

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

COMMISSION OPINION

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I. INTRODUCTION

On January 21, 2026, the Commission determined to review in part the final initial determination (“FID”) issued by the presiding Chief Administrative Law Judge (“CALJ”) on August 1, 2025. 91 Fed. Reg. 3219-21 (Jan. 26, 2026). Specifically, the Commission 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 determined not to review the remainder of the FID’s findings. On review, the Commission has determined that there has been a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“section 337”), with respect to U.S. Patent Nos. 11,365,026 (“the ’026 patent”) and 11,794,952 (“the ’952 patent”). The Commission has not reached a final determination with respect to U.S. Patent No. 11,952,167 (“the ’167 patent”).

In summary, the Commission has determined to: (1) set aside the FID’s finding as to the date of the Auer Catalog, but otherwise affirm the FID’s finding that Klein failed to show by clear and convincing evidence that any asserted claim of the ’026, ’952, or ’167 patents was invalid; (2) vacate the FID’s alternative reasoning that the technical prong would be satisfied even under Klein’s claim construction proposal for “rib extending [away] from the back wall,” but otherwise affirm the FID’s finding that the technical prong of the domestic industry requirement is satisfied for each asserted claim of the ’026, ’952, and ’167 patents; and (3) affirm under modified reasoning the FID’s finding that the economic prong of the domestic industry requirement is satisfied under subsection 337(a)(3)(B) with respect to the ’026 and ’952 patents.

The Commission therefore finds a violation as to the ’026 and ’952 patents, thus reaching a final determination as to those patents. *See* 19 U.S.C. § 1337(c). This opinion sets forth the Commission’s reasoning in support of its determination as to the ’026 and ’952 patents.

II. BACKGROUND

A. Procedural History

The Commission instituted this investigation on July 19, 2024, based upon a complaint filed on behalf of Milwaukee Electric Tool Corporation of Brookfield, Wisconsin (“Milwaukee”) and Keter Home and Garden Products Ltd. of Israel (“Keter”) (collectively, “Complainants”). 89 Fed. Reg. 58764-65 (July 19, 2024). The complaint, as supplemented, alleges violations of 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, ’952, and ’167 patent. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The Commission’s notice of investigation named as the respondent Klein Tools, Inc. of Lincolnshire, Illinois (“Klein”). 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 as to each of the asserted patent claims. Specifically, the FID finds that each and every asserted patent claim is infringed and not invalid. The FID further finds that the technical prong of the domestic industry requirement is met for each patent. Finally, the FID finds that the economic prong is satisfied under subsection 337(a)(3)(A) and (B) and, accordingly, does not reach the issue of

whether the economic prong is satisfied under subsection 337(a)(3)(C).

The FID also includes the CALJ’s Recommended Determination (“RD”) on remedy and bonding. Specifically, the RD recommends, if the Commission finds a violation of section 337, the issuance of a limited exclusion order (“LEO”), a cease and desist order (“CDO”) against Klein, and bond in the amount of 63 percent of the entered value of infringing articles imported during the period of Presidential review.

On August 15, 2025, Klein filed a petition for Commission review of the FID as to construction of the limitation “rib extending away from the back wall” recited in every asserted claim, the economic and technical prongs of the domestic industry requirement, and invalidity based on certain prior art.¹ On August 25, 2025, Complainants filed a response to the petition.²

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

On January 21, 2026, the Commission determined to review the FID with respect to the economic and technical prongs of the domestic industry requirement, patent invalidity, and any underlying claim construction findings. 91 Fed. Reg. at 3220. The Commission sought briefing from the parties on certain issues under review and from the parties, interested government agencies, and other interested parties on remedy, the public interest, and bonding. *Id.*

¹ Klein’s Pet. for Rev. of the Initial Determination (Aug. 15, 2025) (“Pet.”).

² Complainants’ Resp. to Respondents’ Pet. for Rev. of the Initial Determination (Aug. 25, 2025) (“Pet. Resp.”).

On February 4, 2026, the Commission received initial submissions from the parties.³ On February 11, 2026, the Commission received reply submissions from the parties.⁴ The Commission received no other submissions.

