

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

**Before The Honorable Clark S. Cheney
Chief Administrative Law Judge**

In the Matter of

**CERTAIN GLOW FISH TAPES,
SAFETY HELMET SYSTEMS, AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1442

RESPONDENT'S OPENING CLAIM CONSTRUCTION BRIEF

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TABLE OF EXHIBITS

Exhibit Number	Description
1	U.S. Patent No. 11,713,209
2	U.S. Patent No. 12,187,573
3	U.S. Patent No. 11,452,327
4	U.S. Patent No. 12,268,265
5	Klein's First Supplemental Infringement Contention Claim Chart for '209 Patent
6	'209 Patent File History
7	U.S. Patent Application Publication No. 2019/0292005
8	'327 Patent File History
9	American Heritage Dictionary
10	Oxford Advanced Learner's Dictionary
11	U.S. Patent Publication No. 62/622,472

I. INTRODUCTION

Respondent Milwaukee Electronic Tool Corporation (“Milwaukee”) hereby submits its Opening Claim Construction Brief in support of its proposed constructions for the disputed claim terms. The Asserted Patents in this Investigation are directed to two entirely different subject matters: (i) safety helmets / hard hats and (ii) fish tape. Despite the different subject matter, one theme runs throughout Complainant Klein Tools, Inc.’s (“Klein”) proposed constructions: they seek to rewrite the claims to improperly broaden their scope. In contrast, Milwaukee’s proposed constructions align with the claims and intrinsic evidence and clarify the meaning of the disputed terms.

II. LEGAL STANDARDS

“When the parties raise an actual dispute regarding the proper scope” of a claim, the Court “must resolve that dispute.” *O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1360 (Fed. Cir. 2008). The words of a claim “are generally given their ordinary and customary meaning,” which is “the meaning that the term would have to a person of ordinary skill in the art.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005). Claim terms “must be read in view of the specification.” *Id.* at 1315. And “the prosecution history can often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be.” *Id.* at 1317. Extrinsic evidence, such as dictionaries, may also be useful to claim construction insofar as it helps the court “better understand the underlying technology.” *Starhome GmbH v. AT&T Mobility LLC*, 743 F.3d 849, 856 (Fed. Cir. 2014).

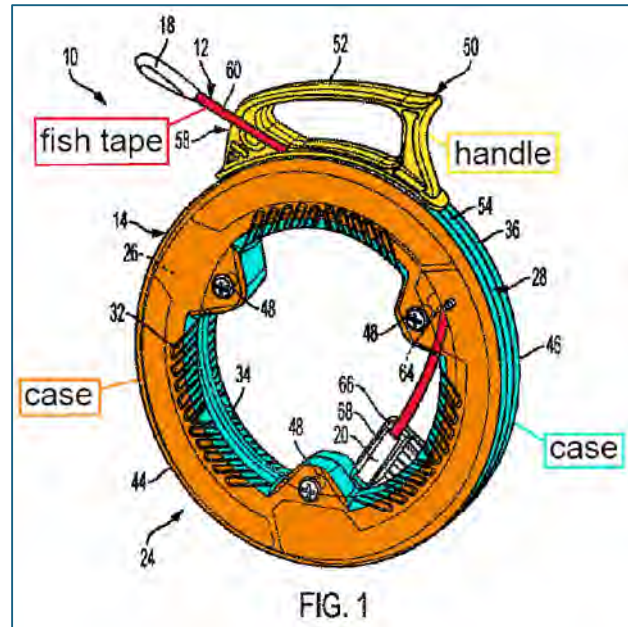
III. OVERVIEW OF THE ASSERTED PATENTS

A. The Asserted Fish Tape Patents

The Asserted Fish Tape Patents include U.S. Patent No. 11,713,209 (“the ’209 Patent”) (Ex. 1) and U.S. Patent No. 12,187,573 (“the ’573 Patent”) (Ex. 2). The ’209 Patent was filed on November 26, 2019 and issued on August 1, 2023. Ex. 1. The ’573 Patent, filed on June 9, 2023, is a continuation of the ’209 Patent and issued on January 7, 2025. Ex. 2. The two patents share the same specification. *See* Exs. 1, 2.

The Asserted Fish Tape Patents are generally directed to “fish tapes,” which are devices “used to pull electrical wires and fiber optic cables through conduit [pipes] or into enclosed wall space.” Ex. 1 at 1:26-27; Ex. 2 at 1:29-30. As the Asserted Fish Tape Patents explain in the Background, light emitting tips that connect to the end of the fish tape to help a user see the fish tape as it moves towards the opening were well known in the art. Ex. 1 at 1:26-37; Ex. 2 at 1:29-41.

The Asserted Fish Tape Patents also describe fish tape with a luminescent material that emits light after being energized by exposure to a light source. Ex. 1 at 3:21-24. Figure 1 (reproduced below) illustrates fish tape system 10, which includes fish tape 12 and a case 14. *Id.* at 3:19-20. As the specification explains, the length 16 of the fish tape includes a luminescent material 22 that “emits light after being energized by exposure to a light source 24.” *Id.* at 3:22-25. To energize this luminescent material, “[a]t least **a portion of the case 14 is transparent** to allow the luminescent material 22 to be energized by light **passing through the transparent portion** and into the storage compartment 26.” *Id.* at 3:27-30.



