vargo) at 64:21-65:22. He testified: “It was very mediocre in sales. And I think looking back on it, what we did with this product was very much in line with what the rest of the market had been doing. We, you know, chased a price point. We didn’t really focus on the durability, didn’t focus on what our users were asking.” By contrast, when developing the Domestic Industry Products, Milwaukee gathered user feedback and developed the PACKOUT system to meet user desires, such as “modularity that locked together,” “more durable hinges . . . more durable corners . . . toggle latches . . . in combination with being able to use multiple widths of products together.” See Tr. (Vargo) at 66:20-67:2.

Mr. Vargo’s testimony indicates that a Milwaukee-branded toolchest that did not have the patented features did poorly, despite the Milwaukee brand, while a system that offers modularity that locks together, varied widths, and other patented features enjoyed commercial success because of those features. In other words, the patented features were more important than the brand. That conclusion is supported by similar testimony from one of Klein’s own witnesses. Mr. Klein testified that a failure to offer a variety of containers that can couple together would be “a major deterrent to the purchase decision *for any brand*.” Tr. (Klein) at 505:11-20 (emphasis added).

Also, the record indicates that branding is not independent of the physical features of a product. Tr. (Maxey) at 623:16-22 (describing a physical feature of a product as emulating “the overall brand language”). Nearly all of the elements of the patent claims are physical features that are visible to the consumer. To the extent that Milwaukee has consistently implemented the claimed features to maintain a strong brand, any influence of the Milwaukee brand on commercial success is not necessarily unrelated to the patented invention.

PUBLIC VERSION

The evidence thus shows that the patented features of the Domestic Industry Products, such as modularity, toggle locking latches, durable hinges, and multiple widths, have contributed to the commercial success of the Domestic Industry Products. These patented features are highlighted on Milwaukee's website and in marketing presentations. *See, e.g.*, JX-0016C; JX-0074; JX-0086; CX-0797; CX-0798; CX-0799; CX-0800; CX-0801; CX-0802; CX-0803; CX-0804; CX-0805. Mr. Vargo credibly testified that he and his development "spend a lot of our lives out talking to users" and the reasons "why they love our products comes down to the durability of the corners, the latches, and the hinges, the ability to stack multiple products next to each other." Tr. (Vargo) at 114:7-115:8. Those features are the patented aspects of the invention.

I find that the commercial success of the Domestic Industry Products (which embody the patent claims) is a strong indication that the inventions protected by the asserted claims would not have been obvious to a person of ordinary skill in the art at the time of the invention.

3. Copying

Testimonial and documentary evidence adduced at the hearing shows that Klein referenced Milwaukee's PACKOUT system throughout its development of the MODbox system. *See* CX-0012C (O'Flaherty Dep.) at 14:25-15:3, 23:19-24:5, 26:10-21; Tr. (Nayfeh) at 1154:5-14; CDX-0002C.31.

For example, Klein's [REDACTED] document for the MODbox system [REDACTED], and states that the "[o]rigin of [the] idea" was a "[c]ompetitive analysis of Milwaukee and DeWalt." CX-0051.0001-2. This document identifies three "Key Competitive Products" in the market: Milwaukee's PACKOUT, DeWalt's ToughSystem, and Ridgid's Pro Gear. CX-0051.0005. These three storage systems use different methods of attaching their component containers to one another: Milwaukee's coupler system has been discussed at length above, and

PUBLIC VERSION

the DeWalt and Ridgid systems both use levers. *See* CX-0012C (O’Flaherty Dep.) at 54:15-55:18.

Klein’s corporate witness Sean O’Flaherty testified that, [REDACTED]

[REDACTED]

CX-0012C (O’Flaherty Dep.) at 56:15-57:10.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. JX-0034C.0001-2; *see* Tr. (Nayfeh) at 1155:22-1156:21. [REDACTED]

[REDACTED]

[REDACTED] CX-0045C.0002. These Klein development documents show that Klein was aware of the patented features of the PACKOUT system and how the PACKOUT system was favorably viewed in the market.