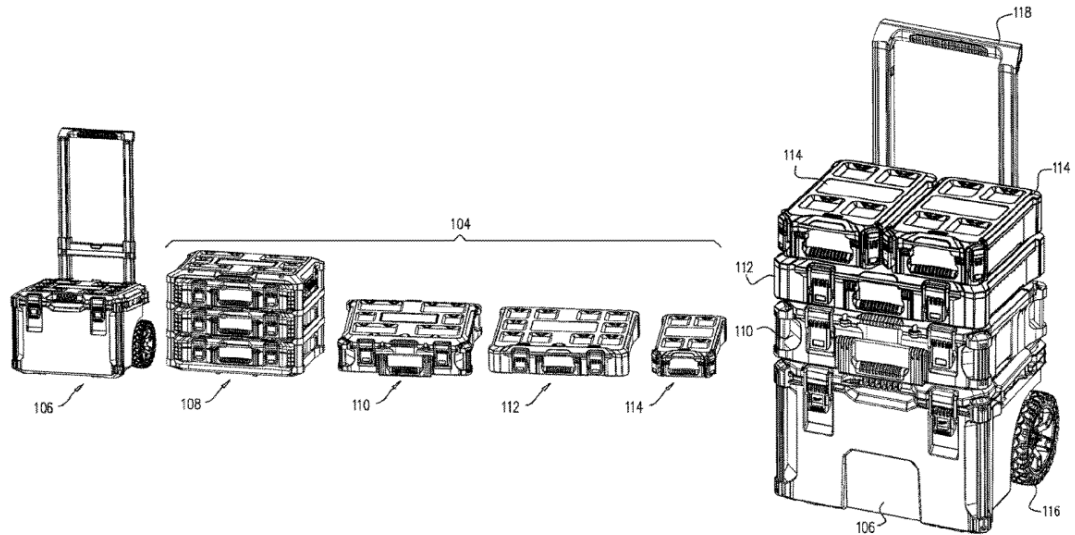
B. The Asserted Patents

The technology at issue in this investigation relates to coupling mechanisms for interlocking containers together. The '952, '167, and '026 patents (together “the Asserted Patents”) are related and share a common specification. They each claim priority through an assortment of continuation applications to a provisional application dated May 2, 2016, and a first-filed non-provisional application dated April 30, 2017.

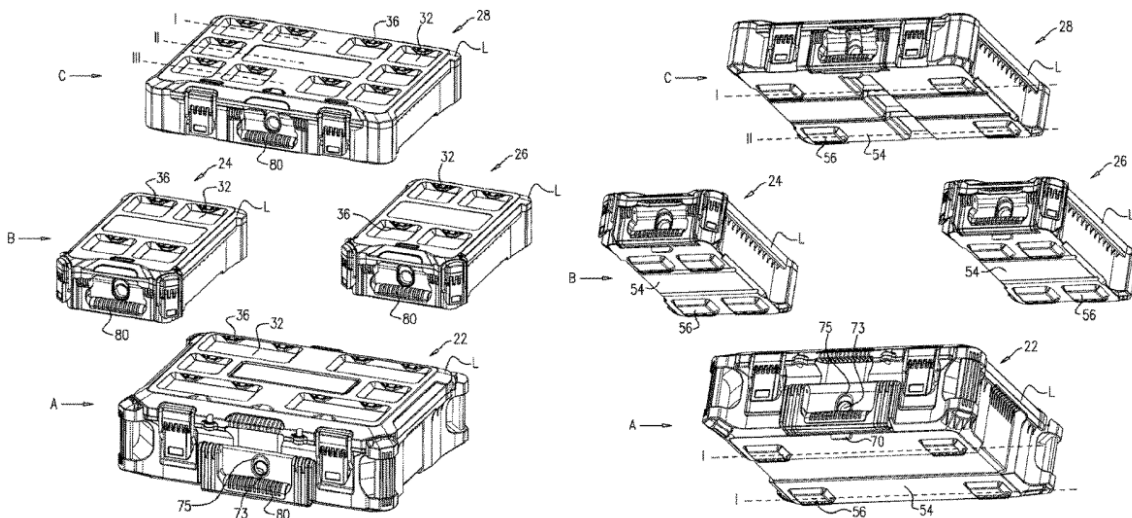
The cover page of the '952 patent shows Figures **6A** and **6B** beside one another. The figure on the left (**6A**) shows a modular collection of (rolling) base container **106**, drawer modules **108**, tool caddy module **110**, compartmented storage module **112**, and half-sized compartmentalized storage modules **114**. The figure on the right (**6B**) shows most of those containers stacked on one another:

³ Complainants’ Response to the Commission’s Notice to Review a Final Determination in Part (Feb. 4, 2026) (“Compl. Init. Sub.”); Klein’s Opening Brief in Response to Commission Notice (Feb. 4, 2026) (“Klein Init. Sub.”).

⁴ Complainants’ Rebuttal to Klein’s Responses to the Commission’s Notice to Review a Final Determination in Part (Feb. 11, 2026) (“Compl. Rep. Sub.”); Klein’s Responsive Brief in Response to Commission Notice (Feb. 11, 2026) (“Klein Rep. Sub.”).



JX-0001C ('952 patent) (cover page). What makes this stacking possible is the interlocking relationship between the top surface of one module and the bottom surface of another module. In particular, the bottom surface of each module has protrusions that slide into grooves in the top surface of another module. This is shown on the cover page of the '167 patent, which includes Figures 1B (module tops) and 1C (module bottoms) beside each other:



'167 patent (cover page). The asserted claims cover the specific structures for the interlocking—faces; sidewalls; couplers; bumpers; and the like.

All of the Asserted Patents include the same convention of a first container including a grooved top surface and a bottom container including a top surface with protrusions. For the '952 patent, Complainants assert dependent claims 3, 4, 8, and 16 for both infringement and the technical prong. Each of those claims depends directly on unasserted independent claim 1. The limitations of independent claim 1 cover a “container assembly” with, in relevant part, a “first container” that includes the grooved top surface, and a “second container” that includes the bottom surface with protrusions.

