

**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

JURY TRIAL DEMANDED

**DEFENDANT KLEIN TOOLS, INC.’S FIRST AMENDED ANSWER AND
COUNTERCLAIMS TO PLAINTIFF MILWAUKEE ELECTRIC TOOL
CORPORATION’S FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Defendant Klein Tools, Inc. (“Klein Tools” or “Defendant”), by and through its undersigned counsel, files this First Amended Answer and Counterclaims to the First Amended Complaint for patent infringement filed by Milwaukee Electric Tool Corporation (“Milwaukee Tool” or “Plaintiff”). Klein Tools denies all allegations in Plaintiff’s claim unless expressly admitted. Any admission herein is for this matter only. Klein Tools also reserves the right to take further positions and raise additional defenses and counterclaims that may become apparent as a result of additional information discovered subsequent to filing this First Amended Answer.

Klein Tools’s specific responses to the numbered allegations of the First Amended Complaint are in the below numbered paragraphs as follows:

of estoppel, waiver, acquiescence, laches, and unclean hands.

ADDITIONAL DEFENSES

Klein Tools reserves the right to assert any additional defenses or counterclaims that discovery may reveal.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Klein Tools hereby respectfully demands a jury trial of all issues triable to a jury in this action.

* * *

COUNTERCLAIMS

Defendant Klein Tools, Inc., by and through its undersigned counsel, asserts the following counterclaims against Plaintiff Milwaukee Electric Tool Corporation (“Milwaukee Tool”).

CASE OVERVIEW

1. As this lawsuit will reveal, Milwaukee Tool copied existing technology and, at times, sought patent protection on products, features, and innovations that have been known in the industry for years, if not decades, before Milwaukee Tool sought patent protection.

2. Milwaukee Tool, including through its employees and agents, have further perpetrated fraud and inequitable conduct before the United States Patent Office (“USPTO”) with the intent to deceive the USPTO and obtain patent rights to which Milwaukee Tool is not entitled.

3. Klein Tools has not and does not infringe any valid and enforceable claim of U.S. Patent No. 11,656,067 (“the ’067 Patent”) or U.S. Patent No. 11,857,064 (“the ’064 Patent”) (collectively, the “Patents-in-Suit”), which are invalid and should never have issued.

PARTIES

4. On information and belief, Milwaukee Tool is a corporation organized and existing under the laws of the State of Delaware with a principal place of business at 13135 West Lisbon

[REDACTED]

[REDACTED] during prosecution of the '067 Patent, on information and belief, the Examiner would have concluded that the prior art disclosed a tape measure that met each and every limitation in at least claim 1 of the '067 Patent, and would have rejected the claims at least as anticipated and/or obvious in view of such prior art tape measures.

182. Mr. Khangar, Mr. Vitas, and Mr. Borchardt committed acts of egregious misconduct by failing to disclose material information regarding prior art tape measures and/or by allowing misleading information regarding Milwaukee Tool's internal testing of prior art tape measures to be submitted to the USPTO.

183. The '067 Patent is unenforceable due to inequitable conduct.

COUNTERCLAIM COUNT 2:

DECLARATORY JUDGMENT OF INVALIDITY OF THE '067 PATENT

184. Klein Tools repeats and realleges paragraphs 1–183 of the Counterclaims as if fully set forth herein.

185. Due to at least the allegations contained in Milwaukee Tool's First Amended Complaint, an actual and justiciable controversy exists between Klein Tools and Milwaukee Tool concerning the validity of the '067 Patent.

186. The claims of the '067 patent are invalid for failure to satisfy one or more conditions of patentability specified in Title 35 of the United States Code, including 35 U.S.C. §§ 101, 102, 103, and 112.

187. The claims of the '067 Patent are anticipated by the prior art under 35 U.S.C. § 102 and are rendered obvious by the prior art under 35 U.S.C. § 103. The prior art is evidenced by at least the following:

