

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN STORAGE CONTAINERS
AND TOOLBOXES, ORGANIZERS,
COMPONENT BOXES, AND COOLERS**

Investigation No. 337-TA-1409

**NOTICE OF A COMMISSION DECISION TO REVIEW A FINAL DETERMINATION
IN PART; SCHEDULE FOR FILING WRITTEN SUBMISSIONS
ON THE ISSUES UNDER REVIEW AND ON
REMEDY, THE PUBLIC INTEREST, AND BONDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to review in part the Chief Administrative Law Judge's ("CALJ's") final initial determination ("FID") finding a violation of section 337 with respect to U.S. Patent Nos. 11,365,026 ("the '026 patent"); 11,794,952 ("the '952 patent"); and 11,952,167 ("the '167 patent") (collectively, "the Asserted Patents"). The Commission requests briefing from the parties on certain issues under review, as set forth in this notice. The Commission also requests briefing from the parties, interested persons, and government agencies on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 708-2532. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 19, 2024, based upon a complaint filed on behalf of Milwaukee Electric Tool Corporation of Brookfield, Wisconsin and Keter Home and Garden Products Ltd. of Israel (collectively, "Complainants"). 89 FR 58764-65 (July 19, 2024). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337"), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain storage containers and toolboxes, organizers,

component boxes, and coolers by reason of infringement of certain claims of the '026 patent, the '952 patent, and the '167 patent. The Commission's notice of investigation named as the respondent Klein Tools, Inc. of Lincolnshire, Illinois. The Office of Unfair Import Investigations is not a party to this investigation.

Over the course of the investigation, Complainants withdrew certain asserted claims. *See* Order No. 15 (Jan. 24, 2025), *unreviewed by* Comm'n Notice (Feb. 18, 2025); Order No. 19 (Feb. 11, 2025), *unreviewed by* Comm'n Notice (Feb. 24, 2025); Order No. 20 (Feb. 27, 2025), *unreviewed by* Comm'n Notice (Mar. 13, 2025). The asserted claims that remain are claims 4 and 8 of the '026 patent; claims 3, 4, 8, and 16 of the '952 patent; and claims 2, 5, 8, 14, and 15 of the '167 patent. *See* Order No. 20 at 2 n.1.

On August 1, 2025, the CALJ issued the FID, which finds a violation of section 337 finding all of the asserted patent claims recited above infringed and not invalid. The FID also finds that the domestic industry requirement has been satisfied for each of the Asserted Patents pursuant to section 337(a)(3)(A) and (B). The FID declined to make findings as to whether Complainants have satisfied the domestic industry requirement under section 337(a)(3)(C).

On August 15, 2025, Klein filed a petition for Commission review of the FID as to the economic and technical prongs of the domestic industry requirement, and invalidity based on certain prior art. On August 28, 2025, Complainants filed a response to the petition.

On September 2, 2025, Complainants filed a public interest submission pursuant to Commission Rule 210.50(a)(4)(i), 19 CFR 210.50(a)(4)(i). The Commission did not receive any submissions pursuant to the *Federal Register* notice published after issuance of the RD. *See* 90 FR 38175-76 (Aug. 7, 2025).

Having reviewed the record of the investigation, including the final FID, the parties' submissions to the ALJ, the petition for Commission review and the response thereto, the Commission has determined to review the FID in part. Specifically, the Commission has determined to review the FID's findings concerning the economic prong of the domestic industry requirement, patent invalidity, and the technical prong of the domestic industry requirement, as well as any underlying claim construction findings. The Commission has determined not to review the remainder of the FID's findings.

In accordance with its review, the Commission requests responses to the following questions. The parties are requested to brief their positions with reference to the applicable law and the existing evidentiary record.

- (1) In connection with Complainants' reliance on activities at Milwaukee's Cookeville facility, if the Commission were to consider Keter's foreign manufacturing of Milwaukee-branded domestic industry articles as part of the relevant contextual inquiry for the existence of a domestic industry, please explain whether Complainants presented sufficient evidence to the ALJ to show the existence of a domestic industry.

- (2) Under a holistic approach to the domestic industry analysis consistent with the Federal Circuit's holding in *Wuhan Healthgen Biotechnology Corp. v. Int'l Trade Comm'n*, 127 F.4th 1334, 1339 (Fed. Cir. 2025), please explain whether Complainants presented sufficient evidence to the ALJ to show the asserted investments significant pursuant to section 337(a)(3)(A) and (B). Under such a holistic approach, is Complainant required to compare its domestic investments in engineering, research, and design or in manufacturing of the DI products to its foreign manufacturing costs of the DI products, including Keter's foreign manufacturing costs? See *Certain Soft Projectile Launching Devices, Components Thereof, Ammunition, and Products Containing Same*, Inv. No. 337-TA-1325 (Jan. 5, 2026) (including Separate Views of Chair Karpel in Dissent); *Certain Movable Barrier Operator Systems and Components Thereof*, Inv. No. 337-TA-1118, Comm'n Op. at 26 (Jan. 12, 2021).
- (3) If the Commission were to set aside Milwaukee's investment in its Olive Branch facility, please explain whether and why there is a domestic industry, under 19 U.S.C. 1337(a)(3)(A) or (a)(3)(B).
- (4) Please explain whether Milwaukee has demonstrated substantial investment in the exploitation of the Asserted Patents under 19 U.S.C. 1337(a)(3)(C). Please explain the nexus between the asserted patents and the domestic investments, including in view of the asserted patents' apparent depiction of the domestic industry articles. Also please explain the relevance, if any, of the FID's nexus findings for the commercial success factor of the objective indicia of nonobviousness as to the requisite nexus for a domestic industry under 19 U.S.C. 1337(a)(3)(C).
- (5) Please explain whether and how the date of the 3|2015 catalog (RX-0183) affects the FID's finding that Klein failed to demonstrate that the Auer system is prior art.

The parties are invited to brief only the discrete issues requested above. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia*, (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and a cease and desist order would have on: (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

In its initial submission, the complainants are also requested to identify the remedy sought and Complainants are requested to submit proposed remedial orders for the Commission's consideration. The complainants are further requested to state the dates that the asserted patents expire, to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. All initial written submissions, from the parties and/or third parties/interested government agencies, and proposed remedial orders from the parties must be filed no later than close of business on February 4, 2026. All reply submissions must be filed no later than the close of business on February 11, 2026. Opening submissions from the parties are limited to 35 pages. Reply submissions from the parties are limited to 25 pages. All submission from third parties and/or interested government agencies are limited to 10 pages. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above pursuant to 19 CFR 210.4(f). Submissions should refer to the investigation number (Inv. No. 337-TA-1409) in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures*, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary, (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed with the Commission and served on any parties to the investigation within two business days of any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on January 21, 2026.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton", enclosed in a thin black rectangular border.

Lisa R. Barton
Secretary to the Commission

Issued: January 21, 2026