1. [Pre] A container assembly comprising:

[a] a first container comprising:

[a.i] a first coupler extending from a top face of the first container, the first coupler comprising two sidewalls, a back wall, and *a rib*, the back wall located between the two sidewalls, the two sidewalls and the back wall projecting above a depressed surface of the top face, and *the rib extending away from the back wall in a first direction*;

[a.ii] a first lid pivotally attached to the first container; and

[a.iii] a first toggle locking latch configured to latch the first lid of the first container in a closed position; and

[b] a second container comprising:

[b.i] a second coupler extending from the second container, the second coupler comprising a tongue extending in a direction parallel to a bottom face of the second container, the tongue extends in a second direction opposite the first direction, the tongue of the second container is engageable with the rib of the first container such that the tongue engages between the rib and the depressed surface;

[b.ii] a second lid pivotally attached to the second container;

[b.iii] a second toggle locking latch configured to latch the second lid of the second container in a closed position;

[b.iv] a front face;

[b.v] a first side face;

[b.vi] an opposing second side face;

[b.vii] a first corner bumper coupled to the second container between the front face and the first side face, the first corner bumper defining a first outer surface that faces away from each of the front face and the first side face; and

[b.viii] a second corner bumper coupled to the second container between the front face and the second side face, and the second corner bumper defining a second outer surface that faces away from each of the front face and the second side face;

[b.ix] wherein the first and second couplers of the first and second containers engage each other when the first and second containers are slid with respect to each other along a sliding path defined by the rib and the tongue;

[c] a locking latch arresting location defined by one of the first container or the second container; and

[d] a locking latch coupled to the other of the first container or the second container, the locking latch positionable in a locked position engaging the locking latch arresting location thereby limiting sliding displacement of the first container with respect to the second container.

9. [Pre] A container assembly comprising:

[a] a first container comprising:

[a.i] a first coupler extending from a top face of the first container, the first coupler comprising two sidewalls, a back wall, and a rib, the back wall located between the two sidewalls, the two sidewalls and the back wall projecting above a depressed surface of the top face, and *the rib extending away from the back wall in a first direction*;

[a.ii] a first lid pivotally attached to the first container; and

[a.iii] a first toggle locking latch configured to latch the first lid of the first container in a closed position; and

[b] a second container comprising:

[b.i] a second coupler extending from the second container, the second coupler comprising a tongue extending in a direction parallel to a bottom face of the second container, the tongue extends in a second direction opposite the first direction, the tongue of the second container is engageable with the rib of the first container such that the tongue engages between the rib and the depressed surface, wherein the second coupler of the second container extends from the bottom face of the second container such that the tongue is offset from at least a portion of the bottom face of the second container and wherein the rib engages between the tongue and the bottom face of the second container;

[b.ii] a second lid pivotally attached to the second container; and

[b.iii] a second toggle locking latch configured to latch the second lid of the second container in a closed position;

[b.iv] wherein the first and second couplers of the first and second containers engage each other when the first and second containers are slid with respect to each other along a sliding path defined by the rib and the tongue;

[c] a locking latch arresting location defined by one of the first container or the second container; and

[d] a locking latch coupled to the other of the first container or the second container, the locking latch positionable in a locked position engaging the locking latch arresting location thereby limiting sliding displacement of the first container with respect to the second container.

JX-0001C ('952 patent) (emphasis added).

For the '167 patent, Complainants assert dependent claims 2, 5, 8, 14, and 15 for both infringement and the technical prong. Claims 2, 5, and 8 depend directly from unasserted independent claim 1. Claim 14 depends on claim 1 through unasserted dependent claim 13. Claim 15 is an independent claim. The relevant claims read as follows:

1. [Pre] A container assembly comprising:

[a] a first container comprising:

[a.i] a first lid pivotally attached to the first container;

[a.ii] a first female coupler at a top face of the first lid;

[a.iii] a first front face, a first side face, an second side face opposite the first side face, the first front face, the first side face, and the second side face collectively partially defining a storage compartment;

[a.iv] a first corner extending between the first front face and the first side face, and a second corner extending between the first front face and the second side face;

[a.v] a first corner bumper extending outward from the first corner; and

[a.vi] a second corner bumper extending outward from the second corner;

[a.vii] wherein the first corner bumper defines an outer surface that extends past and faces away from each of the first front face and the first side face, and wherein the second corner bumper defines an outer surface that extends past and faces away from each of the first front face and the second side face; and

[a.viii] a first locking latch arresting location; and

[b] a second container comprising:

[b.i] a male coupler extending from a bottom face of the second container, the male coupler configured to slidably engage with the first female coupler of the first container, wherein the first female coupler and male coupler engage each other when the first and second containers are slid with respect to each other;

[b.ii] a second lid pivotally attached to the second container; and

[b.iii] a locking latch positionable in a locked position engaging the first locking latch arresting location thereby limiting sliding displacement of the first container with respect to the second container;