Klein argues that the design of the accused MODBox products were based on the coupler and locking-latch system implemented in the Auer System, and not on the Milwaukee PACKOUT system. *See also* section IX above. And yet, Klein’s own development documents state that the “[o]rigin of [the] idea” for MODbox was a “[c]ompetitive analysis of Milwaukee and DeWalt,” not the Auer System. CX-0051.0001-2.

Viewing the record as a whole, I find that the evidence supports a finding that Klein copied the PACKOUT system when designing the accused MODBox products. I find Klein’s copying of the PACKOUT products (which embody the patent claims) is a strong indication that the inventions protected by the asserted claims would not have been obvious to a person of ordinary skill in the art at the time of the invention.

4. Industry Praise

Evidence adduced at the hearing demonstrates industry praise for Milwaukee's PACKOUT system. Milwaukee vice president Mr. Vargo testified that the PACKOUT Products "have been very successful with multiple industry awards, with distributor praise and how excited they are to have our product line in their stores." Tr. (Vargo) at 105:19-106:22. Examples of this industry praise includes the following:

- The Journal of Light Construction awarded its 2017 Editors' Choice Award to the Milwaukee PACKOUT, stating that the "system allows boxes, organizers, and totes of multiple sizes and configurations to easily stack and lock together." JX-0058; see Tr. (Harvey) at 1091:12-16.
- Milwaukee PACKOUT won the 2017 Pro Tool Innovation Award in the Tool Boxes category. CX-0140. The award states: "PACKOUT is one of the most exciting storage systems to come out in several years. With outstanding durability . . . half width boxes that still lock in place and open top tool bags that lock into the system. This may be the single most game-changing tool debuted at Milwaukee's 2017 New Product Symposium." *Id.*; see Tr. (Harvey) at 1091:17-24.
- Pro Tool Innovations awarded Milwaukee PACKOUT the best "Modular" system designation in 2023. CX-0141; see Tr. (Harvey) at 1091:25-1092:5. This award described the PACKOUT as "one of the most exciting modular systems on the market . . . boasting durability no other locking system could stand up to." CX-0141.

These examples of industry praise refer to benefits associated with the patented features of the PACKOUT system, including durability, modularity, and the use of "half-width" containers. See Tr. (Harvey) at 1167:19-1168:16; Tr. (Nayfeh) at 1167:10-1168:18.

I find industry praise of the PACKOUT products (which embody the patent claims) is a strong indication that the inventions protected by the asserted claims would not have been obvious to a person of ordinary skill in the art at the time of the invention.

5. Long-Felt but Unmet Need / Failure of Others

Milwaukee's technical expert Dr. Nayfeh testified that the Domestic Industry Products filled a long-felt but unmet need and corrected the failure of others. Tr. (Nayfeh) at 1163:5-15, 1167:5-9. Dr. Nayfeh supported his opinion by referring to a Keter internal document that referred to the PACKOUT system as "[t]he first system to combine different footprint compartments with connectivity" and "the most innovative system in the market targeting the PRO user." JX-0016C.0010, .0015; *see* Tr. (Nayfeh) at 1163:16-1164:5. According to Dr. Nayfeh, Milwaukee's PACKOUT system addressed a problem experienced by toolbox users—the limited versatility posed by single footprint containers. *See* Tr. (Nayfeh) at 1164:6-22; CX-0755C.4. The side locking mechanisms used by the Ridgid and DeWalt systems on the market at the time confined users to one width of toolbox. CX-0755C.4; *see* Tr. (Nayfeh) at 1164:23-25. According to Dr. Nayfeh, Milwaukee's development of the PACKOUT system implementing half-width containers, mated couplers, and locking latches addressed a long-felt but unsolved need and the failure of others in the industry to provide the versatility of varying sized containers. Tr. (Nayfeh) at 1163:16-1165:11.

