

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

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

Investigation No. 337-TA-1442

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW IN PART A
FINAL INITIAL DETERMINATION FINDING A VIOLATION OF SECTION 337;
REQUEST FOR WRITTEN SUBMISSIONS ON THE ISSUES UNDER REVIEW,
REMEDY, BOND, AND THE PUBLIC INTEREST**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“the Commission”) has determined to review in part a final initial determination (“FID”) issued by the presiding chief administrative law judge’s (“CALJ”) in the above-captioned investigation finding a violation of section 337 of the Tariff Act of 1930, and to solicit briefing on the issues under review as well as remedy, bonding, and the public interest.

FOR FURTHER INFORMATION CONTACT: Carl Bretscher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, D.C. 20436, telephone 202-205-2382. 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: On March 19, 2025, the Commission instituted this investigation based on a complaint, as supplemented, filed by Klein Tools, Inc., of Lincolnshire, Illinois (“Klein”) alleging violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain glow fish tape systems, safety helmet systems, and components thereof by reason of the infringement of asserted claims 1, 3-8, 10-11, and 13-17 of U.S. Patent Nos. 11,452,327 (“the ’327 patent”); claims 6, 8-9, 11, and 14-17 of U.S. Patent No. 11,713,209 (“the ’209 patent”); and

claims 1-2, 4, 6-8, 10, and 14-17 of U.S. Patent No. 12,187,573 (“the ’573 patent”). 90 FR 12790. The complaint further alleges that a domestic industry exists. *Id.* The Commission’s notice of investigation named as respondent Milwaukee Electric Tool Corporation, of Brookfield, Wisconsin (“Milwaukee”). *Id.* The Office of Unfair Import Investigations is not participating in the investigation. *Id.*

On May 30, 2025, the Commission amended the notice of investigation to include allegations of infringement of claims 1-4 of U.S. Patent No. 12,268,265 (“the ’265 patent”). Order No. 6 (May 1, 2025), *unreviewed by* Comm’n Notice (May 30, 2025). The ’265 patent and related ’327 patent are referred to collectively herein as the “Helmet Patents.” The ’209 patent and related ’573 patent are referred to collectively herein as the “Glow Fish Tape Patents.”

On December 12, 2025, the Commission partially terminated the investigation with respect to claims 1, 3-7, 11, and 16 of the ’327 patent; claims 11 and 14-17 of the ’209 patent; and claims 1-2, 4, 10, and 14-17 of the ’573 patent. Order No. 14 (Nov. 20, 2025), *unreviewed by* Comm’n Notice (Dec. 12, 2025). On January 28, 2026, the Commission partially terminated the investigation with respect to claims 13-15 of the ’327 patent, claims 8 and 9 of the ’209 patent, and claims 7 and 8 of the ’573 patent.

On January 20, 2026, the Commission granted Klein’s motion for summary determination that it satisfied the domestic industry requirement for the Glow Fish Tape Patents. Order No. 17 (Dec. 19, 2025), *unreviewed by* Comm’n Notice (Jan. 20, 2026).

The presiding CALJ held an evidentiary hearing from January 5-8, 2026. By the time of the hearing, the claims of the Helmet Patents still at issue for infringement or domestic industry purposes were claims 8, 10, and 17 of the ’327 patent and claims 1-4 of the ’265 patent. The claims of the Glow Fish Tape Patents still at issue for either purpose were claims 1, 5, and 6 of the ’209 patent and claims 1, 5, and 6 of the ’573 patent.

On June 5, 2026, the CALJ issued the FID. With respect to the Helmet Patents, the FID finds that: (i) Milwaukee infringed the ’265 patent but not the ’327 patent; (ii) the asserted claims of the Helmet Patents are not invalid; and (iii) Klein satisfied both the technical and economic prongs of the domestic industry requirement for both Helmet Patents. FID at 216. With respect to the Glow Fish Tape Patents, the FID finds that: (i) Milwaukee did not infringe either the ’209 patent or ’573 patent; (ii) the asserted claims of the Glow Fish Tape Patent are not invalid; and (iii) Klein also satisfied the technical prong of the domestic industry requirement with respect to claim 6 of each Glow Fish Tape Patent (the economic prong having already been decided by Order No. 14, *supra*). *Id.* The FID concludes that Milwaukee violated section 337 with respect to the ’265 patent (a Helmet Patent) but not the ’327 patent or either of the Glow Fish Tape Patents. *Id.*

The FID includes the CALJ's Recommendation on Remedy and Bond ("RD"). The CALJ recommends that if a violation is found, the Commission should issue a limited exclusion order ("LEO") and cease and desist order ("CDO") against Milwaukee with respect to the asserted claims of the '265 patent. The RD also recommends that the Commission set a bond in the amount of 100 percent of the entered value of covered hard hats and safety helmet products that may be imported during the 60-day period of Presidential review.