Ex. 1, Fig 1(annotated with shading)¹

B. The Asserted Helmet Patents

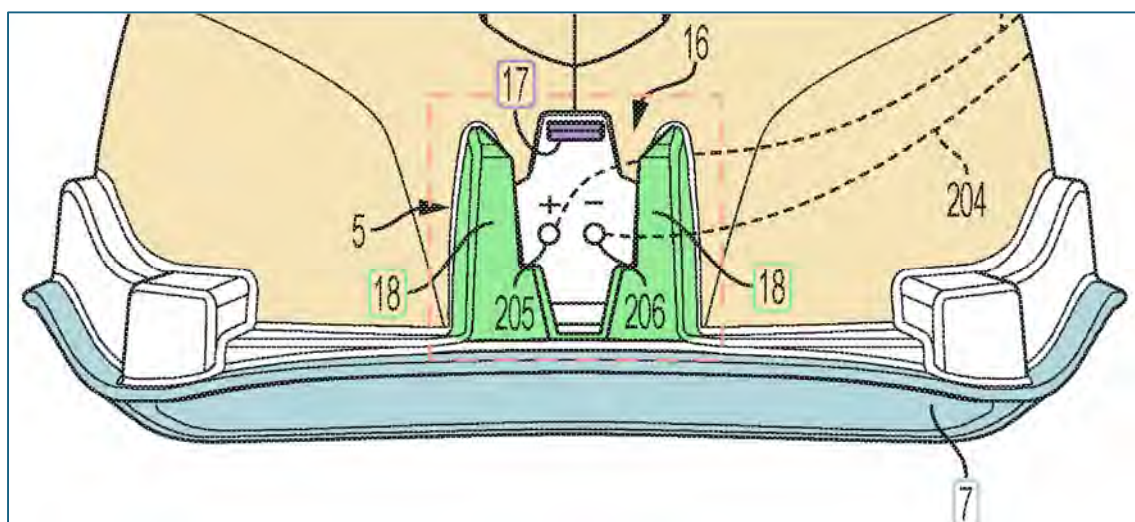
The Asserted Helmet Patents include U.S. Patent No. 11,452,327 (“the ’327 Patent”) (Ex. 3) and U.S. Patent No. 12,268,265 (“the ’265 Patent”) (Ex. 4). The ’327 Patent, filed on January 14, 2019, claims priority to two provisional applications: (i) Provisional Application No. 62/645,491, filed on March 20, 2018 and (ii) Provisional Application No. 62/622,472, filed on January 26, 2018. Ex. 3. The ’327 Patent issued on September 27, 2022. *Id.* The ’265 Patent, filed on July 1, 2022, is a continuation of the ’327 Patent and shares a specification with the ’327 Patent. *See* Exs. 3, 4. The ’265 Patent issued on April 8, 2025. Ex. 4.

The Asserted Helmet Patents are directed to safety helmets that allow accessories to be mounted on each of a front receptacle and a rear receptacle of the helmet. *See* Exs. 3, 4 at Abstract. The safety helmets of the invention include an outer shell that has a front side and rear side and

¹ All emphasis in textual quotations and color annotations and textual labels in figures has been added throughout, unless indicated to the contrary.

that can be reversible “such that one of the front side or the rear side is oriented above a face of the user when the outer shell is worn by the user.” Ex. 3 at 2:7-12.

The Asserted Helmet Patents depict the front receptacle in Figure 3 (reproduced and annotated below). As the specification explains, the “front tapered receiver slot 5 includes a tapered channel 16 formed between a pair of raised sidewalls 18 [green] and a stop, shown in the preferred embodiment as a protruding nub 17 [purple] extending from the surface of the hard outer shell 1 [brown] of the safety helmet 100.” *Id.* at 4:1-5.



Ex. 3, Fig. 3 (annotated)

To mount accessories, the specification explains that a mounting bracket 4 on an accessory (e.g., a headlamp device 200) “is in the form of a tapered clip 19 conforming to the tapered channel 16 such that it is retained by the raised sidewalls 18 when it is inserted into the tapered channel” and that a “slot 20 in the tapered clip 19 receives the protruding nub 17 on the hard outer shell 1 of the safety helmet 100 locking it into place.” *Id.* at 4:5-11.

IV. ARGUMENT

For the reasons set forth below, the Chief ALJ should adopt Milwaukee’s proposed constructions for the following terms:

Asserted Glow Fish Tape Patents – U.S. Patent Nos. 11,713,209 and 12,187,573			
Claim Term	Claim(s)	Klein’s Proposed Construction	Milwaukee’s Proposed Construction
1. transparent	’209 Patent – claims 1, 2, 3, 6, 8, 9, 10, 12, 13, 14, 16, 17, 18 ’573 Patent – claims 9, 11, 12, 16, 17, 18	Plain and ordinary meaning: “clear”	“clear material”
2. light passing through [the at least one of the sidewalls / the sidewalls / the portion]	’209 Patent – claims 1, 2, 3, 6, 8, 9, 14 ’573 Patent – claims 1, 2, 3, 6, 7, 8, 14	Plain and ordinary meaning: “light entering the case through [the at least one of the sidewalls / the sidewalls / the portion]”	“light passing through the material that forms [the at least one of the sidewalls / the sidewalls / the portion]”

Asserted Helmet Patents– U.S. Patent Nos. 11,452,327 and 12,268,265			
Claim Term	Claim(s)	Klein’s Proposed Construction	Milwaukee’s Proposed Construction
3. wherein the front receptacle and rear receptacle are of identical construction	’327 Patent – claims 1, 11, 16	Plain and ordinary meaning: “wherein the front receptacle and the rear receptacle have the same features”	“wherein the front receptacle and rear receptacle have exactly the same shaped, sized, and positioned components”
4. wherein the outer shell is reversible	’327 Patent – claims 1, 8	Plain and ordinary meaning: “wherein the outer shell is designed to be worn by a user in both forward and reverse orientations”	“wherein the front and back of the outer shell have substantially the same construction, such that the user’s view is not obstructed when the outer shell is oriented frontwards or backwards”
5. protruding nub	’327 Patent – claims 1, 2, 4, 8, 12, 16, 17	Plain and ordinary meaning: “small structure extending from a surface”	“small bump extending outwardly”

