UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

KLEIN TOOLS, INC.,

Petitioner,

v.

MILWAUKEE ELECTRIC TOOL CORPORATION,

Patent Owner

Case No. IPR2026-00246

U.S. Patent No. 11,857,064

REPLY IN SUPPORT OF OPPOSITION TO

PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL

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LIST OF EXHIBITS[1]

Exhibit No.	Description
1001	Certified U.S. Patent No. 11,857,064
1002	File History for U.S. Patent No. 11,857,064
1003	Declaration of Robert Giachetti
1004	*Curriculum Vitae* of Robert Giachetti
1005	DE9308896U1 ("Albrecht")
1006	Albrecht Certified Translation
1007	Order Construing Disputed Claims of United States Patent No. 5,584,100 in *D&D Group Pty Ltd. et al. v. Nationwide Industries, Inc.*, Case No. 08-cv-236-MMA (POR), D.I. 26 (S.D. Cal. Mar. 23, 2009)
1008	U.S. Patent Publication No. 2005/0263552 ("Panosian")
1009	U.S. Patent No. 8,919,622 ("Gabriel")
1010	AT388448 ("Glock")
1011	Glock Certified Translation
1012	U.S. Patent Publication No. 2016/0356304 ("Roberts")
1013	File History for U.S. Patent No. 11,304,503
1014	U.S. Reissued Patent No. RE47,477
1015	Dkt. 28, Report of the Parties' Planning Meeting in *Milwaukee Electric Tool Corporation v. Klein Tools, Inc.*, No. 1:25-cv-04689 (N.D. Ill.)

[1] Descriptions are for convenience only and are not admissions or evidence.

Exhibit No.	Description
1016	Dkt. 30, Order adopting Parties' Proposed Case Management Schedule in *Milwaukee Electric Tool Corporation v. Klein Tools, Inc.*, No. 1:25-cv-04689 (N.D. Ill.)
1017	Dkt. 42, Order granting Joint Motion for Extension of Certain Dates in *Milwaukee Electric Tool Corporation v. Klein Tools, Inc.*, No. 1:25-cv-04689 (N.D. Ill.)
1018	Dkt. 53, Joint Motion to Extend Certain Deadlines in the Scheduling Order in *Milwaukee Electric Tool Corporation v. Klein Tools, Inc.*, No. 1:25-cv-04689 (N.D. Ill.)
1019	Excerpts from 2019 Merriam-Webster Dictionary
1020	Declaration of Nathaniel Louis DeLucia in Support of Admission *Pro Hac Vice*
1021	Declaration of Ryan Kane in Support of Admission *Pro Hac Vice*
1022	Dkt. 68, Joint Status Report in *Milwaukee Electric Tool Corporation v. Klein Tools, Inc.*, No. 1:25-cv-04689 (N.D. Ill.).
1023	Dkt. 70, Plaintiff's Opposed Motion for Voluntary Dismissal of Plaintiff's First Amended Complaint Without Prejudice and Dismissal of Defendant's Counterclaims Without Prejudice in *Milwaukee Electric Tool Corporation v. Klein Tools, Inc.*, No. 1:25-cv-04689 (N.D. Ill.).
1024	Dkt. 72, Memorandum in Support of Plaintiff's Opposed Motion for Voluntary Dismissal of Plaintiff's First Amended Complaint Without Prejudice and Dismissal of Defendant's Counterclaims Without Prejudice in *Milwaukee Electric Tool Corporation v. Klein Tools, Inc.*, No. 1:25-cv-04689 (N.D. Ill.).
1025	Dkt. 76, Minute Entry Assigning Case Back to District Judge in *Milwaukee Electric Tool Corporation v. Klein Tools, Inc.*, No. 1:25-cv-04689 (N.D. Ill.).