Dr. Nayfeh also opined that there was a long-felt but unmet need due to the failure of others in the industry to provide durable containers; durability issues present in the marketplace at that time included broken corners and latches. Tr. (Nayfeh) at 1165:12-20; CX-0755C.0006; *see* CDX-0002C.45; CDX-0001C.3 (broken corners and latches on right side), CDX-0002C.45.

PUBLIC VERSION

According to Dr. Nayfeh, the Milwaukee PACKOUT system improved durability by sacrificing container volume to add corner bumpers. Tr. (Nayfeh) at 1165:21-1166:10; *see* CDX-0002C.45.

The testimony of Milwaukee vice president Mr. Vargo supports Mr. Nayfeh's opinion. Tr. (Vargo) at 63:2-5. He testified that he learned that users needed (i) stackable storage that locked together in multiple widths; (ii) reinforced corners; and (iii) durable latches. Tr. (Vargo) at 65:8-15; 66:7-67:2. He further testified: "unanimously across the board on all the products that were on the market," "there was major durability concerns with all of them," and "universally the complaint was I can't have a single width product to store my various tools." Tr. (Vargo) at 67:3-20; *see also* CDX-0001C.3-5.

Mr. Vargo further testified that, when PACKOUT was first shown to Home Depot, "they thought we were crazy" and "thought this was going to be way too expensive, way too heavy and was completely different than anything else that was on the market." Tr. (Vargo) at 69:9-18. Home Depot did not believe the products would sell, so Milwaukee had to "leverage some of [its] relationship with Home Depot to get them to bring in a small quantity of about 30,000 units across their 2000 stores which they told us would sell, it would take four months to sell." Tr. (Vargo) at 69:19-24. Mr. Vargo concluded his account: "And the reality was because we had hit all those user needs, we sold them in four days." Tr. (Vargo) at 69:24-70:1.

The record evidence thus shows that there was a long-felt but unmet need in the market for the type of product the Milwaukee introduced with the PACKOUT line of products, and that others had previously failed to meet that market need. This evidence is a strong indication that the inventions protected by the asserted claims would not have been obvious to a person of ordinary skill in the art at the time of the invention.

6. Conclusion

I find that the record evidence relating to objective indicia of non-obviousness, when viewed as a whole, supports a finding that Klein has failed to show, clearly and convincingly, that any asserted patent claim is invalid as obvious under 35 U.S.C. § 103.

XII. CONCLUSIONS OF LAW

- The Commission has statutory authority to conduct this investigation.
- The importation requirement of section 337 has been satisfied with respect to the Accused Products.
- Milwaukee Tool and Keter own the '952, '167, and '026 patents by assignment.
- The Accused Products infringe all asserted claims, which are claims 3, 4, 8, and 16 of the '952 patent, claims 2, 5, 8, 14, and 15 of the '167 patent, and claims 4 and 8 of the '026 patent.
- Klein is liable for indirect infringement of all asserted claims of the '952, '167, and '026 patents.
- The Domestic Industry Products practice the '952, '167, and '026 patents.
- Milwaukee has shown significant investment in plant and equipment in the United States with respect to the Domestic Industry Products.
- Milwaukee has shown significant employment of labor in the United States with respect to the Domestic Industry Products.
- The asserted claims of the '952, '167, and '026 patents have not been shown to be invalid due to obviousness.

XIII. RECOMMENDED DETERMINATION ON REMEDY AND BOND

The Commission's Rules provide that the administrative law judge shall issue a recommended determination concerning the appropriate remedy in the event the Commission finds a violation of section 337, and the amount of bond to be posted by respondents during Presidential review of the Commission action under section 337(j). *See* 19 C.F.R. § 210.42(a)(1)(ii).

A. Limited Exclusion Order

Section 337(d)(2) provides that in the event the Commission finds a violation of section 337, the Commission shall issue a limited exclusion order directed to the articles of named respondents to the investigation, unless special circumstances exist that justify the imposition of a general exclusion order. 19 U.S.C. § 1337(d)(2); *see Kyocera Wireless Corp. v. Int'l Trade Comm'n*, 545 F.3d 1340 (Fed. Cir. 2008). The Commission has broad discretion in selecting the form, scope, and extent of the remedy in a section 337 proceeding. *Viscofan, S.A. v. U.S. Int'l Trade Comm'n*, 787 F.2d 544, 548 (Fed. Cir. 1986).