Asserted Helmet Patents– U.S. Patent Nos. 11,452,327 and 12,268,265			
Claim Term	Claim(s)	Klein’s Proposed Construction	Milwaukee’s Proposed Construction
6. stop	’327 Patent – claims 2, 9 ’265 Patent – claim 1	Plain and ordinary meaning: “structure that inhibits movement”	“small bump extending outwardly”
7. external slot	’327 Patent – claims 1, 2, 4, 5, 8, 9, 12, 13, 16, 17 ’265 Patent – claim 1	Plain and ordinary meaning: “slot formed on the exterior of the helmet”	“narrow groove between two sidewalls that protrude from the shell”
8. disposed centrally relative to the external slot	’327 Patent – claims 1, 8, 17	Plain and ordinary meaning: “between the outer bounds of the external slot”	“positioned in the middle of two sidewalls that protrude from the shell”

A. Asserted Glow Fish Tape Patents

1. Term 1: “transparent”

Asserted Claims	Klein’s Proposed Construction	Milwaukee’s Proposed Construction
’209 Patent – claims 1, 2, 3, 6, 8, 9, 10, 12, 13, 14, 16, 17, 18 ’573 Patent – claims 9, 11, 12, 16, 17, 18	Plain and ordinary meaning: “clear”	“clear material”

The term “transparent” appears throughout the claims of the ’209 Patent and the ’573 Patent. Ex. 1; Ex. 2. While the parties’ constructions are similar as both incorporate the term “clear,” Klein’s construction improperly seeks to broaden the scope of its claims to cover an empty space (*i.e.*, a hole or gap in the housing) in an effort to preserve its infringement arguments because the Accused Fish Tape Products do not have a transparent or clear material on the housing.

Instead, Milwaukee’s Accused Fish Tape Products only have open slots throughout the casing (*i.e.*, there is no material in those slots). As illustrated below, none of the casing material itself is transparent or clear; it is opaque (red).



Ex. 5 at 2-3 (Milwaukee's Accused 20' Glow Fish Tape (Model No. 48-22-4182))

Klein nonetheless asserts in its contentions that “at least **a portion of the case is transparent** to allow the luminescent material to be energized by light passing through the portion **because it is ‘windowed’ or has open ‘slots’** that allow light to pass through.” Ex. 5 at 2. However, Klein’s interpretation runs afoul of the intrinsic record. Milwaukee’s proposed construction, which requires a “material” that is transparent / clear, is consistent with the intrinsic record.

Starting first with the claims, nothing in the claim language states that the absence of material is within the scope of the term “transparent.” To the contrary, the claims repeatedly use the term “transparent” to describe a material property of physical structures:

- “at least one of the sidewalls of the case is transparent.” Ex. 1 at cl. 1.
- “both of the sidewalls of the case are transparent.” *Id.* at cl. 2.
- “at least one of the innermost and outermost walls is transparent.” *Id.* at cl. 3.
- “at least a portion of the case is transparent.” *Id.* at cls. 6, 14.

The specification further supports Milwaukee's construction. The specification discloses no alternative mechanism for delivering light to the fish tape, except light transmission through a transparent material. The specification recites the following:

- “At least a ***portion of the case is transparent*** to allow the luminescent material to be energized by light passing through the portion.” Ex. 1 at 1:53-55.
- “both of the ***sidewalls of the case are transparent*** to allow the luminescent material to be energized by light passing through the sidewalls.” *Id.* at 1:61-63.
- “at least one of the first and second ***components*** includes a ***transparent material***. In yet a further feature, both of the first and second ***components*** includes a ***transparent material***.” *Id.* at 2:7-10.

The repeated references to the case being transparent and the components which make up the case being made of a “transparent material” confirms that light reaches and energizes the luminescent tape by transmission through a material, not through a gap, hole, or other non-material opening. Even when discussing variations, the specification maintains that “in some applications it may be desirable for just one of the side walls 32 to be ***transparent***, with the other side wall 32 and the other walls 34 and 36 being ***opaque***.” *Id.* at 5:17-21. This distinction between transparent and opaque further confirms that the invention is directed to a ***clear material*** (*i.e.*, transparent material). The specification never states that a “transparent” case is a gap or hole in the case.

In fact, during prosecution, Klein expressly argued ***against*** the absence of material being considered “transparent.” In a Non-Final Rejection, the Examiner rejected claims 1-20 under 35 U.S.C. § 103 as being unpatentable over U.S. Patent Publication No. 2019/0292005 (“Miller”) in view of U.S. Patent No. 6,293,519 (“Farretta”). *See* Ex. 6 at 4-9, Non-Final Rejection (Jun. 8, 2022) at 2-7. Specifically, the Examiner cited Miller as teaching “wherein at least one of the ***sidewalls (FIG. 14 in view of FIG. 1, first clamshell 190)*** of the case (FIG. 14 in view of FIG. 1,

Figure 14 of Miller is reproduced below, which shows the first clamshell 190 with numerous slots 250 (*i.e.*, open spaces). Ex. 7 (Miller) at [0071], Fig. 14.



[T]here is nothing in Miller et al. that even hints at a *transparent sidewall*, let alone teaches a *transparent sidewall*, let alone further teaches such a sidewall that allows a luminescent material to be energized by light passing through such a sidewall. ... Further in this regard it is noted that the figures portray the drum 182 and clamshell 190 as being opaque rather than transparent, with not a single figure, or even a portion of a single figure, being illustrated to show a *transparent wall*. Indeed, FIGS. 14 and 19 show that the clamshell 190 blocks the view of the interior except where the interior can be view[ed] through the slots 250 that extend through the clamshell 190.

Ex. 6 at 12, Response to Non-Final Rejection (Sept. 8, 2022) at 2.

Notably, while Klein acknowledged that Miller described slots 250 extending through the clamshell (*i.e.*, the sidewall), it nonetheless explicitly argued to the Patent Office that these slots did not equate to “transparent” sidewalls as required by the claims. Klein’s interpretation of the term “transparent” in its attempt to distinguish the cited prior art further supports adopting Milwaukee’s construction to require a “clear **material**.” *See, e.g., Fenner Invs., Ltd. v. Cellco P’ship*, 778 F.3d 1320, 1323 (Fed. Cir. 2015) (“Any explanation, elaboration, or qualification presented by the inventor during patent examination is relevant, for the role of claim construction is to ‘capture the scope of the actual invention’ that is disclosed, described, and patented.”).