Exhibit No.	Description
1026	March 6, 2026 Response Letter from J. White to R. Kane in *Milwaukee Electric Tool Corporation v. Klein Tools, Inc.*, No. 1:25-cv-04689 (N.D. Ill.)
1027	*Case Study: Milwaukee Tool*, Tariff Integrity, https://www.tariffintegrity.org/tti/milwaukeetool (last visited April 14, 2026)
1028	*Chinese-owned power tool company based in Wisconsin targeted by Trump administration for tariff evasion*, Washington Examiner (February 12, 2026), https://www.washingtonexaminer.com/news/white-house/4454169/trump-administration-action-chinese-owned-company-wisconsin/ (last visited April 29, 2026)
1029	*American Manufacturing*, Klein Tools, https://www.kleintools.com/content/american-manufacturing (last visited April 14, 2026)
1030	Techtronic Industries 2025 Annual Report (excerpted)
1031	Dkt. 78, Klein Tools' Opposition to Plaintiff's Motion for Voluntary Dismissal of Plaintiff's First Amended Complaint Without Prejudice and Dismissal of Defendant's Counterclaims Without Prejudice and Request for Sanctions in *Milwaukee Electric Tool Corporation v. Klein Tools, Inc.*, No. 1:25-cv-04689 (N.D. Ill.)
1032	Klein Tools' Initial Non-Infringement Contentions Excerpt, Appendix B-2, in *Milwaukee Electric Tool Corporation v. Klein Tools, Inc.*, No. 1:25-cv-04689 (N.D. Ill.)
1033	Klein Tools' Initial Non-Infringement Contentions Excerpt, Appendix B-1, in *Milwaukee Electric Tool Corporation v. Klein Tools, Inc.*, No. 1:25-cv-04689 (N.D. Ill.)

Milwaukee ignored *Revvo* in its discretionary denial brief despite Klein addressing it in the Petition (Pet. at 17-26), lying in wait for a tactical last word without response. Because *Revvo* is discretionary, Milwaukee's new arguments should be deemed waived. Interim Director Discretionary Process at I.C; *Evenflo Co., Inc. v. Baby Jogger, LLC*, IPR2025-01120, Paper 17 at 1 (Dec. 1, 2025). Even if considered, Milwaukee's belated assertions miss the mark.

I. KLEIN'S POSITIONS ARE CONSISTENT WITH *REVVO*

Rather than genuinely engaging with Klein's claim construction positions in the To-Be-Dismissed Case, Milwaukee spends the bulk of its *Revvo* argument mischaracterizing Klein's § 112 and non-infringement defenses, claiming that those defenses somehow show Klein has taken inconsistent claim construction positions for four terms. Milwaukee is wrong. Indeed, the bulk of the defenses Milwaukee relies on as supposedly showing inconsistency are based on ***Milwaukee's*** apparent constructions, not Klein's. In the Petition, Klein advanced its proposed constructions for "mating structure," "channel," and "locking mechanism," which are ***consistent*** with Klein's positions in the To-Be-Dismissed Case. Further, Klein fully heeded *Revvo* in the Petition by acknowledging that it contended "actuator" was a means-plus-function term in the To-Be-Dismissed Case, but agreed to forgo that construction should the Board institute IPR to avoid inconsistency. Now, that too is moot given the parallel litigation will be dismissed, meaning Klein is not and will

not pursue an inconsistent construction for "actuator" in the To-Be-Dismissed Case.

A. Mating Structure. Klein advanced the ***same construction*** in the To-Be-Dismissed Case and the Petition: "mating structure" is subject to § 112(f) with the function as "slidably engag[ing] the channel of the receiver" and the corresponding structure as a "disk." Ex. 1032 at 3; Pet. at 25.

B. Channel. Klein never proposed a construction for "channel" in either the To-Be-Dismissed Case or the Petition,[2] let alone an inconsistent one. Milwaukee points to Klein's ***§ 112 contentions*** to incorrectly imply that Klein proposed some sort of special construction, but Klein's § 112 arguments were "***under Milwaukee's apparent construction***" of "channel." Ex. 2004 at 31-32. The Petition does not advance Milwaukee's apparent construction and thus no inconsistency exists.[3]

C. Locking Mechanism. Consistent with its position in the To-Be-Dismissed Case, Klein identified "locking mechanism" as subject to § 112(f) in the Petition. Ex. 1033 at 2; Ex. 1032 at 2; Pet. at 17-22. Milwaukee's scattershot attempts to create inconsistency where none exist fail.

First, Milwaukee's argument that Albrecht supposedly lacks a "locking pin" is not a *Revvo* issue. POPR at 11-12. It is a merits attack (though Milwaukee is

[2] The Petition proposes that "remaining terms," which includes "channel," "be construed according to their plain and ordinary meaning." Pet. at 25.

[3] In any event, Albrecht discloses a "channel," not a "dual-rail design." Pet. 8-9, 28.

wrong). Pet. at 30-32 (explaining Albrecht's "bolt 15" is the locking pin).

