IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MILWAUKEE ELECTRIC TOOL CORPORATION, Plaintiff, v. KLEIN TOOLS, INC., Defendant.	Case No. 1:25-cv-04689

REPORT OF THE PARTIES' PLANNING MEETING

1. Pursuant to this Court's May 22, 2025 Order (Dkt. No. 17), Plaintiff Milwaukee Electric Tool Corporation ("Milwaukee") and Defendant Klein Tools, Inc. ("Klein Tools") hereby submit the following initial status report and proposed discovery plan. The following persons participated in the Rule 26(f) conference on July 16, 2025 by telephone:

   Karon Fowler of Morgan, Lewis & Bockius LLP, on behalf of Milwaukee; and

   Nathaniel DeLucia and Ryan Kane, P.C., of Kirkland & Ellis LLP, on behalf of Klein Tools.

2. **Initial Disclosures**. The parties completed the initial disclosures required by Rule 26(a)(1) on July 11, 2025.

3. **Disclosures and Discovery Pursuant to Local Patent Rules**. The parties acknowledge that the requirements of the local Patent Rules apply to this case.

4. **Additional Discovery Plan**. The parties propose the following in addition to the discovery plan and schedules addressed in the Local Patent Rules:

   a) Interrogatories. Each party is permitted no more than 25 interrogatories, including sub-parts, consistent with Fed. R. Civ. P. 33(a)(1).

b) Requests for Admission. Each party is permitted no more than 40 requests for admission on substantive issues not related to the authentication of documents.

c) Fact Deposition. The parties do not agree regarding the number of fact depositions that are appropriate in this case.

Milwaukee's Position: The default limits under Rule 30(a)(2) should apply in this case at the outset. This means that a party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(1) and (2) if the parties have not stipulated to the deposition and, as is relevant to the issue raised by Klein Tools, the deposition would result in more than 10 depositions being taken under this rule. Klein Tools identifies no reason that the parties should deviate from the Rule just because the inventors are third parties. As discovery ensues and the case progresses, if Klein Tools determines that it needs to exceed the 10-deposition limit (*i.e.*, it needs to depose more than 5 additional persons beyond the 5 inventors that it purportedly intends to depose), then the parties can meet and confer in good faith. If the parties are unable to resolve the issue at that time, then Klein Tools can move the Court per Rule 30(a)(2).

Klein Tools' Position: There are five named inventors in this case and, although discovery has only just opened, by Klein Tools' count there are already nine likely fact depositions for Klein Tools to take in this case, eight from the parties' initial disclosures (including the five named inventors) and a deposition of Milwaukee pursuant to Rule 30(b)(6). This also disproportionally prejudices Klein Tools as the depositions of the five named inventors, who are third parties no longer employed by Milwaukee, would apply against Klein Tools' total, not Milwaukee's. Klein Tools therefore proposes that the default limits under Rule 30(a)(2) for fact depositions apply in this case, except that depositions of third parties do not count toward a party's 10 deposition limit. Third parties include, without limitation, for example, former employees. This will enable the number of party depositions to remain low, while avoiding prejudice to Klein Tools based on the number of named inventors in this case.

d) Length of Deposition. The parties agree to the default limits under Rule 30(d)(1), and the length of depositions is limited to one day of 7 hours on the record. However, the parties agree to meet and confer in good faith to address Rule 30(b)(6) corporate testimony, including whether any such deposition may need to exceed 7 hours on the record.

e) Email Service. The parties agree that service by email to the following email addresses shall constitute effective service equivalent to hand delivery:

Party	Designated Email Address
Milwaukee	NDIL-Milwaukee-Klein@morganlewis.com
Klein Tools	KleinTools_NDIL@kirkland.com

f) ESI Discovery. Pursuant to Fed. R. Civ. P. 26(f)(3)(C), the parties acknowledge that this case may involve discovery of electronically stored information ("ESI") and agree to meet and confer regarding the preparation of an ESI Plan to govern the treatment of ESI.

g) Protective Order. The parties agree that a case-specific protective order is warranted in this case and agree to meet and confer regarding a proposed modified protective order pursuant to LPR 1.4.

h) Discovery is permitted with respect to claims of willful infringement and defenses of patent invalidity or unenforceability not pleaded by the party, where the evidence needed to support these claims or defenses is in whole or in part in the hands of another party.

5. **Alternative Discovery Plan**. The parties do not propose a discovery plan that differs from that provided in the Local Patent Rules, except as outlined in the proposed Case Management Schedule set forth in Exhibit 1.