[c] wherein the first female coupler comprises two sidewalls, a back wall, and a ***first rib***, the back wall located between the two sidewalls, the two sidewalls and the back wall projecting above a depressed surface of the top face of the first lid, and ***the first rib extending away from the back wall in a first direction towards the first front face of the first container***;

[d] wherein the second container comprises a second female coupler at a top face of the second lid, the second female coupler comprising two sidewalls, a back wall, and a ***second rib***, the back wall located between

the two sidewalls, the two sidewalls and the back wall projecting above a depressed surface of the top face of the second lid, and *the second rib extending away from the back wall towards a front face of the second container and the first front face of the first container*; and

[e] wherein the first container defines a width axis parallel to the first front face of the first container and the second container defines a width axis parallel to the first front face of the first container, wherein the width axis of the second container is approximately one-half the width axis of the first container.

15. A container assembly comprising:

[a] a first container comprising:

[a.i] a first lid pivotally attached to the first container;

[a.ii] a first female coupler at a top face of the first lid;

[a.iii] a first front face, a first side face, an second side face opposite the first side face, the first front face, the first side face, and the second side face collectively partially defining a storage compartment;

[a.iv] a first corner extending between the first front face and the first side face, and a second corner extending between the first front face and the second side face;

[a.v] a first corner bumper extending outward from the first corner; and

[a.vi] a second corner bumper extending outward from the second corner;

[a.vii] wherein the first corner bumper defines an outer surface that extends past and faces away from each of the first front face and the first side face, and wherein the second corner bumper defines an outer surface that extends past and faces away from each of the first front face and the second side face; and

[a.viii] a first locking latch arresting location; and

[b] a second container comprising:

[b.i] a male coupler extending from a bottom face of the second container, the male coupler configured to slidingly engage with the first female coupler of the first container, wherein the first female

coupler and male coupler engage each other when the first and second containers are slid with respect to each other;

[b.ii] a second lid pivotally attached to the second container; and

[b.iii] a locking latch positionable in a locked position engaging the first locking latch arresting location thereby limiting sliding displacement of the first container with respect to the second container;

[c] the first container comprising a plurality of female couplers including the first female coupler, the plurality of female couplers at the top face of the first lid, the first container comprising a second locking latch arresting location; and

[d] the container assembly comprising a third container comprising:

[d.i] a second male coupler extending from a bottom face of the third container, the second male coupler configured to slidably engage with one of the plurality of female couplers of the first container, wherein the second male coupler and the at least one of the plurality of female couplers engage each other when the first and second containers are slid with respect to each other;

[d.ii] a third lid pivotally attached to the third container;

[d.iii] a third female coupler at a top face of the third lid, the third female coupler comprising two sidewalls, a back wall, and a *first rib*, the back wall located between the two sidewalls, the two sidewalls and the back wall projecting above a depressed surface of the top face of the third lid, and *the first rib extending away from the back wall towards a front face of the third container and the front face of the first container*; and

[d.iv] a second locking latch positionable in a locked position engaging the second locking latch arresting location thereby limiting sliding displacement of the third container with respect to the first container.

16. The container assembly of claim 9, wherein the first container further comprises a pair of rear wheels and a telescoping handle extending upwards from a rear wall of the first container.

JX-0003C ('167 patent) (emphasis added).

For the '026 patent, Complainants assert dependent claims 4 and 8 for both infringement and the technical prong. Claim 4 is dependent on unasserted claim 1 through unasserted

dependent claims 2 and 3. Claim 8 is directly dependent on claim 1. The limitations of the dependent claims are not at issue. The claims read as follows:

1. [Pre] A container assembly comprising:

[a] a first container comprising:

[a.i] a first coupler extending from a first face of the first container, the first coupler comprising two sidewalls, a back wall, and *a rib*, the back wall located between the two sidewalls, the two sidewalls and the back wall projecting from a depressed surface of the first face, and *the rib extending from the back wall in a first direction*;

[a.ii] a lid pivotally attached to the first container; and

[a.iii] a toggle locking latch configured to latch the lid of the first container in a closed position;

[b] a second container comprising:

[b.i] a second coupler extending from a second face of the second container, the second coupler comprising a tongue offset from the second face, the tongue extends in a second direction opposite the first direction, the tongue of the second container is engageable with the rib of the first container;

[b.ii] a lid pivotally attached to the second container; and

[b.iii] a toggle locking latch configured to latch the lid of the second container in a closed position;

[b.iv] wherein the first and second couplers of the first and second containers engage each other when the first and second containers are slid with respect to each other along a sliding path defined by the rib and the tongue;

[c] a locking latch arresting location defined by one of the first container or the second container; and

[d] a locking latch coupled to the other of the first container or the second container, the locking latch positionable in a locked position engaging the locking latch arresting location thereby limiting sliding displacement of the first container with respect to the second container.

JX-0001C ('026 patent) (emphasis added).