Accordingly, Milwaukee’s proposed construction should be adopted as it aligns with the intrinsic record and defines the material property of the required structure recited in the claims.

2. Term 2: “light passing through [the at least one of the sidewalls / the sidewalls / the portion]”

Asserted Claims	Klein’s Proposed Construction	Milwaukee’s Proposed Construction
’209 Patent – claims 1, 2, 3, 6, 8, 9, 14 ’573 Patent – claims 1, 2, 3, 6, 7, 8, 14	Plain and ordinary meaning: “light entering the case through [the at least one of the sidewalls / the sidewalls / the portion].	“light passing through the material that forms [the at least one of the sidewalls / the sidewalls / the portion]”

As with the term “transparent,” Klein’s proposed construction seeks to broaden the scope of this term to cover light passing through an open slot or gap in the housing, in another effort to preserve its infringement arguments. The claims of the ’209 Patent and the ’573 Patent require “light passing through” sidewalls of the case or a portion of the case to energize the luminescent material on the claimed fish tape. Klein seeks to broaden the scope of the claims to not only include light passing through a **material** that forms the sidewalls and/or a portion of the case, but also to encompass light merely passing through a slot or hole in the case. *See, e.g.,* Ex. 5 at 2 (asserting

that “at least a portion of the case is transparent to allow the luminescent material to be energized **by light passing through** the portion **because it is ‘windowed’ or has open ‘slots’ that allow light to pass through.**”).

Klein’s construction lacks support in the intrinsic record. Claims 1-4, 6, 8, 9, and 14 of the ’209 Patent and claims 1-3, 6-8, and 14 of the ’573 Patent all recite variations of: “light passing through [the at least one of the sidewalls / the sidewalls / the portion].” Ex. 1; Ex. 2. This phrasing ties the light’s path to a specific material property of the case. The claims do not refer to “light entering the case,” as argued by Klein, but instead describe a material property of the case resulting from the transmission of light through the sidewall. The claims never refer to this limitation as a structural property (*i.e.*, a gap or slot in the sidewalls). Milwaukee’s construction aligns with the claims and clarifies that the sidewalls must be made of a material that permits light to pass through the material.

Further, every reference to “light passing through” in the specification of the Asserted Fish Tape Patents is paired with a reference to the sidewall or portion of the case having the material property of transparency. For example, the specification recites: “light passing *through the transparent portion* and into the storage compartment 26.” Ex. 1 at 3:29-30. This disclosure confirms that the light must pass through a transparent material forming the sidewalls or portion of the case rather than through gaps, holes, or other openings in the case.

The prosecution history further supports Milwaukee’s interpretation. As discussed with respect to the term “transparent,” the Patent Office rejected the claims based on Miller, asserting that Miller teaches “wherein one of the **sidewalls (FIG. 14 in view of FIG. 1, first clamshell 190)** of the case (FIG. 14 in view of FIG. 1, fish tape drum 182) **is transparent to allow the**

luminescent material to be energized by light passing through the at least one of the sidewalls.” Ex. 6 at 5, Non-Final Rejection (Jun. 8, 2022) at 3.

Klein disagreed, noting in response that “there is **nothing in Miller** et al. that even hints at a transparent sidewall, let alone teaches a transparent sidewall, let alone further teaches such a **sidewall that allows a luminescent material to be energized by light passing through such a sidewall.”** Ex. 6 at 12, Response to Non-Final Rejection (Sept. 8, 2022) at 2.

While Klein acknowledged that Miller described slots 250 extending through the clamshell (*i.e.*, the sidewall), which would inevitably allow light to enter the case, Klein argued that this does not fall within the allowed scope of the claims. Klein’s interpretation further supports adopting Milwaukee’s construction. *See, e.g., Fenner*, 778 F.3d at 1323.

Accordingly, Milwaukee’s proposed construction should be adopted as it aligns with the intrinsic record and clarifies the structural requirements of the claims.

B. Asserted Helmet Patents

1. Term 3: “wherein the front receptacle and the rear receptacle are of identical construction”

Asserted Claims	Klein’s Proposed Construction	Milwaukee’s Proposed Construction
’327 Patent – claims 1, 11, 16	Plain and ordinary meaning: “wherein the front receptacle and the rear receptacle have the same features”	“wherein the front receptacle and the rear receptacle have exactly the same shaped, sized, and positioned components”

The parties’ dispute for this phrase centers around the meaning of the term “identical construction.” Klein argues that the phrase should be given a plain and ordinary meaning, which it says is “wherein the front receptacle and the rear receptacle have the *same features*.” But this is not the plain and ordinary meaning. The phrase “identical construction” requires the receptacles to have more than the same features. It requires the receptacles to be exactly the same, which is

confirmed by the intrinsic evidence and extrinsic dictionary definitions. As such, this term requires a match in shape, size, and position of the relevant components of the front and rear receptacles.

The claim language supports Milwaukee's construction. In the '327 Patent, independent claims 1 and 16, as well as dependent claim 11, each recites "wherein the front receptacle and the rear receptacle are of **identical** construction." Ex. 3 at cls. 1, 11, 16. While Milwaukee's construction gives meaning to the term "identical," Klein's proposed construction improperly seeks to read it out by broadening this term to merely the same features. Any interpretation that reads out the phrase "identical construction" would render the claim term meaningless. *See, e.g., Cat Tech LLC v. TubeMaster, Inc.*, 528 F.3d 871, 885 (Fed. Cir. 2008) (refusing to adopt a claim construction which would render a claim limitation meaningless); *Elekta Instrument S.A. v. O.U.R. Sci. Int'l, Inc.*, 214 F.3d 1302, 1305-07 (Fed. Cir. 2000) (refusing to adopt a claim construction which would render claim language superfluous).