- a. U.S. Patent No. 7,096,596 to Hernandez et al. (“Hernandez ’596”)
- b. International Patent Publication WO 2007/044004 (“Hernandez ’004”)
- c. U.S. Patent No. 6,243,964 to Murray (“Murray ’964”)
- d. U.S. Patent No. 6,282,808 to Murray (“Murray ’808”)
- e. U.S. Patent No. 6,324,769 to Murray (“Murray ’769”)
- f. U.S. Patent No. 6,804,899 to Murray (“Murray ’899”)
- g. U.S. Patent No. 7,395,608 to Liao (“Liao”)
- h. Chinese Patent No. CN 2869762Y to Zhongyan (“Zhongyan”)
- i. Stanley Tape Measure model no. FMHT33502 (“Stanley 33502”)
- j. DeWalt Tape Measure model no. DWHT33924 (“DeWalt 33924”)
- k. DeWalt Tape Measure model no. DWHT33975 (“DeWalt 33975”)
- l. DeWalt Tape Measure model no. DWHT36225S (“DeWalt 36225S”)
- m. Stanley Tape Measure model no. FMHT33725 (“Stanley 33725”)
- n. Stanley Tape Measure model no. 33-885 (“Stanley 33-885”)
- o. Stanley Tape Measure model no. 33-890 (“Stanley 33-890”)
- p. Stanley Tape Measure model no. 33-895 (“Stanley 33-895”)
- q. DeWalt Tape Measure model no. DWHT33975 (“DeWalt 33975”)
- r. DeWalt Tape Measure model no. DWHT33976 (“DeWalt 33976”)

188. The Background of the Invention section of the ’067 Patent admits the following was known in the prior art:

Tape measures are measurement tools used for a variety of measurement applications, including in the building and construction trades. Some tape measures include a graduated, marked blade wound on a reel and also include a retraction system for automatically retracting the blade onto the reel. In some such tape measure designs, the retraction system is driven by a coil or spiral spring that is tensioned, storing energy as the tape is extended, and that releases energy to spin the reel, winding the blade back onto the reel such that automatic or nonmanual tape retraction is provided. In some other tape measure designs, retraction of the

tape is controlled via a manual crank, and such tape measure blades tend to have a long length.

'067 Patent at 1:25-37.

189. The '067 Patent further admits that the following was known regarding prior art tape measures:

TABLE 1

Tape Design	Flat Width (mm)	Steel Thickness (mm)	Total Thickness (mm)	Angle-Laser (deg)	Curved Height-Laser (mm)	Curved Width-Laser (mm)	Droop @ 10 ft (in)	Standout (in)
A	30	0.11	0.18	57.39	8.8515	21.85	22-25	156-160
B	30	0.11	0.18	62.71	9.074	21.5	20-23	160-162
C	30	0.11	0.36	49.68	9.348	21.15	23-25	159-164
D	27	0.11	0.36	72.42	7.5385	21.151	25-27	133-135
Milwaukee Electric Tool Prod. No. 48-22-7116	27	0.13	0.19	96.26	5.904	23.4	N/A	108-112
Milwaukee Electric Tool Prod. No. 48-22-7135	27	0.12	0.19	91.12	6.281	22.8	N/A	110-114
Milwaukee Electric Tool Prod. No. 48-22-7526	32	0.13	0.18	58.48	8.986	23.9	34-36	142-146
Prior Art Tape No. 1	31.75	0.13	0.18	62	9.1835	23.651	31-32	145 avg
Prior Art Tape No. 2	31.75	0.13	0.22	64	9.166	23.601	28-29	149 avg
Prior Art Tape No. 3	31.75	0.13	0.18	88	7.9675	26.05	32-33	138 avg

TABLE 2

Tape Design	Ratio- Height/Flat Width	Ratio- Height/Steel Thickness	Ratio- Curved Width/Flat Width	Ratio- Angle/Flat Width
A	0.29505	80.46818182	0.728333333	1.913
B	0.302466667	82.49090909	0.716666667	2.0903333
C	0.3116	84.98181818	0.705	1.656
D	0.279203704	68.53181818	0.78337037	2.6822222
Milwaukee Electric Tool Prod. No. 48-22-7116	0.218666667	45.41538462	0.866666667	3.5651852
Milwaukee Electric Tool Prod. No. 48-22-7135	0.23262963	52.34166667	0.844444444	3.3748148
Milwaukee Electric Tool Prod. No. 48-22-7526	0.2808125	69.12307692	0.746875	1.8275
Prior Art Tape No. 1 @ 12 ft.	0.289244094	70.64230769	0.744913386	1.9625197
Prior Art Tape No. 2 @ 12 ft.	0.288692913	70.50769231	0.743338583	2.0179528
Prior Art Tape No. 3 @ 12 ft.	0.250944882	61.28846154	0.820472441	2.7672441