6. **Other Dates**:

a) Dates for supplementation under Rule 26(e). Any supplementation or correction of initial disclosures or written discovery responses must comply with Federal Rules of Civil Procedure 26(e). The Parties reserve the right to seek relief from the Court

based on the timing of any Party's supplementation or correction of initial disclosures or written discovery responses.

b) The parties do not currently ask to meet with the Court before a scheduling order is entered, but can be available to meet at the Court's convenience if a meeting would benefit the Court.

c) Requested dates for pretrial conferences. The parties request a pretrial conference 14 days prior to trial.

d) Final date for the plaintiff to amend pleadings or join parties. None, or as directed by the Court.

e) Final date for the defendant to amend pleadings or join parties. No later than 21 days after service of Final Non-Infringement, Validity, and Enforceability Contentions pursuant to LPR 3.2.

f) Final date for submitting Rule 26(a)(3) witness lists, designation of witnesses whose testimony will be presented by deposition, and exhibit lists. The parties agree to meet-and-confer regarding pretrial deadlines—including final dates to file objections under Rule 26(a)(3)—14 days after the end of fact discovery.

g) Final date to file objections under Rule 26(a)(3). The parties agree to meet-and-confer regarding pretrial deadlines—including final dates to file objections under Rule 26(a)(3)—14 days after the end of fact discovery.

7. **Other Items**:

a) State the prospects for settlement. The parties are engaged in multiple litigations in multiple jurisdictions and have had prior discussions around settlement. The parties are open to discussing settlement of this case.

b) Identify any alternative dispute resolution procedure that may enhance settlement prospects. Neither party proposes a specific alternative dispute resolution procedure at this time, but the parties agree to revisit this topic at the case proceeds and after taking discovery.

c) Communications between a party's attorney and a testifying expert relating to the issues on which he/she opines, or to the basis or grounds in support of or countering the opinion, are subject to discovery by the opposing party only to the extent provided in Rule 26(b)(4)(B) and (C).

d) The parties agree that expert discovery is governed by Rule 26.

Milwaukee's Position: Beyond the parties' agreement that expert discovery is to be conducted consistent with Rule 26, Klein Tools also desires adding statements about what party will include opinions on secondary considerations of non-obviousness in their opening report. But Milwaukee sees no reason to stipulate in this initial status report as to what issues may or may not be addressed in an expert's opening (versus rebuttal) report. Indeed, it is not required by the local rules or this Court's procedures. Nevertheless, as a compromise and in line with the positions that Klein Tools took on other issues in this report, Milwaukee agreed to include a statement that the parties would meet and confer in good faith to discuss the issue at a time certain relative to the end of fact discovery and beginning of expert discovery. However, Klein Tools maintains that the schedule would not permit it and did not provide a counter proposal.

Klein Tools' Position: To the extent Milwaukee intends to rely on expert testimony regarding secondary considerations of non-obviousness, such opinions should be included in its opening expert report(s). *See Brandeis Univ. v. Keebler Co.*, No. 1:12-CV-01508, 2012 WL 13390308, at *1 (N.D. Ill. Oct. 15, 2012) ("The current case schedule contemplates only two rounds of expert reports—initial and rebuttal—and the plaintiffs have not persuaded me that their expert cannot opine on the secondary considerations of non-obviousness in the initial expert report… I therefore accept the defendants' proposal that the plaintiffs' expert be instructed to address the secondary considerations in his opening report."). Klein Tools would be prejudiced if Milwaukee were permitted to include expert opinions regarding secondary considerations for the first time in a rebuttal report because it would prevent Klein Tools' expert(s) from being able to respond, and/or lead to an otherwise avoidable dispute whereby Klein Tools is forced to seek leave to file a reply expert report on the

issue of secondary considerations. Putting off resolution of this issue until the end of fact discovery is not tenable; should the parties be unable to reach agreement, the briefing on such a dispute would likely not even be complete before the deadlines to serve expert reports. This is a discreet discovery issue that the parties should discuss (and have discussed) in connection with this initial status report under both the Local and Federal Rules and there is no reason to put off its resolution.

e) In responding to discovery requests, each party shall construe broadly terms of art used in the patent field (e.g., "prior art", "best mode", "on sale"), and read them as requesting discovery relating to the issue as opposed to a particular definition of the term used. Compliance with this provision is not satisfied by the respondent including a specific definition of the term in its response, and limiting the response to that definition.

f) The parties agree to meet and confer no later than 14 days after the completion of dispositive motion briefing regarding whether the video "An Introduction to the Patent System" distributed by the Federal Judicial Center, should be shown to the jurors in connection with its preliminary jury instructions. Milwaukee maintains that the video "An Introduction to the Patent System" distributed by the Federal Judicial Center, should be shown to the jurors in connection with its preliminary jury instructions. Defendant notes that the video "An Introduction to the Patent System" addresses numerous topics that may or may not ultimately be relevant at trial and it is therefore too early to determine whether it is appropriate to play.