The specification further supports Milwaukee's proposed construction. The term "identical" appears four times in the specification of the Asserted Helmet Patents. It first appears in the "Brief Summary of the Disclosure," which mirrors the claim language and states that the "front receptacle and the rear receptacle are of **identical** construction." Ex. 3 at 2:1-3. The other three occurrences of the word "identical" notably include the qualifier "substantially" before the word "identical":

- "As shown in FIGS. 7 and 9-13 in two alternative embodiments, the safety helmet 100 includes a rear tapered slot 11 that is **substantially identical** to the front tapered receiver slot 5." *Id.* at 4:31-34.
- "In this embodiment, the front tapered receiver slot 5 is **substantially identical** to the rear tapered receiver slot 1'." *Id.* at 5:52-54.
- "The safety helmet features a detachable mounted headlamp device 200 mounted via the mounting bracket 4 in a rear tapered receiver slot 11 **substantially identical** to the front tapered receiver slot 5 disposed on the hard outer shell 1' of the safety helmet 100." *Id.* at 6:10-14.

The inclusion of the word “substantially” before “identical” in some, but not all, instances in the specification confirms that Klein knew how to describe slight variations in the construction of the front and rear receptacle, but deliberately chose precise claim language allowing for no differences between the two receptacles. Nothing in the claims or specification indicates that Klein intended for “identical construction” to mean anything other than the front and rear receptacle “hav[ing] exactly the same shaped, sized, and positioned elements or components,” as Milwaukee proposes.

Moreover, the prosecution history of the '327 Patent further supports Milwaukee's construction. During prosecution, the Examiner rejected claims 1, 3-4, and 6-13 under 35 U.S.C. § 102 as being anticipated by U.S. Patent Application Publication No. 2014/0020159 (“Teetzel”). See Ex. 8 at 16-19, Non-Final Rejection (Jan. 29, 2021) at 6-9. In response, Klein attempted to distinguish Teetzel by arguing that the reference fails to teach the limitation “wherein the front and rear receptacle are of identical construction.” Specifically, Klein asserted:

the front connector 140 and the rear connector 164 are of different construction because they accommodate different devices that have different functions. ... the front connector accommodates a bracket (142) that is ‘adapted to attach a pivoting mount which allows the user to selectively move the optical or viewing device between a lower, operable position in front of the user’s eyes and to a raised, stowed position on the helmet out of the [line] of sight of the viewer. ... the rear connector ... includes a ‘mounting shoe’ for connecting to an electrical connector.

Ex. 8 at 30-31, Response to Non-Final Rejection (Apr. 7, 2021) at 10-11. Unpersuaded by this argument, the Examiner issued another rejection stating: “The front and back receptacles are openings and contacts 124, 126 as seen illustrated in Figures 4 and 5. The front receptacle is illustrated in Figure 4 and the back receptacle is illustrated in Figure 5, both the front and the back receptacles have openings 124 and contacts 126 with *the same size, arrangement, and structure making them identical receptacles.*” Ex. 8 at 41, Final Rejection (Apr. 19, 2021) at 7. Klein made no attempt to refute or argue around the Examiner’s construction in subsequent responses. See

Phillips, 415 F.3d at 1317 (noting that the prosecution history “provides evidence of how the PTO and the inventor understood the patent”). Accordingly, the term “identical construction” should be construed to mean the front receptacle and rear receptacle “having exactly the same shaped, sized, and positioned elements or components.”

Extrinsic evidence is consistent with Milwaukee’s proposed construction. For example, the American Heritage Dictionary defines the term “identical” as “[b]eing the same” and “[e]xactly equal and alike.” Ex. 9 at 4. Additionally, the Oxford Advanced Learner’s Dictionary defines the term “identical” as “similar in every detail.” Ex. 10 at 3. This extrinsic evidence further supports that the term “identical” conveys exactness.

Accordingly, Milwaukee’s proposed construction should be adopted as it aligns with the intrinsic record and properly gives meaning to *all* words in the claim.

2. Term 4: “wherein the outer shell is reversible”

Asserted Claims	Klein’s Proposed Construction	Milwaukee’s Proposed Construction
’327 Patent – claims 1, 8	Plain and ordinary meaning: “wherein the outer shell is designed to be worn by a user in both forward and reverse orientation.”	“wherein the front and back of the outer shell have substantially the same construction, such that the user’s view is not obstructed when the outer shell is oriented frontwards or backwards”

The parties’ dispute for this phrase centers on whether the claim only requires the capability of the outer shell being reversed, as Klein suggests, or whether the helmet needs to actually be usable when the outer shell is reversed, as Milwaukee suggests.

Independent claims 1 and 8 of the ’327 Patent recite: “wherein the outer shell is reversible *such that* one of the *front side or the rear side is oriented above a face of the user* when the outer shell is worn by the user.” Ex. 3. This language does not merely describe capability of reversing

the orientation of the helmet. It ties the concept of reversibility to a functional result that either the front or rear side of the outer shell is positioned above the user's face when worn. This result necessarily depends on a structural configuration in which the front and back of the helmet are substantially the same and allow for the helmet to be worn in either orientation without obstructing the user's view. Klein's construction improperly reads out the "such that" clause of the claims.

The specification further supports Milwaukee's construction. The specification states:

The safety helmet features a detachable mounted headlamp device 200 mounted via the mounting bracket 4 in a rear tapered receiver slot 11 substantially identical to the front tapered receiver slot 5 disposed on the hard outer shell 1' of the safety helmet 100. In this configuration, the light emanating from the light source 2 projects rearward of the safety helmet 100, illuminating the area in front of a user when the safety helmet is in its reverse orientation, with the brim 7 behind the wearer's head.

Ex. 3 at 6:10-18. The specification discloses that when the helmet is worn in a reverse orientation, the light source mounted at what is normally the rear of the helmet projects forward. This functionality would be wholly unnecessary unless, consistent with the above-emphasized claim language, the front and rear of the outer shell were substantially similar such that the user's view is not obstructed when the outer shell is oriented frontwards or backwards.