TABLE 3

Design Parameter	Prior Art 1 (CAWB 78 deg)	Prior Art 2 (CAWB 55deg)	Prototype 1 (35 FW Deep)	Prototype 2 (38 FW Deep)	Prototype 3 (35 FW)	Prototype 4 (38 FW)	Prototype 5 (35 Super Deep)	Prototype 6 (38 Super Deep)
Thickness (mm)	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13
Flat Width (mm)	32	32	35	38	35	38	35	38
arc angle center (deg)	102.23	108.916	110	112.5	102	104	108.916	108.916
Radius at center	11.57	10.37	10.8	11.4	13	16.1	10.37	10.37
Radius at edges	76.33	22.77	23.35	23.35	30	50	22.77	22.77
Center arc length	20.644	19.713	20.735	22.384	23.143	29.224	19.713	19.713
Leg arc length	5.68	6.14	7.13	7.81	5.93	4.39	7.64	9.14
Curved Height Total	8.86	9.76	10.98	12.16	9.76	9.76	11.18	12.64
Curved Width Total	24.81	22.59	23.98	25.32	26.71	30.47	23.53	24.28
Ratio Curved Width to Flat Width	0.7753125	0.7059375	0.685142857	0.666315789	0.763142857	0.801842105	0.672285714	0.638947368
Ratio Height Width to Flat Width	0.276875	0.305	0.313714286	0.32	0.278857143	0.256842105	0.319428571	0.332631579
Total Energy per 1 mm Length (N * mm) @ r31 (approx 10 ft mark)	3.7112	4.7072	4.7080	4.7094	3.6539	3.0517	4.8817	5.0562

'067 Patent at Tables 1–3.

190. The above excerpts from the '067 Patent are “statement[s] in the patent that something is in the prior art” and are “binding on the application and patentee for determinations of anticipation and obviousness.” *PharmaStem Therapeutics, Inc. v. ViaCell, Inc.*, 491 F.3d 1342, 1362 (Fed. Cir. 2007) (*quoting Constant v. Advanced Micro–Devices, Inc.*, 848 F.2d 1560, 1570 (Fed. Cir. 1988)).

191. The specification of the '067 Patent further states, “Applicant has determined that by selecting the tape blade width and the tape blade profile shape, the amount of tape blade standout ... can be selected to achieve blade standout and retraction torque requirements not previously achievable.” '067 Pat. 14:56–61.

192. As examples, the '067 Patent concedes that at least “Prior Art Tape No. 1” and “Prior Art Tape No. 2” meet every limitation in at least claim 1 of the '067 Patent with the

exception of, according to Table 1, the limitation “wherein a stand out distance of the elongate blade from the housing is greater than 150 inches.” *See* ’067 Pat. 12:64–66, Tables 1–3.

193. “Prior Art Tape No. 1,” as referenced in the ’067 Patent, [REDACTED]

[REDACTED].

194. “Prior Art Tape No. 1” in the ’067 Patent meets every limitation of at least claim 1 of the ’067 Patent.

195. Prior Art Tape No. 1 is “[a] tape measure.”

196. Prior Art Tape No. 1 includes a “housing.”

197. Prior Art Tape No. 1 includes “a tape reel rotatably mounted within the housing.”

198. Prior Art Tape No. 1 includes “an elongate blade wound around the reel.”

199. Prior Art Tape No. 1 has “an upper surface.”

200. Prior Art Tape No. 1 has “a lower surface.”

201. Prior Art Tape No. 1 has “an elongate metal core having a first thickness, T1, between 0.12 mm and 0.14 mm.”

202. Prior Art Tape No. 1 has “a length between 15 feet and 40 feet.”

203. Prior Art Tape No. 1 has “a flat width of 20 mm to 40 mm.”

204. Prior Art Tape No. 1 has “a curved profile such that the upper surface of the elongate blade defines a concave surface and the lower surface defines a convex surface.”

205. Prior Art Tape No. 1 has “a curved width, wherein the curved width is less than the flat width.”

206. Prior Art Tape No. 1 has “a curved height between 8.5 mm and 9.5 mm.”

207. Prior Art Tape No. 1 has “a ratio of the curved width to the flat width [that] is between 0.6 and 0.8.”

208. Prior Art Tape No. 1 has “a ratio of curved height to flat width [that] is greater than 0.285.”

209. Prior Art Tape No. 1 has “a standout distance of the elongate blade from the housing [that] is greater than 150 inches.”

210. Prior Art Tape No. 1 has “a retraction system coupled to the tape reel, wherein the retraction system drives rewinding of the elongate blade on to the tape reel.”

211. The prior art tape measure identified as Prior Art Tape No. 1 in the '067 Patent anticipates the asserted claim (claim 1) of the '067 Patent under 35 U.S.C. § 102, at least under Milwaukee Tool's apparent infringement theory and apparent construction of the claims.

212. Prior Art Tape No. 2, as referenced in the '067 Patent, [REDACTED]

[REDACTED].

213. “Prior Art Tape No. 2” in the '067 Patent meets every limitation of at least claim 1 of the '067 Patent.