Milwaukee argues that a limited exclusion order is an appropriate remedy in this investigation. CIB at 130-31. Milwaukee does not argue that the Commission should impose a general exclusion order, *id.*, and I find there is no support for such a remedy in the evidentiary record. Klein does not contest that a limited exclusion order is an appropriate remedy in the event the Commission finds a violation of section 337. *See* RRB at 84.

Accordingly, it is my recommendation that, in the event the Commission finds a violation of section 337 and public interest factors do not weigh against imposing a remedy, a limited exclusion order should be directed to Klein.

B. Cease and Desist Order

Section 337 provides that in addition to, or in lieu of, the issuance of an exclusion order, the Commission may issue a cease and desist order (“CDO”) as a remedy for a violation of section 337. 19 U.S.C. § 1337(f)(1). Under Commission precedent, “[c]ease and desist orders are generally issued when, with respect to the imported infringing products, respondents maintain commercially significant inventories in the United States or have significant domestic operations that could undercut the remedy provided by an exclusion order.” *Certain Air Mattress Systems, Components Thereof, and Methods of Using the Same*, Inv. No. 337-TA-971, Comm’n Op. at 49 (May 17, 2017) (citations and footnote omitted).

The parties stipulated that Klein maintains an inventory of Accused Products in the United States. JX-0010C ¶ 6. As of June 30, 2024, Klein had approximately [REDACTED] units of the Accused Products in inventory in the United States. *Id.* Based on the average sales prices of the Accused Products from January 1, 2024, through July 28, 2024, this inventory has an estimated value of approximately [REDACTED]. CX-0769C; JPX-0059C; *see also* CDX-0030C. And the inventory as of June 30, 2024, represents approximately [REDACTED]. Tr. (Harvey) at 424:23-425:6; CX-00769C; JX-0010C; *see also* CDX-0004C.0054; CDX-0030C-31C.

In view of the record evidence, I find that Klein maintains a commercially significant inventory of the Accused Products in the United States. Accordingly, I recommend that a cease and desist order be issued as to Klein in the event the Commission finds a violation of section 337 and public interest factors do not weigh against imposing a remedy.

C. Bond During Presidential Review

Pursuant to section 337(j)(3), the administrative law judge and the Commission must determine the amount of bond be required of a respondent, during the 60-day Presidential review

PUBLIC VERSION

period following the issuance of permanent relief, in the event the Commission determines to issue a remedy. The purpose of the bond is to protect the complainant from any injury. 19 U.S.C. § 1337(j)(3); 19 C.F.R. §§ 210.42(a)(1)(ii), 210.50(a)(3).

When reliable price information is available, the Commission has often set the bond by eliminating the differential in sales prices between the domestic product and the imported, infringing product. *Certain Microsphere Adhesives, Process for Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, Comm’n Op. at 24, USITC Pub. No. 2949 (1995). In other cases, the Commission has turned to alternative approaches, especially when the level of a reasonable royalty rate could be ascertained. See *Certain Integrated Circuit Telecommunication Chips and Products Containing Same, Including Dialing Apparatus*, Inv. No. 337-TA-337, Comm’n Op. at 41-43, USITC Pub. No. 2670 (1995). A 100% bond has been required when no effective alternative existed. *Certain Flash Memory Circuits and Products Containing Same*, Inv. No. 337-TA-382, USITC Pub. No. 3046, Comm’n Op. at 26-27 (July 1997) (a 100% bond imposed when price comparison was not practical because the parties sold products at different levels of commerce, and the proposed royalty rate appeared to be *de minimis* and without adequate support in the record).

