

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

KLEIN TOOLS, INC.,
Petitioner,

v.

MILWAUKEE ELECTRIC TOOL CORPORATION
and KETER HOME AND GARDEN PRODUCTS, LTD.,
Patent Owner.

IPR2025-01018
Patent 11,952,167 B2

Before COKE MORGAN STEWART, *Deputy Under Secretary of
Commerce for Intellectual Property and Deputy Director of the United
States Patent and Trademark Office.*

DECISION
Denying Institution of *Inter Partes* Review

Milwaukee Electric Tool Corporation and Keter Home and Garden Products, Ltd. (“Patent Owner”) filed a request for discretionary denial (Paper 10, “DD Req.”) in the above-captioned case, and Klein Tools, Inc. (“Petitioner”) filed an opposition (Paper 12, “DD Opp.”).

After considering the parties’ arguments and the record, and in view of all relevant considerations, discretionary denial of institution is appropriate in this proceeding. This determination is based on the totality of the evidence and arguments the parties have presented.

Some considerations counsel against discretionary denial. For example, the challenged patent has not been in force for a significant period of time (issued in 2024). Accordingly, Patent Owner has not developed strong settled expectations that favor discretionary denial.

Other considerations favor discretionary denial. In particular, the projected final written decision due date in the Board proceeding is December 20, 2026. DD Req. 7. The target date for completion in the parallel International Trade Commission (“ITC”) investigation involving the parties is December 1, 2025. *Id.* at 11–12; Ex. 2007; DD Opp. 2. As such, it is unlikely that a final written decision in this proceeding will issue before the ITC investigation completes, resulting in significant duplication of effort, additional expense for the parties, and a risk of inconsistent decisions. Additionally, there is insufficient evidence that the ITC is likely to stay its proceeding even if the Board were to institute trial. DD Req. 9. Furthermore, there has been substantial investment in the parallel ITC proceeding by the parties. *Id.* at 11–12. For example, the ITC already held a *Markman* hearing, completed fact and expert discovery, conducted a full

evidentiary hearing, and issued an initial determination. *Id.*; Ex. 2009, 10–12. On balance, these circumstances favor discretionary denial.

Although certain arguments are highlighted above, the determination to exercise discretion to deny institution is based on a holistic assessment of all of the evidence and arguments presented. Accordingly, the Petition is denied under 35 U.S.C. § 314(a).

In consideration of the foregoing, it is:

ORDERED that Patent Owner’s request for discretionary denial is *granted*; and

FURTHER ORDERED that the Petition is *denied*, and no trial is instituted.

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