

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

KLEIN TOOLS, INC.,
Petitioner,

v.

MILWAUKEE ELECTRIC TOOL CORPORATION and
KETER HOME AND GARDEN PRODUCTS, LTD.,
Patent Owner.

IPR2024-01400 (Patent 11,365,026 B2)
IPR2024-01401 (Patent 11,794,952 B2)¹

Before COKE MORGAN STEWART, *Acting Under Secretary of
Commerce for Intellectual Property and Acting Director of the United States
Patent and Trademark Office.*

ORDER

Granting Director Review, Vacating the Decision Granting Institution, and
Denying Institution of *Inter Partes* Review

¹ This order applies to each of the above-listed proceedings.

IPR2024-01400 (Patent 11,365,026 B2)

IPR2024-01401 (Patent 11,794,952 B2)

Milwaukee Electric Tool Corporation and Keter Home and Garden Products, Ltd. (collectively, “Patent Owner”) filed a request for Director Review of the Decision granting institution (“Decision,” Paper 17) in each of the above-captioned cases, and Klein Tools, Inc. (“Petitioner”) filed an authorized response to each request. *See* Paper 19 (“DR Request”); Paper 20.² In each request, Patent Owner argues that the Board erred in its fact-finding as to *Fintiv*³ factors 1, 4, and 6—likelihood of a stay in the parallel proceeding, overlap between issues raised in the petition and the parallel proceeding, and the strength of the Petition’s merits, respectively. DR Request 6–15. Petitioner responds that the Board thoroughly considered the *Fintiv* factors. Paper 20, 1–5.

The Board’s analysis of factors 1 and 4, and overall weighing of the *Fintiv* factors were erroneous. *See* Decision 14–20. The Board did not give enough weight to the lack of a stay, or the fact that a stay was unlikely, in the parallel International Trade Commission (“ITC”) investigation. *See id.* at 14–15. Nor did the Board sufficiently consider the extent of overlap between the two proceedings. *See id.* at 16–19. Under the proper analysis, factors 1 and 4 weigh in favor of denial. Here, the ITC investigation is unlikely to be stayed, and the ITC already has conducted a full evidentiary hearing and is scheduled to issue a final determination six months before the statutory deadline for the Board’s final written decision. *See id.* at 15–16. Further, the ITC investigation involves the same parties, the same

² All citations are to the record in IPR2024-01400. Similar papers were filed in IPR2024-01401.

³ *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 5–6 (PTAB Mar. 20, 2020) (precedential).

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challenged claims, and includes overlapping prior art references. *Id.* at 17–19.

With respect to factor 6, under *Fintiv*'s holistic assessment, the merits of the Petitions do not outweigh the other factors, which all favor denial. *Id.* at 19. Thus, a holistic analysis of all the circumstances demonstrates that the efficiency and integrity of the system are best served by denying institution.

In consideration of the foregoing, it is:

ORDERED that Director Review is granted;

FURTHER ORDERED that the Board's Decision granting institution of *inter partes* review (Paper 17) is vacated; and

FURTHER ORDERED that the Petition is *denied*, and no trial is instituted.

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