C. The Accused Products

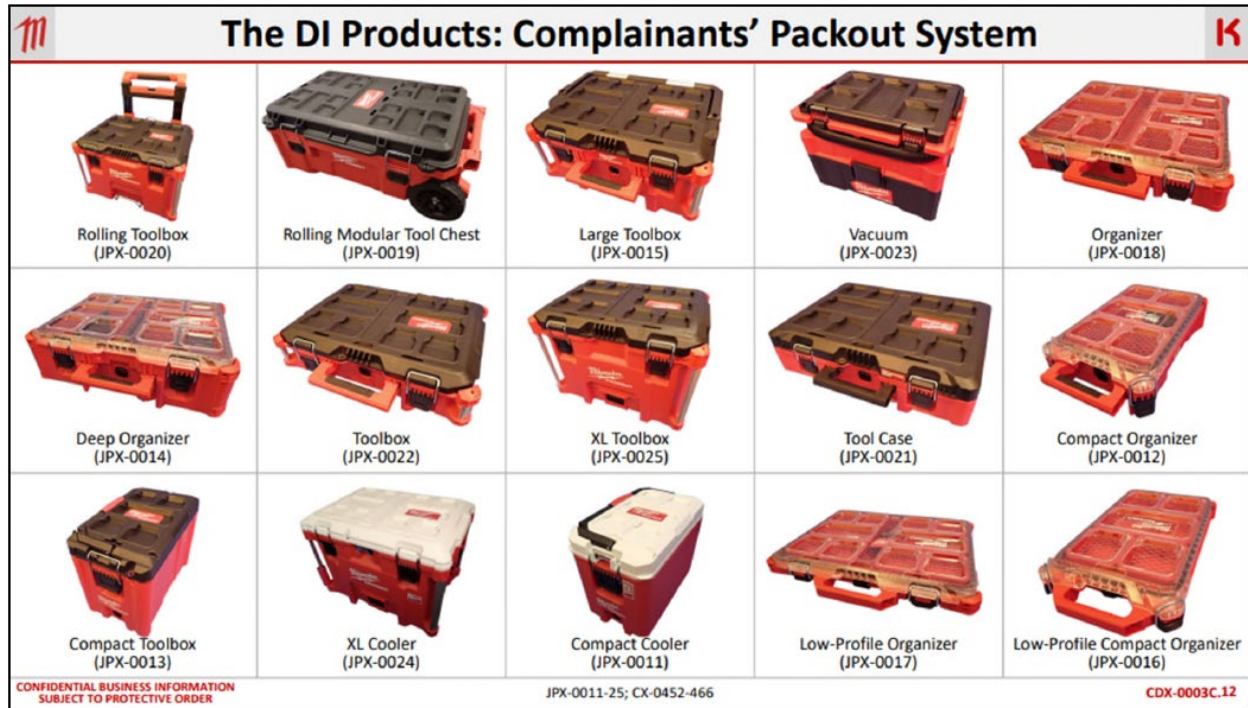
The accused products are 10 of Klein's interlockable storage containers, tool boxes, component boxes, and coolers:



Complainants' Initial Post-Hearing Brief at 6 (Feb. 28, 2025) ("Compl. IPHB") (quoting CDX-0003.14).

D. The Domestic Industry Products

The domestic industry products are Milwaukee-branded interlockable storage containers, tool boxes, organizers, component boxes, and coolers. Complainants assert that the domestic industry products are the following 15 products, which are sold on a standalone basis:



Compl. IPHB at 5 (citing CDX-0003C.12). The domestic industry products also include 21 kits, which involve packaging one of the above 15 products with tools or accessories. *Id.* at 6 (citing CDX-0003C.13). The standalone products and kits correspond as follows:

Standalone Product (with SKU)	Kit (with SKU)
Rolling Toolbox (48-22-8426)	PACKOUT™ Electrician Kit (48-22-0140) PACKOUT™ Plumber Kit (48-22-0141) PACKOUT™ MRO Kit (48-22-0142)
Rolling Modular Tool Chest (48-22-8428)	None
XL Toolbox (48-22-8429)	None
Large Toolbox (48-22-8425)	PACKOUT™ Electrician Kit (48-22-0140) PACKOUT™ Plumber Kit (48-22-0141) PACKOUT™ MRO Kit (48-22-0142)

Toolbox (48-22-8424)	PACKOUT™ Electrician Kit (48-22-0140) PACKOUT™ Plumber Kit (48-22-0141) PACKOUT™ MRO Kit (48-22-0142)
Tool Case (48-22-8450)	None
Compact Toolbox (48-22-8422)	None
XL Cooler (48-22-8462)	None
Compact Cooler (48-22-8460)	None
Vacuum (0970-20)	None
Deep Organizer (48-22-8432)	None
Organizer (48-22-8430)	204PC Class B Type III PACKOUT™ First Aid Kit (48-73-8430) 193PC Class B Type III PACKOUT™ First Aid Kit (48-73-8430C) 76 PC Class A Type III PACKOUT™ First Aid Kit (48-73-8435) 79 PC Class A Type III PACKOUT™ First Aid Kit (48-73-8435C) SHOCKWAVE Impact Duty™ Socket 1/2" Dr 31 PC PACKOUT™ Set (49-66-6806)
Low-Profile Organizer (48-22-8431)	SHOCKWAVE Impact Duty™ 1" Drive 7PC MM & SAE Wheel Service Socket PACKOUT™ Set (49-66-6805) 106pc 1/4" and 3/8" Metric & SAE Ratchet and Socket Set with PACKOUT™ Low-Profile Organizer (48-22-9486) 47pc 1/2" Drive Ratchet and Socket Set with PACKOUT™ Low- Profile Organizer (48-22-9487)