Milwaukee argues that bond in this investigation should be set by comparing the sales prices between Milwaukee’s PACKOUT products and Klein’s imported MODbox products. See CIB at 133-34. Milwaukee argues that the “Accused Products unfairly compete with [its] products and would continue to cause harm to [Milwaukee] if imported during the Presidential review period.” *Id.* at 133. The record evidence demonstrates that Milwaukee views Klein as a direct competitor in the modular storage marketplace. For example, Mr. Vargo testified that the MODbox “copies that Klein has launched, every one of those that sells is not only costing us that direct sale

but costing us any future revenue stream for [Domestic Industry Products] and for non-[Domestic Industry] Packout products in the future.” Tr. (Vargo) at 118:5-119:7. He also testified that Milwaukee was aware of the Accused Products after they were released and that a “variety of distributors, end users . . . colleagues [came] to me and ask[ed] why did we let Klein copy our product?” *Id.* Mr. Vargo further testified that certain Domestic Industry Products and Accused Products were functionally comparable to each other. Tr. (Vargo) at 119:8-120:7; *see* CDX-0001C.0021 (identifying eight PACKOUT products and comparing them to nine MODbox products).

Milwaukee’s economic expert Ms. Harvey took the set of competing Domestic Industry Products and Accused Products identified by Mr. Vargo and performed a price comparison on these products. *See* Tr. (Harvey) at 427:12-430:06; *see also* CDX-0004C.0057. According to Ms. Harvey’s calculations, the average sales price of the Accused Products varied from [REDACTED] in 2024, and the average sales price of comparable Domestic Industry Products varied from \$23 to \$111. *See id.*; CDX-0032C. Dr. Harvey calculated that Klein’s Accused Products are sold at a discount to the comparable Domestic Industry Product, and that this discount ranges from [REDACTED] to [REDACTED] depending on the product, or [REDACTED] based on a weighted average across all the comparable products. Tr. (Harvey) at 430:7-19; JX-0043C; *see* CDX-0032C. Ms. Harvey thus concluded that a bond value of [REDACTED] is warranted in this investigation. Tr. (Harvey) at 430:7-19.

Klein disputes that an [REDACTED] bond rate is appropriate, arguing that Ms. Harvey’s calculation “d[id] not account for actual competition between [Domestic Industry] Products and the Accused Products. Specifically, [Milwaukee’s] calculations use wholesale revenue data of the parties to calculate price differentials, rather than using retail prices.” RRB at 85 (citing Tr. (Harvey) at 428:25-429:14). Klein argues that, because Milwaukee and Klein sell the relevant products to

PUBLIC VERSION

different major wholesalers—Milwaukee to Home Depot and Klein to Lowes—“to the extent there is competition between the parties, such competition occurs at the retail level, not the wholesale level.” *Id.* (citing Tr. (Klein) at 511:21-512:23; Tr. (Harvey) at 464:17-465:12; Tr. (Akemann) at 1049:25-1050:19). Klein thus argues that Milwaukee’s bond calculation is flawed and that a 0% bond rate is appropriate. *Id.* Klein does concede, however, that if the Commission determines a non-zero bond is appropriate in this investigation, that “the bond rate should be, at most, the retail price differential [REDACTED].” *Id.* (citing Tr. (Akemann) at 1050:20-1051:6; RX-0010-17, 62-70; *Certain Compact Multipurpose Tools*, Inv. No. 337-TA-416, Comm’n Op., 1999 WL 693946, at *5-6 (Sep. 7, 1999) (accepting retail price comparison for bond calculations)).

The law instructs that a bond should be set to protect Milwaukee from any injury. 19 U.S.C. § 1337(j)(3); 19 C.F.R. §§ 210.42(a)(1)(ii), 210.50(a)(3). I find Klein’s suggestion that a bond be set at 0% would not protect Milwaukee from injury. Mr. Tom Klein, President of Klein, testified that Milwaukee was a “primary” competitor in the modular tool storage category. Tr. (Klein) at 485:22-486:15; *see also id.* at 562:19-563:3. Mr. Vargo, Milwaukee’s vice president of product marketing, testified that “every one” of Klein’s sales of an Accused Product “is not only costing us that direct sale but costing us any future revenue stream” for related products. Tr. (Vargo) at 118:5-119:7. No record evidence contradicts a conclusion that the Domestic Industry Products and the Accused Products compete head-to-head. A bond rate of 0% would not protect Milwaukee from injury due to sales lost to Klein during the presidential review period.

