

Morgan Lewis

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March 6, 2026

VIA E-MAIL

Ryan Kane, P.C.
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Re: Milwaukee Electric Tool Corp. v. Klein Tools, Inc., No. 1:25-cv-04689 (N.D. Ill.)

Dear Ryan:

We write in response to your letter dated March 3, 2026 about Milwaukee's lack of constitutional standing at the time the lawsuit was filed, and Milwaukee's plan to dismiss and re-file this lawsuit.

Milwaukee's and Morgan Lewis' Investigation of Ownership

As stated previously, including during the March 3, 2026 meet-and-confer with Mr. Sherwin and Ms. Doukas, Milwaukee and Morgan Lewis believed that Milwaukee had standing at the time the lawsuit was filed. The publicly filed assignments from the inventors name Milwaukee as the owner of the asserted patents. See MET-00000563; MET-00000568. These documents were produced to Klein on July 11, 2025. Milwaukee and Morgan Lewis did not believe that any other agreements assigned all of Milwaukee's right, title, and interest in the Asserted Patents to any other entity at the time the lawsuit was filed.

As in all lawsuits, Milwaukee and Morgan Lewis continued to engage in investigation of the issues during fact discovery. In mid-January 2026, Milwaukee and Morgan Lewis first learned that agreements between Milwaukee and TCGP might affect ownership of the Asserted Patents and investigated the issue at that time. Based on a continued analysis of the agreements, Milwaukee notified Klein on January 26, 2026 that Milwaukee likely lacked constitutional standing, and thus this lawsuit must be dismissed. Milwaukee produced portions of these agreements by email on February 9, 2026, and then formally produced the full agreements on February 13, 2026. As stated on February 17, 2026, Milwaukee asked for a meet-and-confer to determine if Klein would agree to dismissal, or if Klein opposed dismissal such that Milwaukee would need to seek leave of Court.

As stated by Klein during our March 3, 2026 meet-and-confer, the agreements between Milwaukee and TCGP confirm that Milwaukee lacked constitutional standing at the time the lawsuit was filed. Thus, there does not appear to be any dispute between the parties that this lawsuit must be dismissed.

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Ultimately, TCGP and Milwaukee entered into a new agreement on February 16, 2026, and this agreement was produced to Klein on February 19, 2026. This new agreement assigns to Milwaukee all right, title, and interest in the Asserted Patents, and other related patents and applications, and this agreement will form the basis for standing in Milwaukee's new lawsuit.

The timing of Milwaukee's and Morgan Lewis' investigation was not prompted by Klein's decision to file IPRs or assert an inequitable conduct counterclaim. Milwaukee continues to believe that these allegations by Klein are subject to significant procedural and substantive defects, and it is addressing them separately at the PTAB and in District Court.

Klein's assertion that we "withheld information" and Klein's comment about our "refusal to be forthcoming about all the facts and circumstances" is not accurate. We have been forthcoming on this issue since we first identified it. We explained the circumstances surrounding why, at the time Milwaukee filed this lawsuit, Milwaukee and Morgan Lewis believed that standing was proper. We explained that the Milwaukee and TCGP agreements were reviewed for their possible impact on ownership of the Asserted Patents in January 2026. And once we discovered the issue, we promptly notified Klein about the constitutional standing issue. Some of Klein's questions have sought disclosure of Milwaukee's and Morgan Lewis' work product and attorney client communications, so we have not been able to provide responses to those questions from Klein, as we made it clear that Milwaukee and Morgan Lewis were not waiving these doctrines and privileges.

In short, while Milwaukee and Morgan Lewis believed that Milwaukee had standing at the time the lawsuit was filed, in the course of fact discovery, we learned that Milwaukee lacked constitutional standing at the time the lawsuit was filed, and we promptly notified Klein of this fact. Thus, this lawsuit must be dismissed for lack of standing and subject matter jurisdiction.

Klein's Alleged Prejudice is Unfounded

Your letter states that there has been "prejudice to Klein Tools." However, with respect to any past prejudice, this allegation is not consistent with the March 3, 2026 meet-and-confer where you stated that Klein would not suffer prejudice directed to past efforts in the current lawsuit because the new lawsuit will include the same Asserted Patents and because the discovery from this lawsuit will be re-used in the new lawsuit. Your recent email seems to recant this position. However, regardless of your statement during the March 3, 2026 meet-and-confer, Klein could not have suffered any past prejudice because the currently produced documents and discovery will be available to Klein in the new lawsuit. Thus, Klein's efforts will not have been wasted and re-using the existing discovery is not prejudicial to Klein. If anything, re-filing this lawsuit will benefit Klein procedurally. Klein will now get a longer schedule, which is what it sought earlier in this lawsuit. Further, Klein's failure to meet-and-confer before filing counterclaims will now be a moot issue if those counterclaims are raised in the new lawsuit, and Klein will have an opportunity to assert any counterclaims that it believes are viable without first meeting-and-conferring with Milwaukee.

As you also stated during our March 3, 2026 meet-and-confer, Klein raised concerns about future alleged prejudice based on the fact that the scope of the new lawsuit will change (*i.e.*, based on the number of asserted patents, claims, and list of accused infringing products) as compared to the current scope of the current lawsuit.