On June 22, 2026, both Milwaukee and Klein filed petitions or contingent petitions for review of certain adverse findings in the FID. Milwaukee filed a petition for review of: (i) the FID's construction and infringement findings for the '265 patent; (ii) its finding that the asserted claims of the Helmet Patents are not invalid as obvious under 35 U.S.C. 103 or for lack of sufficient written description under 35 U.S.C. 112(a); (iii) its finding that the claims of the Glow Fish Tape Patents are not invalid as obvious; and (iv) its finding that Klein satisfied the technical and economic prongs of the domestic industry requirement for the Helmet Patents. Klein, in turn, filed a contingent petition for review of: (i) the FID's construction and non-infringement findings for the '327 patent; (ii) its construction and non-infringement findings for the Glow Fish Tape Patents; and (iii) its finding that copying is not among the objective indicia of non-obviousness of the Glow Fish Tape Patents. On June 30, 2026, the parties filed their respective responses to the opposing party's petition.

On July 10, 2026, Klein's counsel submitted a letter to the Commission identifying certain allegedly false statements in Milwaukee's opposition to Klein's petition. On the same date, Milwaukee's counsel submitted a response, to which it attached a copy of a letter to Klein's counsel dated July 8, 2026, explaining why Milwaukee's representations are allegedly correct. Upon review of the letters, the Commission has declined to consider them because they are not permissible under the Commission's rules.

On July 15, 2026, the Commission issued a notice requesting submissions on public interest issues raised by the recommended relief, should the Commission find a violation. 91 FR 43402-03 (July 15, 2026). The Commission has not received any third-party responses to its request.

Upon review of the FID, the petitions for review and responses thereto, and the evidence of record, the Commission has determined to review the following findings in the FID. With respect to the Helmet Patents, the Commission has determined to review the FID's finding that: (i) the asserted claims of the '265 patent and '327 patent are not obvious under 35 U.S.C. 103 and (ii) Klein satisfied the economic prong of the domestic industry requirement. With respect to the Glow Fish Tape Patents, the Commission has determined to review: (i) the construction of the claim term "wherein at least a portion

of the case is configured to allow the luminescent material to be energized by light passing through the portion” in the ’573 patent and related findings; (ii) the finding of non-infringement of the ’209 and ’573 patents, both literal and under the doctrine of equivalents; and (iii) the finding that the asserted claims of the Glow Fish Tape Patents are not invalid as obvious. The Commission has determined not to review the remainder of the FID.

The parties are asked to provide additional briefing on the following issues under review:

- (1) Explain whether the evidence and argument presented by Milwaukee show that a person skilled in the art at the time of the invention of the Helmet Patents would have been motivated or have any reason to combine the prior art Chinese Patent Publication CN 202026888 U to Yan with (i) U.S. Patent No. 9,993,043 to Daley; (ii) U.S. Patent No. 4,304,009 to Nesbitt; and/or (iii) German Patent Application DE 20 2006 007 009 U1 to Kiessler to produce the claimed inventions of the Helmet Patents with a reasonable likelihood of success.
- (2) With respect to the Glow Fish Patents, explain whether the passage of light through a solid transparent material versus passage of light through an open slot or window affects the “way” the light energizes the luminescent surface of the fish tape and its relevance, if any, to analyzing infringement under the doctrine of equivalents.
- (3) Regarding the proposed combination of the prior art European Patent Application Publication EP 1391412 (“Hartranft”) with U.S. Patent No. 6,293,519 (“Farretta”), explain whether either reference teaches away from such a combination, whether there is a motivation or reason to combine the references, and the extent to which the alleged objective indicia of non-obviousness are directed to the claimed inventions of the Glow Fish Tape Patents versus other, unclaimed features.
- (4) 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 Klein presented sufficient evidence to the ALJ to show the asserted investments significant pursuant to section 337(a)(3)(B) or substantial pursuant to section 337(a)(3)(C) for the Helmet Patents. Under such a holistic approach, does the record contain evidence to enable the Commission to compare the domestic investments in engineering, research, and design or in manufacturing of the DI products to foreign manufacturing and other foreign costs of the DI products? *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). For the Helmet Patents, in comparing domestic labor or capital investments relating to the DI products to foreign investments to demonstrate significance, what foreign investments are relevant? Citing to the evidentiary record, what evidence is on record regarding Klein’s foreign investments?

- (5) The FID found a certain number of “Texas-Made Hard Hats” and “Customized Hard Hats” were manufactured from 2023 to 2024, and found an associated amount of domestic manufacturing labor costs. FID at 208. Please explain, using the evidence in the record, how Klein was able to produce this amount of hats with the amount of domestic manufacturing labor costs cited.

The parties are invited to brief only the discrete issues requested above, with reference to the applicable law and limited to arguments and evidence in the existing evidentiary record. The parties are not to brief any 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 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. *See* 19 U.S.C. 1337(d)(1). 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, Complainant is also requested to identify the remedy sought and to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the dates the Asserted Patents will expire, the HTSUS subheadings under which the accused products are imported, and 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 the close of business on September 18, 2026. All reply submissions must be filed no later than the close of business on September 25, 2026. Opening submissions from the parties are limited to **45** pages. Reply submissions from the parties are limited to **30** pages. All submissions 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-1442) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/secretary/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 September 3, 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 within a large, loopy oval shape.

Lisa R. Barton
Secretary to the Commission

Issued: September 3, 2026