

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Klein Tools, Inc.
Petitioner,

v.

Milwaukee Electric Tool Corporation,
Patent Owner.

IPR2026-00233
U.S. Patent No. 11,656,067

PATENT OWNER'S SUR-REPLY

IN SUPPORT OF

REQUEST FOR DISCRETIONARY DENIAL

LIST OF EXHIBITS

Exhibit No.	Description
2001	RESERVED
2002	RESERVED
2003	Counterclaims in <i>Milwaukee Electric Tool Corp. v. Klein Tools, Inc.</i> , No. 1:25-cv-04689 (N.D. Ill.), Dkt. 56, filed January 22, 2026 (excerpted)
2004	Klein Tool's Local Patent Rule 2.3 Initial Non-Infringement, Unenforceability, and Invalidity Contentions in <i>Milwaukee Electric Tool Corp. v. Klein Tools, Inc.</i> , No. 1:25-cv-04689 (N.D. Ill.), served Aug. 19, 2025 (excerpted)
2005	Interim Processes for PTAB Workload Management Memorandum, dated March 26, 2025
2006	"Klein Tools Improves Tape Measure Performance and Durability with Updated Line," dated Oct. 3, 2019
2007	WO 2019/040752

Klein's Reply does nothing to rehabilitate its fatal claim-construction problem. Klein asks the Board to institute review under a plain-and-ordinary construction, while continuing to preserve materially different indefiniteness positions for the same terms in district court. That is exactly the type of unreconciled cross-forum inconsistency *Revvo*, *Tesla*, *Terumo*, *Ford*, and *TikTok* reject.

First, there is no waiver. No rule required Milwaukee to raise this claim-construction and petition-sufficiency issue in its discretionary-denial brief. The POPR properly responded to Klein's Petition, which itself raised *Revvo* and Klein's different district court and IPR positions. In *Revvo*, the patent owner raised the same Rule 42.104(b)(3) defect in its preliminary response, and the Director addressed it there. *Revvo*, Paper 20 at 2-5. *Evenflo* later treated *Revvo* as supporting discretionary denial but did not hold that the issue must be raised only in discretionary-denial briefing. *Evenflo*, Paper 17 at 1. Klein filed an authorized Reply, so the problem is not lack of process; it is Klein's failure to reconcile its claim construction positions.

Second, Klein's "accused-products" excuse does not reconcile anything. Klein asks the Board to treat the claims as definite enough to apply to Hernandez and Murray, while telling the district court that the same claim terms are indefinite when applied to Milwaukee's infringement case. Klein cannot treat the claims as definite for invalidity but indefinite for infringement without explaining why both positions are consistent. That is what *Revvo* requires, yet Klein fails to deliver.

Third, Cochlear does not cure Klein’s Revvo problem. Klein cites *Cochlear* to argue that the Board may analyze prior art even where indefiniteness is alleged. But Milwaukee is not asking the Board to decide indefiniteness or hold that prior art analysis is impossible. Milwaukee’s point is different: Klein cannot advocate plain-and-ordinary meaning here while preserving indefiniteness positions in district court without explaining why those positions are consistent. *Revvo* requires that explanation. *Terumo* confirms Klein cannot avoid it by saying the disputed issue is immaterial to the IPR. *Revvo*, Paper 20 at 3-5; *Terumo BCT Inc. v. Haemonetics Corp.*, IPR2025-01374, Paper 20 at 3-5 (May 12, 2026).

Fourth, the supposed dismissal of the district court case does not cure Klein’s inconsistent advocacy. Later procedural developments do not erase inconsistent advocacy. *TikTok, Inc. v. Shopsee, Inc.*, rejected a petitioner’s offer to abandon inconsistent indefiniteness arguments if instituted. IPR2025-01485, Paper 13 at 2-3 (Jan. 16, 2025). *Ford Motor Co. v. Autoconnect Hldgs., LLC*, likewise held that a later offer to withdraw indefiniteness arguments was insufficient after petitioner had already run afoul of *Revvo* and *Tesla*. IPR2025-01342 Paper 27 at 3-4 (May 12, 2026). This is precisely the strategic cross-forum behavior that undermines predictability, efficiency, fairness, and the integrity of IPR proceedings.

Klein had both the Petition and its authorized Reply to explain why its positions are consistent or why any differences are warranted. It failed to do so. Institution should be denied.

Dated: June 1, 2026

Respectfully Submitted,

/ Dion M. Bregman /

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. Section 42.6(e)(4), lead counsel for Patent Owner hereby certifies that on June 1, 2026 a copy of the foregoing document was served on Petitioner's counsel of record at the email correspondence address of record:

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