Klein’s alternative suggestion of a [REDACTED] bond rate also would not protect Milwaukee from injury. The suggestion of [REDACTED] comes from Klein’s calculation of the retail price differential between the competing goods and from Klein’s assertion that the two parties compete through retail sales. RRB at 85. But the record contradicts Klein’s claim that the parties compete only at

PUBLIC VERSION

the retail level. Mr. Tom Klein, President of Klein, testified that one of Klein's two "primary overarching channels" is "wholesale through a variety of supply houses, such as Graybar, City Electric Supply, and so forth." Tr. (Klein) at 511:21-25. The record evidence also shows that a retail price differential does not reflect the injury to Milwaukee as directly as wholesale revenue data. Tr. (Harvey) at 429:11-20.

Additionally, because the law instructs that a bond should be set to protect Milwaukee from "any" injury, I find setting the bond rate based on an average price differential across multiple products is not appropriate. Milwaukee's economic expert Ms. Harvey stated that her calculation of an average wholesale price differential was "a reasonable approach" that would "offset harm" to Milwaukee. But offsetting harm is not the same as protecting Milwaukee from "any injury," as the statute instructs. 19 U.S.C. § 1337(j)(3); 19 C.F.R. §§ 210.42(a)(1)(ii), 210.50(a)(3). While Ms. Harvey calculated a weighted average wholesale price differential across multiple products to be █%, the price differential between each individual product in Ms. Harvey's price comparison was higher than █ ranging from █ on the low end to █ on the upper end:

CDX-0004C.57. That data indicates that if the bond rate is set at [REDACTED] the price differential on sales of these products will not be eliminated.

Because the largest price differential of record between the various competing products is [REDACTED] and because the bond should be set to prevent any injury to Milwaukee, I recommend the Commission set the bond rate for the Presidential review period at [REDACTED]

XIV. INITIAL DETERMINATION ON VIOLATION

For the reasons set forth above, it is my initial determination that Milwaukee has shown a violation of section 337 in the importation into the United States and the sale within the United States after importation of certain interlockable storage containers and toolboxes, organizers, component boxes, and coolers.

This initial determination is hereby certified to the Commission.

PUBLIC VERSION

The Secretary is ordered to serve the confidential version of this initial determination upon counsel who are signatories to the Protective Order (Order No. 1) issued in this investigation. A public version will be served at a later date upon all parties of record.

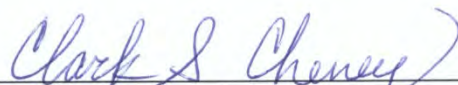
Pursuant to 19 C.F.R. § 210.42(h), this initial determination will become the determination of the Commission unless a party files a petition for review pursuant to 19 C.F.R. § 210.43(a) or the Commission, pursuant to 19 C.F.R. § 210.44, orders on its own motion a review of the Initial Determination or certain issues therein.

XV. ORDER

The parties shall file a corrected Joint Final Exhibit List on EDIS.

Within seven days of the date of this document, the parties must jointly submit a single proposed public version with any proposed redactions indicated in red. If the parties submit excessive redactions, they may be required to provide declarations from individuals with personal knowledge, justifying each proposed redaction and specifically explaining why the information sought to be redacted meets the definition for confidential business information set forth in 19 C.F.R. § 201.6(a). The proposed redactions should be made electronically, in a single PDF file using the “Redact Tool” within Adobe Acrobat. The proposed redactions should be submitted as “marked” but not yet “applied.” The proposed redactions should be submitted via Box, with an email sent to Cheney1409@usitc.gov providing notice of the submission, and not filed on EDIS.

SO ORDERED.



Clark S. Cheney
Chief Administrative Law Judge