g) The parties agree that drafts of expert reports will not be retained and produced.

h) Per Local Patent Rule 3.5(b):

   i. Each patent-in-suit is eligible to be challenged at the USPTO by Klein Tools;

   ii. Each patent-in-suit may be challenged in at least an *inter partes* review or *ex parte* reexamination;

   iii. Each patent-in-suit may be challenged in an *inter partes* review or *ex parte* reexamination immediately. Klein Tools may file a new petition for *inter partes* review up through May 8, 2026;

iv. None of the patents-in-suit have been subject to prior USPTO *inter partes* review or *ex parte* reexamination. However, Klein Tools notes that the following patent related to the patents-in-suit was subject to a post-grant review challenge: 10,422,617; and

v. None of the patents-in-suit have been asserted in any other litigation.

Dated: July 18, 2025

Respectfully submitted,

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EXHIBIT 1

Event	Proposed Deadline	Source
Initial Disclosures	July 11, 2025 (*within 14 days of Answer*)	Fed. R. Civ. P. 26(a)(1) LPR 2.1
Joint Initial Status Report / Joint Scheduling Order due	July 14, 2025	D.E. 17
Rule 26(f) Conference	TBD	Fed. R. Civ. P. 26(f)
Initial Infringement Contentions	July 25, 2025 (*within 14 days of Initial Disclosure*)	LPR 2.2
Initial Non-Infringement, Unenforceability, and Invalidity Contentions	August 8, 2025 (*within 14 days of Initial Infringement Contentions*)	LPR 2.3
Initial Response to Invalidity Contentions	August 22, 2025 (*within 14 days of Initial Non-Infringement Contentions*)	LPR 2.5
Final Infringement, Unenforceability, and Invalidity Contentions (Stage 1)	December 5, 2025 (*within 19 weeks after Initial Infringement Contentions*)	LPR 3.1(a)(1)
Final Infringement, Unenforceability, and Invalidity Contentions (Stage 2)	December 19, 2025 (*within 21 weeks after Initial Infringement Contentions*)	LPR 3.1(a)(2)
Final Non-Infringement, Validity, and Enforceability Contentions	January 16, 2026 (*within 28 days of Final Infringement Contentions*)	LPR 3.2(a)
Exchange of Claim Terms for Construction	January 30, 2026 (*within 14 days of Final Non-Infringement Contentions*)	LPR 4.1(a)

Event	Proposed Deadline	Source
Meet and Confer Regarding Selection of Claim Terms	February 6, 2026 (*within 7 days of Exchange of Claim Terms*)	LPR 4.1(b)
Opening Claim Construction Brief + Joint Appendix	March 6, 2026 (*within 35 days of Exchange of Claim Terms*)	LPR 4.2(a) and (b)
Responsive Claim Construction Brief	April 3, 2026 (*within 28 days of Opening Brief*)	LPR 4.2(c)
Reply Claim Construction Brief	April 17, 2026 (*within 14 days of Responsive Claim Construction Brief*)	LPR 4.2(d)
Joint Claim Construction Chart	April 24, 2026 (*within 7 days of Reply Claim Construction Brief*)	LPR 4.2(f)
Exchange of Claim Construction Exhibits	May 12, 2026 (*no later than 3 days prior to hearing*)	LPR 4.3
Claim Construction Hearing (Markman)	May 15, 2026 (*estimated 28 days after Reply Claim Construction Brief*)	LPR 4.3
Claim Construction Ruling	At the Court's discretion	
Close of Fact Discovery	TBD (*42 days after entry of Claim Construction Ruling*)	
Opening Expert Reports	TBD (*within 21 days after Close of Fact Discovery*)[1]	LPR 5.1(b)

[1] The proposed deadlines for Opening Expert Reports, Rebuttal Expert Reports, and Completion of Expert Witness Depositions are reflective of the deadlines in Judge Tharp's "Estimated Patent Case Schedule" which differ from those in the Local Patent Rules.

Event	Proposed Deadline	Source
Rebuttal Expert Reports	TBD (*within 35 days of Initial Expert Reports*)	LPR 5.1(c)
Completion of Expert Witness Depositions	TBD (*within 35 days of Rebuttal Expert Reports*)	LPR 5.2
Dispositive Motion Deadline	TBD (*within 28 days after Close of Expert Discovery*)	LPR 6.1
Case Ready for Trial	TBD (*within 20 weeks after Filing Dispositive Motions*)	