The file history of the '327 Patent further supports Milwaukee's construction. In its January 26, 2018 provisional application to which the '327 Patent claims priority, Klein stated in the specification:

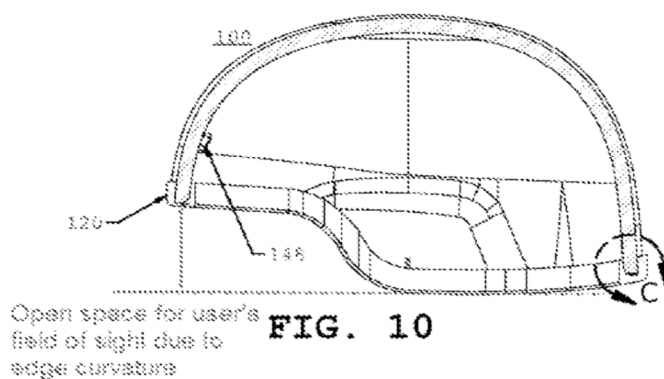
For a variety of reasons, it is common for typical users of safety helmets [to] often choose to wear their safety helmets in reverse orientation with the brim facing rearward. The reverse orientation is often advantageous in situations requiring the user of the safety helmet to ***look upward unobstructed by the brim of the helmet or simply to increase the user's field of vision.*** ... One benefit of the present invention allows a user to use the same portable device or headlamp with a safety helmet in both standard and reverse safety helmet orientation.

Ex. 11 at [0011], [0013]. This language indicates Klein's intention that the term "reversible" requires the outer shell to have substantially the same structure in the forward and rearward facing

directions such that the user's vision is not obstructed when the outer shell is in a reverse orientation.

Additionally, during prosecution of the '327 Patent, the examiner rejected claim 1, 3-4 and 6-13 under 35 U.S.C. § 102 as being anticipated by Teetzel because, *inter alia*, Teetzel had an outer shell (110) that is capable of being reversed. Ex. 8 at 16, Non-Final Rejection (Jan. 29, 2021) at 6. In response, Klein argued that Teetzel did not include a reversible shell because “the brim of the helmet is raised in the front (left side of the figure) and drops towards the back (right side of the figure) such that, if the helmet was oriented with the rear portion aligned with the wearer's face, the helmet would obstruct the user's view. Such orientation would be inconsistent with a normal and expected use of a helmet such as Teetzel's, and would impede the user's activities while wearing the helmet (especially in a combat environment as contemplated by Teetzel).” Ex. 8 at 29, Response to Non-Final Rejection (Apr. 7, 2021) at 9. In its response, Klein included an annotated drawing of Fig. 10 of Teetzel, as shown below.

Teetzel's FIG. 10 is reproduced below with annotations to illustrate this point:



Id. Klein also argued that “Applicant respectfully submits that Teetzel does not describe or suggest that the outer shell is ‘reversible’ as recited in claim 1, nor would it be obvious to modify Teetzel

in this fashion as the base structure taught by Teetzel involves front and rear sides of the helmet to be at different heights...” *Id.* at 30. Klein’s arguments distinguishing the invention over that of Teetzel further supports Milwaukee’s construction.

Klein’s construction, on the other hand, provides an overly broad interpretation that captures any outer shell that a user might wear backwards, regardless of whether the design permits safe or functional use in that orientation. The intrinsic record makes clear that the limitation requires more than mere capability of reversibility.

Accordingly, Milwaukee’s proposed construction should be adopted as it aligns with the intrinsic record and properly gives meaning to *all* words in the claim.

3. Terms 5 and 6: “protruding nub” / “stop”

Asserted Claims	Klein’s Proposed Construction	Milwaukee’s Proposed Construction
5. protruding nub: '327 Patent – claims 1, 2, 4, 8, 12, 16, 17	Plain and ordinary meaning: “small structure extending from a surface”	small bump extending outwardly
6. stop: '327 Patent – claims 2, 9 '265 Patent – claim 1	Plain and ordinary meaning: “structure that inhibits movement”	small bump extending outwardly

The parties’ threshold dispute is whether the terms “protruding nub” and “stop” should be construed to mean the same thing. While different claim terms can, in general, be afforded different meanings, this is not an absolute rule. “Different terms or phrases in separate claims may be construed to cover the same subject matter where the written description and prosecution history indicate that such a reading of the terms or phrases is proper.” *Edwards Lifesciences LLC v. Cook Inc.*, 582 F.3d 1322, 1330 (Fed. Cir. 2009) (internal citations omitted). Here, the intrinsic record makes clear that the terms “protruding nub” and “stop” are directed to the same subject matter and should be given the same construction, as proposed by Milwaukee.

The secondary dispute centers on the precise construction of these terms, and Milwaukee's construction best aligns with the plain and ordinary meaning of the term, as well as the intrinsic evidence, and it should be adopted.

First, although Klein uses the term “stop” in some claims and “protruding nub” in other claims, the intrinsic record confirms that each term refers to the *same* structure in the Asserted Helmet Patents. The independent claims of the '327 Patent describe the front receptacle on the safety helmet as having an “external slot . . . and a **protruding nub**” with claims 1, 8, and 17 further stating that the protruding nub is “**integrally molded** with the outer shell.” Ex. 3 at cls. 1, 8, 16, 17. Although the '265 Patent swaps the term “protruding nub” for “stop,” it covers the same subject matter by requiring the front receptacle on the safety helmet to have a “**stop** . . . wherein the **stop is integrally molded** with the exterior surface of the outer shell.” Ex. 4 at cl. 1.

