

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Klein Tools, Inc.
Petitioner,

v.

Milwaukee Electric Tool Corporation,
Patent Owner.

IPR2026-00246
U.S. Patent No. 11,857,064

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	March 11, 2026 Memorandum, Additional Discretionary Institution Considerations - U.S. Manufacturing and Small Business Use of AIA Proceedings
2007	US 2022/0211165

Klein's Reply does nothing to rehabilitate its fatal claim-construction problem. Klein asks the Board to institute review under claim-scope positions materially different from the positions Klein advanced in district court to avoid infringement. 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 a 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 "Milwaukee's apparent construction" excuse does not reconcile anything. Even if Klein's district-court positions were framed as responses to Milwaukee's infringement theory, they were still Klein's positions, advanced to support Klein's non-infringement and invalidity defenses. Klein cannot avoid *Revvo* by characterizing those positions as merely reactive. It must explain why they are consistent with the broader claim-scope positions it advances here, or why any difference is warranted. Klein never does.

Third, Klein’s term-by-term responses confirm the inconsistency. Klein advances narrower constructions in district court for non-infringement and broader constructions here for invalidity. The “locking mechanism” limitation illustrates the problem. Klein says both constructions include a “locking pin,” but ignores the critical difference in district court where Klein further requires the locking pin to “extend[] through a pinhole [] through [a] disk,” which is absent in the Petition. Ex. 1032 at 2; Ex. 1033 at 2. Klein’s similar treatment of “mating structure” and “channel” confirms the same pattern: narrower district court constructions, broader IPR invalidity positions, and no adequate explanation for the difference. *Revvo* requires an explanation. Klein provides none.

Fourth, the supposed dismissal of the district court case does not cure Klein’s inconsistent advocacy. Later procedural developments do not erase inconsistent advocacy. In fact, *TikTok* rejected a petitioner’s offer to abandon inconsistent arguments if IPR were instituted, and *Ford* likewise held that a later withdrawal offer was insufficient. *TikTok, Inc. v. Shopsee, Inc.*, IPR2025-01485, Paper 13 at 2-3 (Jan. 16, 2025); *Ford Motor Co. v. Autoconnect Hldgs., LLC*, IPR2025-01342, Paper 27 at 3-4 (May 12, 2026). The same result should follow here.

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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