Compact Organizer (48-22-8435)	SHOCKWAVE Impact Duty™ Socket 1/2” Dr 15 PC SAE PACKOUT™ Set (49-66-6802) SHOCKWAVE Impact Duty™ Socket 1/2” Dr 16 PC MM PACKOUT™ Set (49-66-6803) SHOCKWAVE Impact Duty™ Socket 1/2” Dr 27 PC MM & SAE PACKOUT™ Set (49-66-6804) SHOCKWAVE Impact Duty™ Socket 3/8” Dr 36 PC PACKOUT™ Set (49-66-7840) HOLE DOZER Bi-Metal Hole Saw Kit with PACKOUT™ Compact Organizer 10 PC (49-22-5606) 9 PC BIG HAWG™ with Carbide Teeth Hole Saw Kit w/ PACKOUT™ Compact Organizer (49-56-9295)
Low-Profile Compact Organizer (48-22-8436)	SHOCKWAVE Impact Duty™ Socket 3/8” Dr 17 PC SAE PACKOUT™ Set (49-66-6800) SHOCKWAVE Impact Duty™ Socket 3/8” Dr 19 PC SAE PACKOUT™ Set (49-66-6801) 3/8” Drive 28pc Ratchet & Socket Set with PACKOUT™ Low-Profile Compact (48-22-9481) 32pc 3/8” Metric Ratchet and Socket Set with PACKOUT™ Low-Profile Compact Organizer (48-22-9482)

CDX-0003C.13 (as corrected by FID at 20 n.5); CDX-0001C.9.⁵ These 15 standalone products and 21 kits constitute the “DI Products.”

⁵ Although Complainants’ IPHB defines the DI Products as including “SHOCKWAVE Impact Duty Driver Bit PACKOUT Set – 100PC (SKU 48-32-4082),” IPHB at xii, the IPHB omits that product from its description to the DI Products, *id.* at 6, and does not assert how that product satisfies the technical prong, *id.* at 9-10, 66-67, 95-96. Accordingly, the Commission finds that Complainants failed to carry their burden of proof on the economic prong regarding SHOCKWAVE Impact Duty Driver Bit PACKOUT Set – 100PC (SKU 48-32-4082).

III. COMMISSION REVIEW OF THE FINAL ID

When the Commission reviews an initial determination, in whole or in part, it reviews the determination *de novo*. *Certain Electronic Stud Finders, Metal Detectors and Electrical Scanners*, Inv. No. 337-TA-1221, Comm’n Op. at 9 (Feb. 15, 2022) (citations omitted), *aff’d*, *Zircon Corp. v. Int’l Trade Comm’n*, 101 F.4th 817 (Fed. Cir. 2024). Upon review, the “Commission has ‘all the powers which it would have in making the initial determination,’ except where the issues are limited on notice or by rule.” *Certain Electronic Devices, Including Streaming Players, Televisions, Set Top Boxes, Remote Controllers, and Components Thereof* (“*Streaming Players*”), Inv. No. 337-TA-1200, Comm’n Op. at 7 (Nov. 10, 2021) (citations omitted), *aff’d*, *Roku, Inc. v. Int’l Trade Comm’n*, 90 F.4th 1367 (Fed. Cir. 2024). With respect to the issues under review, “the Commission may affirm, reverse, modify, vacate, or remand for further proceedings, in whole or in part, the initial determination of the administrative law judge.” 19 C.F.R. § 210.45(c). The Commission also “may take no position on specific issues or portions of the initial determination,” and “may make any finding or conclusions that in its judgment are proper based on the record in the proceeding.” *Id.*; *see also Beloit Corp. v. Valmet Oy*, 742 F.2d 1421, 1423 (Fed. Cir. 1984).

IV. ANALYSIS

The Commission’s findings, conclusions, and supporting analysis follow. The Commission affirms and adopts the ID’s findings, conclusions, and supporting analysis that are not inconsistent with the Commission’s opinion.

A. Validity

Patent invalidity is an affirmative defense to an action for infringement before the Commission. 35 U.S.C. § 282(b); 19 U.S.C. § 1337(c) (“All legal and equitable defenses may be presented in all cases.”); *Guangdong Alison Hi-Tech Co. v. Int’l Trade Comm’n*, 936 F.3d 1353,

1359 (Fed. Cir. 2019)). A patent claim is invalid as obvious if “the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains.” 35 U.S.C. 103. A reference counts as a prior art reference if the claimed invention was “in public use” or “on sale” “before the effective filing date of the claimed invention.” 35 U.S.C. 102(a)(1). A party cannot establish that a reference was “in public use” or “on sale” based on uncorroborated witness testimony. *Finnigan Corp. v. U.S. Int’l Trade Comm’n*, 180 F.3d 1354, 1367 (Fed. Cir. 1999). All factual propositions and inferences underlying an invalidity defense must be proven by clear and convincing evidence. *Microsoft Corp. v. I4I Ltd. P’ship*, 564 U.S. 91, 95 (2011).