The specification confirms that the terms cover the same subject matter and thus should be construed to have the same meaning. The term “stop” did not appear in the original specification with the specification instead only referring to a “protruding nub.” Ex. 8 at 2-9, Specification (Jan. 14, 2019). Klein only added the word “stop” to the specification after the Patent Office objected to the specification during prosecution of the '327 Patent for failing to provide support for claim language that recited “wherein the front receptacle includes a receiver slot flanked by raised walls and including a **stop**” Ex. 8 at 13, Non-Final Rejection (Jan. 29, 2021) at 3. In response to this rejection, Klein amended the specification as follows:

[0018] The mounting bracket 4 and front tapered receiver slot 5 are one exemplary embodiment for releasably connecting the device 200 to the safety helmet 100. As also shown in FIGS. 3 and 4, the front tapered receiver slot 5 includes a tapered channel 16 formed between a pair of raised sidewalls 18 and a stop, shown in the preferred embodiment as a protruding nub 17 extending from the surface of the hard outer shell 1 of the safety helmet 100. The mounting bracket 4 is in the form of a tapered clip 19 conforming to the

Ex. 8 at 22, Specification (Apr. 7, 2021) at 2.

In the Remarks, the only explanation offered by Klein for this amendment was that it was provided “for clarity, consistency with the claims, and to correct an informality,” but at no point did Klein explain how a “stop” would structurally differ from a “protruding nub.” Ex. 8 at 28, Response to Non-Final Rejection (Apr. 7, 2021) at 8. Notably, Klein did not add the word “stop” anywhere else in the specification, instead leaving the specification as originally filed to only refer to a “protruding nub” as the invention. Ex. 3 at 4:8-15, 5:64-6:6. Klein expressly equated the “stop” and the “protruding nub.” Accordingly, the terms should be construed to have the same meaning.

With respect to the second issue, and with the understanding that “stop” and “protruding nub” should be construed to have the same meaning, the intrinsic record confirms Milwaukee’s proposed construction. The claim language of the ’327 Patent indicates that a “protruding nub” is a physical structure that extends outwardly from the exterior of the helmet. Independent claims 1 and 8 recite: “wherein the *protruding nub is integrally molded with the outer shell ... and directly onto the exterior surface of the outer shell* at an upward location away from the brim.” Ex. 3 at cls. 1, 8. This language confirms that the “protruding nub” is part of the helmet’s outer geometry and must project outward from the shell. Neither the claims nor the specification describes the nub as a surface feature or internal component, but instead, that the protruding nub is a physical structure that must extend outwardly from the exterior surface of the helmet.

The specification also supports Milwaukee’s proposed construction. The specification states: “a *protruding nub 17 extending from the surface* of the hard outer shell 1 of the safety helmet.” Ex. 3 at 4:4-5. This language supports that the “protruding nub” is a distinct feature extending outwardly from the helmet’s surface. The specification further recites that a separate accessory clip includes a slot that “*receives the protruding nub 17 ... locking [the clip] into place.*”

Ex. 3 at 4:8-11. Here, the term “receives” reinforces that the nub must project outwardly from the helmet surface to interact with the clip.

Finally, extrinsic evidence also supports Milwaukee’s proposed construction. For example, the American Heritage Dictionary defines the term “nub” as a “small lump.” *See* Ex. 9 at 5. Milwaukee’s proposed construction is “**small bump** extending outwardly,” which is consistent with this extrinsic evidence.

Klein’s construction for “protruding nub” of “small structure extending from a surface” is an attempt to encompass a recess, as is included Klein’s domestic industry products. A nub or a stop, as described above, is not a recess.

Accordingly, Milwaukee’s proposed constructions for the terms “protruding nub” and “stop” should be adopted as they align with the intrinsic and extrinsic evidence and clarify the structural similarity between the two terms.

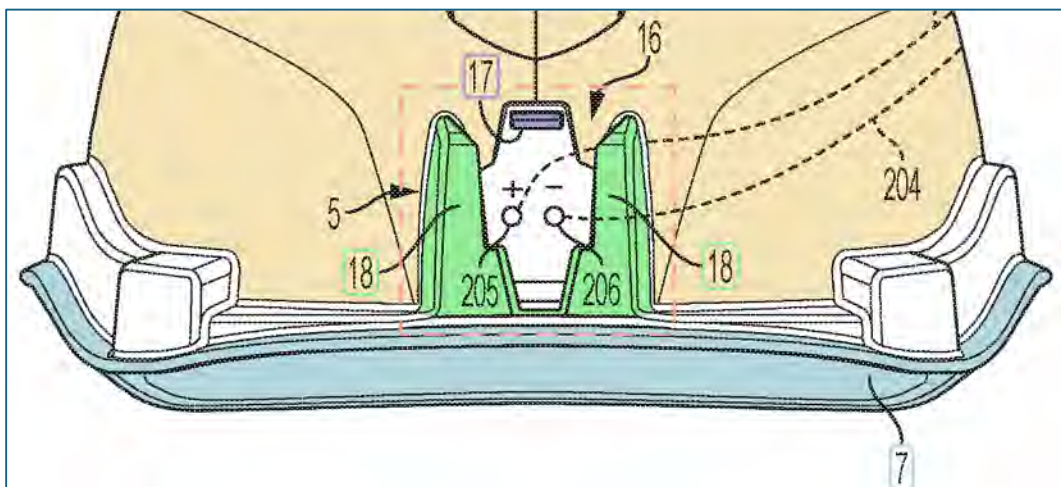
4. Term 7: “external slot”

Asserted Claims	Klein’s Proposed Construction	Milwaukee’s Proposed Construction
’327 Patent – claims 1, 2, 4, 5, 8, 9, 12, 13, 16, 17 ’265 Patent – claim 1	Plain and ordinary meaning: “slot formed on the exterior of the helmet”	“narrow groove between two sidewalls that protrude from the shell”

The parties dispute whether the word “slot” needs to be more specifically defined, as well as what it means to be an “external slot” as that term is used in the Asserted Helmet Patents. While Klein merely restates the claim word “slot” in its construction, which offers no guidance, Milwaukee’s proposed construction aligns with the meaning of the term “external slot” when read in the context of the intrinsic record.