214. Prior Art Tape No. 2 is “[a] tape measure.”

215. Prior Art Tape No. 2 includes a “housing.”

216. Prior Art Tape No. 2 includes “a tape reel rotatably mounted within the housing.”

217. Prior Art Tape No. 2 includes “an elongate blade wound around the reel.”

218. Prior Art Tape No. 2 has “an upper surface.”

219. Prior Art Tape No. 2 has “a lower surface.”

220. Prior Art Tape No. 2 has “an elongate metal core having a first thickness, T1, between 0.12 mm and 0.14 mm.”

221. Prior Art Tape No. 2 has “a length between 15 feet and 40 feet.”

222. Prior Art Tape No. 2 has “a flat width of 20 mm to 40 mm.”

223. Prior Art Tape No. 2 has “a curved profile such that the upper surface of the elongate blade defines a concave surface and the lower surface defines a convex surface.”

224. Prior Art Tape No. 2 has “a curved width, wherein the curved width is less than the flat width.”

225. Prior Art Tape No. 2 has “a curved height between 8.5 mm and 9.5 mm.”

226. Prior Art Tape No. 2 has “a ratio of the curved width to the flat width [that] is between 0.6 and 0.8.”

227. Prior Art Tape No. 2 has “a ratio of curved height to flat width [that] is greater than 0.285.”

228. Prior Art Tape No. 2 has “a standout distance of the elongate blade from the housing [that] is greater than 150 inches.”

229. Prior Art Tape No. 2 has “a retraction system coupled to the tape reel, wherein the retraction system drives rewinding of the elongate blade on to the tape reel.”

230. The prior art tape measure identified as Prior Art Tape No. 2 in the '067 Patent anticipates the asserted claim (claim 1) of the '067 Patent under 35 U.S.C. § 102.

231. As another example, the Stanley 33502 tape measure meets every limitation of at least claim 1 of the '067 Patent.

232. The Stanley 33502 is “[a] tape measure.”

233. The Stanley 33502 includes a “housing.”

234. The Stanley 33502 includes “a tape reel rotatably mounted within the housing.”

235. The Stanley 33502 includes “an elongate blade wound around the reel.”

236. The Stanley 33502 has “an upper surface.”

237. The Stanley 33502 has “a lower surface.”

238. The Stanley 33502 has “an elongate metal core having a first thickness, T1, between 0.12 mm and 0.14 mm.”

239. The Stanley 33502 has “a length between 15 feet and 40 feet.”

240. The Stanley 33502 has “a flat width of 20 mm to 40 mm.”

241. The Stanley 33502 has “a curved profile such that the upper surface of the elongate blade defines a concave surface and the lower surface defines a convex surface.”

242. The Stanley 33502 has “a curved width, wherein the curved width is less than the flat width.”

243. The Stanley 33502 has “a curved height between 8.5 mm and 9.5 mm.”

244. The Stanley 33502 has “a ratio of the curved width to the flat width [that] is between 0.6 and 0.8.”

245. The Stanley 33502 has “a ratio of curved height to flat width [that] is greater than 0.285.”

246. The Stanley 33502 has “a standout distance of the elongate blade from the housing [that] is greater than 150 inches.”

247. The Stanley 33502 has “a retraction system coupled to the tape reel, wherein the retraction system drives rewinding of the elongate blade on to the tape reel.”

248. The Stanley 33502 was offered for sale, sold, and/or in public use before August 24, 2017.

249. The Stanley 33502 anticipates the asserted claim of the '067 Patent under 35 U.S.C. § 102.

250. As another example, the DeWalt 33924 tape measure meets every limitation of at least claim 1 of the '067 Patent.

251. The DeWalt 33924 is “[a] tape measure.”
252. The DeWalt 33924 includes a “housing.”
253. The DeWalt 33924 includes “a tape reel rotatably mounted within the housing.”
254. The DeWalt 33924 includes “an elongate blade wound around the reel.”
255. The DeWalt 33924 has “an upper surface.”
256. The DeWalt 33924 has “a lower surface.”
257. The DeWalt 33924 has “an elongate metal core having a first thickness, T1, between 0.12 mm and 0.14 mm.”
258. The DeWalt 33924 has “a length between 15 feet and 40 feet.”
259. The DeWalt 33924 has “a flat width of 20 mm to 40 mm.”
260. The DeWalt 33924 has “a curved profile such that the upper surface of the elongate blade defines a concave surface and the lower surface defines a convex surface.”
261. The DeWalt 33924 has “a curved width, wherein the curved width is less than the flat width.”
262. The DeWalt 33924 has “a curved height between 8.5 mm and 9.5 mm.”
263. The DeWalt 33924 has “a ratio of the curved width to the flat width [that] is between 0.6 and 0.8.”
264. The DeWalt 33924 has “a ratio of curved height to flat width [that] is greater than 0.285.”
265. The DeWalt 33924 has “a standout distance of the elongate blade from the housing [that] is greater than 150 inches.”
266. The DeWalt 33924 has “a retraction system coupled to the tape reel, wherein the retraction system drives rewinding of the elongate blade on to the tape reel.”

