

From: [Director Discretionary Decision](#)
To: [Baker, W. Todd](#); [Director Discretionary Decision](#)
Cc: [#KleinTools_IPR](#); [Metco-067Patent-IPR](#); [Bregman, Dion M.](#); [White, Jason C.](#); [Sherwin, Scott D.](#); [Doukas, Maria E.](#); [Barboun, Michael](#); [Trials](#)
Subject: RE: Klein Tools v. Milwaukee Electric Tool, IPR2026-00233 -- Request for Leave to file a Reply to the POPR
Date: Wednesday, May 20, 2026 7:39:16 AM

Petitioner may file a 2-page reply in IPR2026-00233, due no later than Tuesday, May 26, 2026, limited to addressing the matters raised below. Patent Owner is authorized a 2-page sur-reply, due no later than Monday, June 1, 2026.

From: Baker, W. Todd <todd.baker@kirkland.com>
Sent: Wednesday, May 6, 2026 4:05 PM
To: Director_Discretionary_Decision <Director_Discretionary_Decision@uspto.gov>
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Subject: Klein Tools v. Milwaukee Electric Tool, IPR2026-00233 -- Request for Leave to file a Reply to the POPR

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Dear Director Squires,

Petitioner Klein's Position

Petitioner Klein respectfully requests leave to file a short, two-page reply to respond to discretionary denial arguments Milwaukee Electric Tool Corporation ("Milwaukee") raises for the first time in its Preliminary Response. Specifically, Milwaukee argues that the Director should deny institution under *Revvo* due to the Petition pursuing claim construction positions that are, in its view, allegedly inconsistent with the district court proceeding. Good cause exists to grant the requested reply for at least the following reasons:

1. Milwaukee moved to dismiss the very district court case it relies on for its *Revvo* arguments after the Petition was filed and a reply would give Klein the opportunity to address Milwaukee's *Revvo* arguments in light of this fact.
2. Milwaukee's *Revvo*-based arguments are discretionary in nature and thus it was required to include this argument in its discretionary denial briefing. See, e.g., *Evenflo Company, Inc. et al v. Baby Jogger, LLC*, PTAB-IPR2025-01120, Paper 17 at 1 (characterizing denial of institution under *Revvo* as a discretionary consideration); Interim Director Discretionary Process at I.C. ("The petitioner and the patent owner should not present discretionary

considerations in the petition or the Patent Owner Preliminary Response (POPR), respectively.”) (available at <https://www.uspto.gov/patents/ptab/interim-director-discretionary-process>).

3. Milwaukee mischaracterizes Klein’s claim construction positions, both in the to-be-dismissed district court action and the Petition.

Klein further submits that a reply would assist the Director in clarifying the record and resolving disputed issues, as Milwaukee’s failure to include them in its discretionary briefing deprived Klein of the opportunity to respond in its opposition to Milwaukee’s request for discretionary denial. Klein disagrees with Milwaukee Tool’s assertion that Klein’s request for leave to file a reply is argumentative or contrary to the Board’s rules, as it simply provides Klein’s good cause for a reply. See Consolidated Trial Practice Guide at 52.

Patent Owner Milwaukee Tool’s Position

Milwaukee opposes Klein’s request and strenuously objects to Klein making substantive arguments by email, contrary to the Board’s practice strictly prohibiting such behavior. That said, because Klein has done so, Milwaukee responds to avoid any possibility that the Board acts on Klein’s one-sided arguments alone.

Klein has not shown good cause:

1. The fact that Milwaukee intended to move to dismiss the district court case is not new. Both parties have already addressed the issue in the existing briefing. In fact, Klein’s opposition to discretionary denial acknowledged Milwaukee’s intended motion to dismiss the district court case (which Klein opposed), and addressed the issue as it relates to the *Fintiv* factors. The fact that the expected motion was later filed is not good cause for another brief.
2. Milwaukee disagrees with Klein’s assertion that Milwaukee raised a new discretionary-denial argument in the POPR. Milwaukee’s argument is a claim-construction and petition-sufficiency issue, properly addressed in response to Klein’s claim-construction positions in the Petition. Klein itself raised *Revvo* and the allegedly different claim-construction positions in the Petition’s claim-construction section, citing *Revvo* and arguing that, although Klein had asserted indefiniteness positions in district court, it was adopting Milwaukee’s “plain and ordinary” constructions “for the purposes of this Petition only.” Petition at 14–17. Klein devoted approximately three pages to explaining the purported differences between its district court indefiniteness positions and its IPR claim-construction positions, including its position that any indefiniteness concern arose from Milwaukee’s application of the claims to accused products in district court, not from applying the claims to the prior art in this IPR. Petition at 14–17. Having raised and argued that issue at length in the Petition, Klein cannot show good cause for another brief simply because Milwaukee responded.
3. *Evenflo* does not hold otherwise. Paper 17 is only a summary notice stating that certain proceedings were “discretionarily denied in view of *Revvo*”; it does not explain the basis for that denial, address the procedural issue here, or hold that a patent owner must raise inconsistent claim-construction arguments only in discretionary-denial briefing. And *Revvo* itself confirms that the issue may be raised in a POPR, where the patent owner raised the petitioner’s allegedly

inconsistent claim-construction positions in its Preliminary Response and discretionary denial briefing. *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20 at 2–5. Moreover, if inconsistent claim-construction positions across forums may be raised only in discretionary-denial briefing, and not in the Petition or POPR, as Klein contends, then Klein does not explain why it raised this issue and *Revvo* in its Petition.

4. Klein’s assertion that Milwaukee “mischaracterizes” Klein’s positions reflects only Klein’s disagreement with Milwaukee’s response and its desire for another opportunity to argue the same issue. That is not good cause. Klein already anticipated in its Petition the issue created by taking different claim-construction positions across forums, and Klein should not get another brief to reargue points already made.

In the unlikely event the Board authorizes Klein’s requested reply, Milwaukee respectfully requests an equal-length sur-reply.

The parties have exchanged communications regarding this request and Milwaukee has informed Klein that it opposes this request, but if granted, requests an equal-length sur-reply, which Klein does not oppose.

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