The claims of the ’327 Patent and the ’265 Patent describe the “external slot” as part of the front receptacle and rear receptacle. *See, e.g.*, Ex. 3 at cl. 1 (“a front receptacle having an external

slot extending upwardly along the front side on the exterior surface of the outer shell”; “a rear receptacle having an additional external slot disposed on the rear side on the exterior surface of the outer shell”). The term “external slot” appears only once in the specification. The specification states that, as “**shown in FIG. 3**, the protruding nub is centrally disposed relative to the **external slot**.” Ex. 3 at 6:4-5. Although this passage does not specifically label the “external slot” on Figure 3, an external slot (*i.e.*, a narrow groove) exists between the two projecting sidewalls 18 (green) with the protruding nub 17 (purple) being centrally disposed relative to that external slot. The narrow groove shown in Figure 3 is further consistent with extrinsic evidence, which defines the term “slot” as “[a] narrow opening or groove.” Ex. 9 at 6-7.



Ex. 3, Fig. 3

Milwaukee’s construction thus comports with the meaning of the term “slot” while providing meaning for the modifying language “external” that is consistent with how the term is used in the intrinsic record.

In contrast, Klein’s construction of an “external slot” being a “slot formed on the exterior of the helmet” offers no clarification as to the meaning of the term. It merely restates the claim language “slot” and reads in the positional requirement of “on the exterior of the helmet,” which

is already recited in other claims. *See, e.g.*, Ex. 3 at cl. 1 (“**external slot** extending upwardly along the front side **on the exterior surface** of the outer shell”). Thus, Klein’s proposed construction should be rejected because it renders other claim terms superfluous. *See Merck & Co. v. Teva Pharm. USA, Inc.*, 395 F.3d 1364, 1372 (Fed. Cir. 2005) (“A claim construction that gives meaning to all the terms of the claim is preferred over one that does not do so.”).

Accordingly, Milwaukee’s proposed construction should be adopted as it aligns with the intrinsic record and clarifies the structural requirements of the “external slot.”

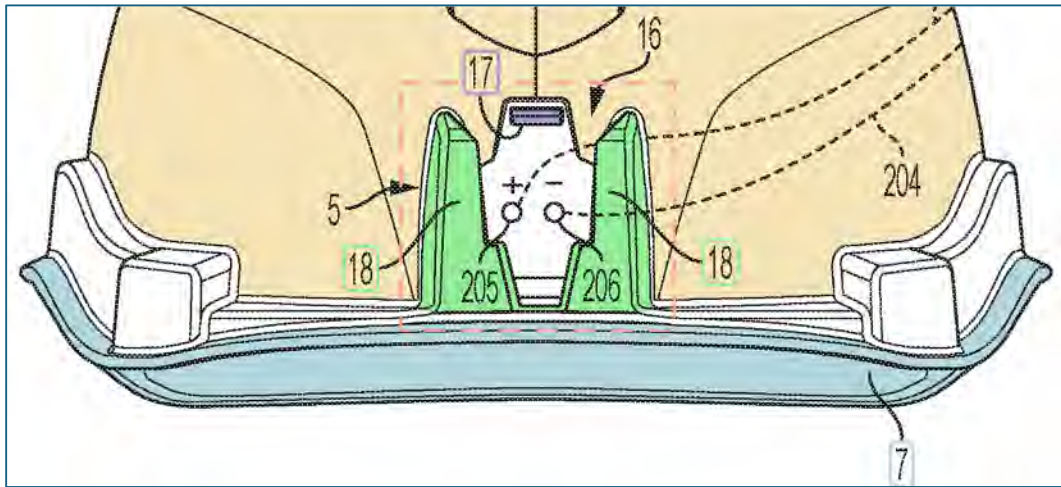
5. Term 8: “disposed centrally relative to the external slot”

Asserted Claims	Klein’s Proposed Construction	Milwaukee’s Proposed Construction
’327 Patent – claims 1, 8, 17	Plain and ordinary meaning: “between the outer bounds of the external slot”	“positioned in the middle of two sidewalls that protrude from the shell”

The parties’ dispute for this term is largely focused on the meaning of the term “centrally,” which has a plain and ordinary meaning of “[s]ituated at, in, or near the center” (*i.e.*, “the middle”). *See, e.g.*, Ex. 9 at 3. Milwaukee’s construction is consistent with the plain and ordinary meaning, while Klein’s construction effectively reads out the term “centrally” by only requiring that the protruding nub be located somewhere between the extreme boundaries of the external slot. Klein’s construction also introduces ambiguity by including the ambiguous phrase “outer bounds” as a point of reference. Milwaukee’s construction, in contrast, aligns with the intrinsic record and maintains the proper claim scope.

The claims require that the “protruding nub” be disposed centrally relative to the external slot. Ex. 3 at cls. 1, 8, 17. For example, the specification describes Figure 3 (reproduced below, annotated), as follows: “As **shown in FIG. 3**, the protruding nub 17 is **centrally disposed** relative to the external slot.” Ex. 3 at 6:3-5. Consistent with this description, Figure 3, depicted below, shows that the protruding nub 17 is centrally positioned (*i.e.*, in the middle) of the external slot—

i.e., in the middle of the two tapered raised sidewalls 18. Thus, the proper construction of term 3 is: “positioned in the middle of two sidewalls that protrude from the shell.”



Ex. 3, Fig. 3

Accordingly, Milwaukee’s proposed construction should be adopted because it is consistent with the intrinsic record and clarifies the structural requirements of the “external slot” and the spatial relationship between the protruding nub and sidewalls.

V. CONCLUSION

For the foregoing reasons, Milwaukee respectfully requests that the Chief ALJ adopt its proposed constructions for the disputed terms.

WORD COUNT CERTIFICATION

The undersigned herby certifies that this Brief includes 6,844 words, as calculated pursuant to Ground Rule 1.7. This Brief therefore complies with the word limitation of Ground Rule 7.2

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Respectfully submitted,

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