267. The DeWalt 33924 was offered for sale, sold, and/or in public use before August 24, 2017.

268. The DeWalt 33924 anticipates the asserted claim of the '067 Patent under 35 U.S.C. § 102.

269. The prior art also anticipates the asserted claim of the '067 Patent under 35 U.S.C. § 102 for the reasons set forth in Counterclaim Count I above, which Klein Tool incorporates by reference.

270. Klein Tools is entitled to a declaratory judgment under 28 U.S.C. §§ 2201 and 2202 from this Court that each and every claim of the '067 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 101, 102, 103, and 112.

COUNTERCLAIM COUNT 3:

DECLARATORY JUDGMENT OF INVALIDITY OF THE '064 PATENT

271. Klein Tools repeats and realleges paragraphs 1–270 of the Counterclaims as if fully set forth herein.

272. Due to at least the allegations contained in Milwaukee Tool's First Amended Complaint, an actual and justiciable controversy exists between Klein Tools and Milwaukee Tool concerning the validity of the '064 Patent.

273. The asserted claims of the '064 patent are invalid for failure to satisfy one or more conditions of patentability specified in Title 35 of the United States Code, including 35 U.S.C. §§ 101, 102, 103, and 112.

274. For example, the asserted claims of the '064 Patent are anticipated by the prior art under 35 U.S.C. § 102 and are rendered obvious by the prior art under 35 U.S.C. § 103. The prior

art is evidenced by at least the following:

- a. U.S. Patent Publication No. 2009/0078730 to Kuny (“Kuny”)
- b. U.S. Patent No. 5,274,885 to Hellweg (“Hellweg”)
- c. Austrian Patent No. AT388448B to Glock (“Glock ’448”)
- d. U.S. Patent No. 6,478,202 to Glock (“Glock ’202”)
- e. U.S. Patent No. 5,081,709 to Benyo et al. (“Benyo”)
- f. German Patent Publication DE 9308896 (“Albrecht Kind”)
- g. U.S. Patent Publication No. 2010/0242239 to Engel et al. (“Engel”)
- h. U.S. Patent Publication No. 2005/0263552 to Panosian et al. (“Panosian”)
- i. International Patent Publication WO 2019/206441 (“Hubbard”)
- j. U.S. Patent No. 7,032,791 to Stotts (“Stotts”)
- k. ToughBuilt ClipTech System (“ToughBuilt”)
- l. Tajima Safety Belt System (“Tajima SBS”)
- m. U.S. Patent No. 8,727,642 to Tse et al. (“Tse”)
- n. U.S. Patent Publication No. 2016/0356304 to Roberts (“Roberts”)
- o. U.S. Patent No. 8,919,622 to Gabriel et al. (“Gabriel”)

275. For example, Albrecht Kind alone, or in combination with one or more of Glock ’448, Panosian, and/or Gabriel renders the asserted claims of the ’064 Patent obvious.

276. As another example, Kuny alone, or in combination with one or more of Panosian, ToughBuilt, and/or Albrecht Kind, renders the asserted claims of the ’064 Patent obvious.

277. Klein Tools is entitled to a declaratory judgment under 28 U.S.C. §§ 2201 and 2202 from this Court that each and every claim of the ’064 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 101, 102, 103, and 112.

PRAYER FOR RELIEF

Wherefore, Klein Tools respectfully requests that this Court enter judgment in its favor and grant the following relief:

- A. A declaration that the claims of the '067 Patent are unenforceable;
- B. A declaration that the claims of the '067 Patent are invalid;
- C. A declaration that the claims of the '064 Patent are invalid;
- D. A judgment in favor of Klein Tools denying Milwaukee Tool all relief requested in its First Amended Complaint;
- E. Dismissal of the First Amended Complaint with prejudice;
- F. A declaration that this case is exceptional under 35 U.S.C. § 285 and an award to Klein Tools of its costs, expenses, and reasonable attorney fees incurred in this action; and
- G. Further relief as the Court may deem appropriate and just under the circumstances.

Date: January 22, 2026

Respectfully submitted,

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