However, Milwaukee always had a right to assert new patents against infringing products, independent of any constitutional standing issues. Klein may not like the fact that it is infringing additional Milwaukee patents, but it is not unduly prejudiced by this fact, and the assertion of new patents in a new lawsuit is a completely independent issue from the standing issue in the current lawsuit. Further, Milwaukee also always had a right to assert different claims against different accused products. Again, Klein may not like the fact that additional products are infringing additional claims, but it is not unduly prejudiced by this fact, and the addition of new claims against new products is an independent issue from the standing issue in the current lawsuit.

Even if the Court had subject matter jurisdiction in the current lawsuit, which both parties appear to agree it does not, Milwaukee would have procedural options to assert additional patents and/or claims and accuse additional products, including in a new lawsuit. This current lawsuit is in its infancy: there has only been one fact deposition; there have been no Markman exchanges, briefs, oral argument, or Court orders; the parties have not submitted final contentions; the parties have not exchanged ESI (*i.e.*, emails); there is still third-party and other fact discovery pending; there are still months of fact discovery for written discovery, productions, and depositions; there has been no expert discovery; and there are no dates set after the claim construction hearing, including dates for additional fact discovery or a trial date. Put simply, even in the current lawsuit, and assuming we could set aside the constitutional standing issue, Milwaukee would have ample opportunity to include these allegations.

Any assertion by Klein that Milwaukee has waived, is estopped, or cannot bring new allegations under a theory of claim preclusion are without merit. Klein's suggestion that Milwaukee is foreclosed from these allegations is tantamount to asserting that Milwaukee is required to give Klein a royalty-free license to all unasserted patents, all unasserted claims, and for all unaccused products. Put another way, Klein is effectively asking for final judgment in its favor on these patents, claims, and products. However, Klein's suggestion that Milwaukee forfeit its patent rights, and make payments to Klein as well, is not a "reasonable step" to secure Klein's agreement to dismiss the lawsuit. Instead, it is serious overreach, an improper demand, and appears to be an attempt by Klein to seek substantive concessions from Milwaukee without any good faith basis.

As explicitly stated during our March 3, 2026 meet-and-confer, Milwaukee is not waiving any of its rights to assert its patents against Klein's infringing products. And as both parties appear to agree, Milwaukee did not have constitutional standing at the time the lawsuit was filed, thus this Court lacks subject matter jurisdiction. Thus, the issue before the Court is directed to dismissal so Milwaukee can re-file its lawsuit.

Response to Klein's Demands to Voluntarily Dismiss the Lawsuit

1. As already agreed, Milwaukee will identify Judge Tharp and the case number for this current lawsuit on the designation sheet for the new lawsuit pursuant to LR 40.3(b)(2). Milwaukee consents to Judge Tharp in the new lawsuit. Milwaukee is not waiving any of its rights to: assert any of its patents in these two patent portfolios, change the scope of asserted claims, or change the scope of Klein's infringing products. Further, as stated in our letters on February 6, 2026 and March 3, 2026, Klein's inequitable conduct allegations are improper and lack merit.

2. Discovery

- i. With the exception that these documents may require some changes to address the scope of the complaint and any counterclaims asserted by Klein, Milwaukee agrees to work in good faith to use the Protective Order (Dkt. 47) and ESI Order (Dkt. 52) from the current lawsuit. Although some changes are possible and necessary, we don't expect significant changes.
 - ii. Milwaukee agrees. For clarity, no documents need to be re-produced in the new lawsuit.
 - iii. Milwaukee agrees.
 - iv. Milwaukee agrees to the limitations on the number of interrogatories and requests for admissions. Milwaukee does not agree with Klein's request with respect to the deadlines to amend pleadings or join parties. These deadlines will be set by the local patent rules. For clarity, Milwaukee does not agree that its new lawsuit is limited to the exact allegations in the current lawsuit.
 - v. Milwaukee agrees that as-served written discovery and as-served responses will be considered served in the new lawsuit and that they count towards the discovery limits in the new lawsuit.
 - vi. Milwaukee does not agree with Klein's proposal. The parties should serve all contentions pursuant to the deadlines in the local patent rules. This will align the contentions with the allegations in the complaint, any counterclaims, and the standard local patent practice. For example, Milwaukee will provide its list of asserted patents, claims, and products, and Klein will have an opportunity to assert any alleged non-infringement and invalidity grounds. While these contentions will likely remain identical, or nearly identical, as it relates to the currently Asserted Patents and those contentions can be copied directly from the current lawsuit, both parties will also have an opportunity to address the new allegations in the new lawsuit.
3. Milwaukee does not agree with Klein's request. The question of damages can be addressed during fact discovery, expert discovery, and trial if necessary.
4. Milwaukee does not agree with Klein's demand. As explained above extensively, this request is improper. Klein has not suffered any past prejudice and the parties appear to have a plan to re-use nearly all of the discovery from the current lawsuit. Further, Klein gets a longer schedule, which it requested. Put simply, the parties efforts in the current lawsuit will not be wasted in the new lawsuit, and Milwaukee should not be forced to pay Klein's costs for the current lawsuit.

Milwaukee has litigated this matter in good faith and will continue to do so. Please let us know if Klein agrees to dismiss the lawsuit voluntarily by stipulation based on the agreed terms above by Tuesday, March 10, 2026 at noon Central.

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Should Klein oppose these terms, we will proceed to file our motion to dismiss as there is no basis to delay informing the Court about this issue.

Sincerely,

/s/ Jason C. White

Jason C. White