Second, Milwaukee points to Klein's § 112 contentions in the To-Be-Dismissed Case to argue that "Petitioner took different litigation positions concerning … 'locking mechanism.'" POPR at 10-11. Not so. Klein's § 112 arguments were under "[***Milwaukee's***] apparent interpretation." Ex. 2004 at 29; Pet. at 25 (explaining the same). No inconsistency exists as the Petition advances ***Klein's*** proposed construction, not Milwaukee's.

Third, Milwaukee claims Klein urged a narrower district-court structure requiring "a locking pin that goes through a pinhole and also through a disk," while only a "locking pin" in the Petition, but Milwaukee never explains how this is inconsistent. POPR at 15. It is not: "locking pin" is the proposed structure in both.

Finally, Milwaukee's assertion that Klein "noted different functions defined by claim 1 as compared to claim 16" is, at best, misleading. POPR at 15. Klein's contentions quoted the relevant claim language for the relevant claim—*i.e.*, claim 1 for claim 1 and claim 16 for claim 16—as support for the ***same*** position advanced in the Petition: that "locking mechanism" is subject to § 112(f) and should be construed to cover only the corresponding structure of a "locking pin." Ex. 1033 at 2; Ex. 1032 at 2. Klein's contentions explained that "unlock[ing] the tool attachment device from the receiver allow[s] the pouch and the tool attachment device to be released from the receiver" for ***both*** claims. *Id.* (both quoting Ex. 1001, 3:29-33).

Indeed, the Petition quotes the same passages from claim 1 and claim 16 as Klein's noninfringement contentions and explains how they "similarly define[d]" the locking-mechanism function. Pet. at 20. Any confusion from Milwaukee about Klein's position in the To-Be-Dismissed Case could have been addressed in the claim construction exchange process. Of course, because Milwaukee had no rights to the '064 patent when it sued Klein, the parties never started that process.

D. Actuator. As explained in the Petition, and to avoid the possibility of inconsistent constructions, Klein agreed it would not pursue its 112(f) contention in the To-Be-Dismissed Case "should the Board institute the Petition." Pet. at 26. This issue is now moot: Milwaukee moved to dismiss that case before claim construction, so Klein is not advancing and will not advance that position in the To-Be-Dismissed Case. As for Milwaukee's argument based on Klein's § 112 contentions, POPR at 10-11, it too fails because Klein's position in the To-Be-Dismissed Case was only to the extent ***Milwaukee*** contended the same feature was both actuator and locking mechanism; Klein contended the actuator and locking mechanism were distinct. Ex. 2004 at 29-30. Klein took the same position in the Petition: Albrecht, alone or in combination with Gabriel and/or Glock, unambiguously disclose distinct "actuator" and "locking mechanisms." Pet. at 30-32, 35, 42-50, 81-87.

II. *REVVO* IS INAPPLICABLE

Revvo's fundamental concern—pursuing contrary constructions in a parallel

proceeding—is absent. IPR2025-00632, Paper 20 at 4 (Nov. 3, 2025). The case Milwaukee relies on ***will be dismissed*** with no claim construction ruling because Milwaukee lacked rights in the '064 patent; the only issue left is whether Milwaukee will face conditions or sanctions for its egregious conduct. Ex. 1022 at 2-4; Ex. 1023 at 1; Ex. 1031 at 9-14. Due to this dismissal, the concerns underscoring *Revvo* are absent: there is no parallel proceeding in which inconsistent positions can cause harm. And any suggestion that a future litigation may raise such concerns is speculation given no such litigation exists, and, even if filed, would likely be stayed.

Recent discretionary denials are not on point. In *TikTok, Inc. v. Shopsee, Inc.*, IPR2025-01485, Paper 7 at 2-3 (Jan. 16, 2025), the parallel proceeding was pending and the petitioner did not explain its inconsistent positions. Here, no valid parallel litigation exists, and Klein explained how its positions are consistent. Pet. at 17-26. In *Terumo BCT, Inc. v. Haemonetics Corp.*, IPR2025-01374, Paper 20 at 4 (May 12, 2026) and *Ford Motor Co. v. AutoConnect Holdings, LLC*, IPR2025-01342, Paper 27 at 3 (May 12, 2026), the petitioners pursued indefiniteness after institution to gain a tactical advantage, a circumstance not present here because—as explained in the Petition—Klein's § 112 contentions were under ***Milwaukee's*** apparent constructions, which Klein did not advance in the Petition.

The Director should reject Milwaukee's belated and tactical attempt to invoke *Revvo* and manufacture a claim construction issue where none exists.

Date: May 26, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

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