1. FID

Klein argued, *inter alia*, that all of the asserted claims of all three Asserted Patents were invalid as obvious in view of the Auer Packaging Toolbox Pro System (RPX-0001-07) (the “Auer System”). FID at 216. The FID rejected Klein’s invalidity argument by finding that Klein failed to establish by corroborated testimony that the Auer System was in public use or on sale prior to the effective filing date of the claimed invention—May 2, 2016. *Id.* at 219-30. Although the FID finds that Phillipp Auer⁶ and Michael Perl⁷ testified that the Auer System was in public use at the FachPack 2015 trade fair from September 29-October 1, 2015, the FID finds that Klein failed to corroborate that testimony. *Id.* at 220-27.

⁶ Phillipp Auer is the Chief Marketing Office of Auer Packaging GmbH (“Auer”), which manufactures the Auer system. RX-0176.1.

⁷ Michael Perl is a freelance designer who did work for Auer on its Tool Box Pro product. RX-0167.7.

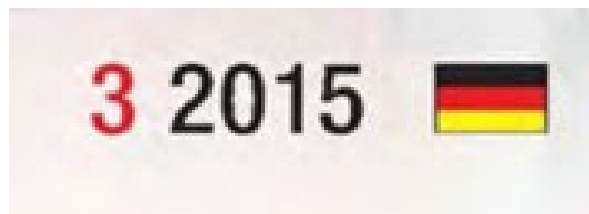
Klein argued that the testimony as to public use of the Auer System was corroborated based on: (1) undated and unauthenticated low-resolution photographs purportedly taken at FachPack 2015, RX-0182; (2) two contemporaneous German patents that were purportedly practiced by the products in public use at FachPack 2015, RX-0186, RX-0187; (3) an undated video that might be only a rendering, JX-0012 (Perl. Dep.) at 109:17-110:12; (4) a CAD drawing made in January of 2017, JX-0012 (Perl Dep.) at 66:15-67:7; and (5) an Auer Catalog from 2015 indicating that Auer would be present at FachPack 2015, RX-0183.

The FID, however, finds that none of that evidence corroborated what products Auer displayed at FachPack 2015 or whether the displayed products satisfied every limitation of every asserted claim. FID at 221-24. The FID also supported its finding that Klein had not shown what products were in public use at FachPack 2015 based on: (1) evidence that the Auer System had several versions over a period of time, Tr. (Cameron) at 925:1-926:1; Tr. (Nayfeh) at 1123:21-1124:8.; (2) Mr. Auer's testimony that the Auer System had not yet launched as of April 29, 2016, RX-0176.1-5 (Auer Decl.) ¶¶ 54-57; (3) Mr. Perl's testimony that there have been changes to the Auer System, JX-0012 (Perl Dep.) at 29:19-22; and (4) a CAD drawing made for the Auer System in January of 2017, well after FachPack 2015, JX-0012 (Perl Dep.) at 66:15-67:7. *Id.* at 224-26.

The FID also finds that Klein failed to show that the Auer System was on sale prior to May 2, 2016. FID at 227-30. Although Klein provided an Auer Catalog indicating that the Auer System would be "[a]vailable starting in 2016," the FID finds that: (1) "[a]vailable starting in 2016" does not mean before May 2, 2016; (2) Philip Auer's testimony indicates that the Auer System was not released as late as April 29, 2016; and (3) the Auer Catalog merely depicts

renderings of the Auer System and contains no prices, which indicates that the Auer System was not available for sale in the Auer Catalog. *Id.* at 228-30.

As a part of the FID's analysis, the FID made several findings based on the assumption that the Auer catalog was dated March 2015 based on the following image on its cover:



RX-0183.1 (cited at FID 223-24, 227-28). The FID relied on that assumption to: (1) find that the catalog did not corroborate that Auer displayed the Auer System at FachPack 2015 in light of Michael Perl's testimony that the design of the Auer System was not completed until June 2015, FID at 223-24; and (2) find that the Auer System was likely not for sale given that the catalog shows prices for some goods but shows no prices for the Auer System, *id.* at 227-28.

2. Petition for Review

Klein argues that the FID erred in assuming that the "3 2015" marking on the catalog referred to March 2015, and that the "3 2015" marking instead referred to the third version of the catalog in 2015, which was first publicly available on September 29, 2015, at FachPack 2015. Pet. at 43 (citing RX-176 ¶ 15). Klein further argues that the totality of the evidence corroborates Mr. Auer's and Mr. Perl's testimony, and that the FID required too high of a standard for establishing corroboration. *Id.* at 38-48.

Complainants respond that the FID correctly finds that Klein failed to provide evidence corroborating that the Auer System (satisfying all limitations of all asserted claims) was in public use at FachPack 2015 or on sale prior to May 2, 2026. Pet. Resp. at 29-33. Complainants argue

that, regardless of whether the Auer Catalog was released in March or September of 2015, Klein still failed to corroborate what was in public use at FachPack 2015. *Id.* at 32 n.8.

3. Review and Briefing

On January 21, 2026, the Commission determined to review “findings concerning . . . patent invalidity . . . as well as any underlying claim construction findings.” 91 Fed. Reg. at 32-20. The Commission sought briefing on the question: “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.” *Id.* at 3220.

Complainants contend that Klein failed to corroborate the pertinent issues—whether Auer presented the Auer System (with features sufficient to render the asserted claims obvious) at FachPack 2015 or whether the Auer System was for sale prior to May 2, 2016. Compl. Init. Sub. at 18-22. Complainants argue that the issue with the Auer Catalog is the lack of specificity about whether Auer System existed at that time (and what features it possessed), so it is irrelevant whether the Auer Catalog was released in March or September of 2015. *Id.* at 20-22; Compl. Rep. Sub. at 18-19.

Klein argues that the FID erred in finding that the Auer Catalog issued in March of 2015, and that the error permeates all of the FID’s corroboration analysis. Klein Init. Sub. at 29-31. Klein argues that the FID inappropriately considered each piece of evidence in a vacuum, and should have instead considered the entirety of the evidence as sufficient to corroborate that the Auer System was in public use at FachPack 2015. Klein Rep. Sub. at 19-22.

4. Analysis

The Commission has determined to set aside the FID’s finding that the Auer Catalog issued in March of 2015. FID at 223-24, 227-28. Mr. Auer stated in a declaration that “3 2015” refers to “Version 3|2015” of the catalog, which was “first publicly available on or about

29.09.2015, at FachPack 2015.” RX-0176.3. No party disputes that statement. Accordingly, the Commission finds that the Auer Catalog was publicly available on or about September 29, 2015.

The Commission otherwise affirms the FID’s finding that Klein failed to show by clear and convincing evidence that all asserted claims were invalid as anticipated based on public use of the Auer System. As the FID finds, “[a]n anticipatory use under § 102(b) must exhibit all of the claim limitations”⁸ and “oral testimony of prior public use must be corroborated in order to invalidate a patent.”⁹ The sufficiency of corroboration is determined under a “rule of reason” analysis that does not require that every detail be independently corroborated, but does require evaluating “all pertinent evidence” to determine whether the testimony is credible.¹⁰

Here, while Mr. Auer and Mr. Perl testified that the Auer System was in public use at FachPack 2015, Klein failed to present any corroborating evidence that Auer presented any product at FachPack 2015, let alone the Auer System. As the FID finds, undated and unauthenticated photographs and undated video do not corroborate that Auer presented the Auer System at FachPack 2015. FID at 221, 223. Also, while the Auer Catalog and German patents corroborate that Auer was developing the Auer System, that evidence does not corroborate when the Auer System was completed or whether the Auer System was in public use at FachPack 2015. *Id.* at 222-23. Accordingly, the Commission affirms the FID’s finding that Klein failed to show that the Auer System was prior art by clear and convincing evidence and finds that whether the Auer Catalog issued in March or September of 2015 makes no difference in reaching that conclusion. Because Klein failed to show that the Auer System was prior art, Klein failed to

⁸ *Star Scientific, Inc. v. R.J. Reynolds Tobacco Co.*, 355 F.3d 1364, 1377 (Fed. Cir. 2011).

⁹ *Juicy Whip, Inc. v. Orange Bang, Inc.*, 292 F.3d 728, 737-38 (Fed. Cir. 2002).

¹⁰ *TransWeb, LLC, v. 3M Innovative Properties, Co.*, 812 F.3d 1295, 1301-02 (Fed. Cir. 2016).

establish that the Auer System anticipated or rendered obvious any asserted claim. *See Juicy Whip*, 292 F.3d at 737-38 (holding that corroboration is required for public use to be anticipating prior art); 35 U.S.C. § 103 (requiring an examination of “the differences between the claimed invention and the prior art,” which cannot be performed for the Auer System if it is not prior art).

B. Domestic Industry

When a section 337 investigation is based on allegations of patent infringement, the complainant must show that “an industry in the United States, relating to the articles protected by the patent . . . exists or is in the process of being established.” 19 U.S.C. § 1337(a)(2). The “domestic industry requirement” consists of a so-called “technical prong” and a so-called “economic prong.” *Philip Morris Products S.A. v. Int’l Trade Comm’n*, 63 F.4th 1328, 1341 (Fed. Cir. 2023).

A complainant satisfies the technical prong by showing it is practicing, licensing, or otherwise exploiting the patents at issue. *Certain Movable Barrier Operator Systems and Components Thereof*, Inv. No. 337-TA-1118, Comm’n Op. at 16 (Dec. 3, 2020), *aff’d*, *Chamberlain Group, Inc. v. Int’l Trade Comm’n*, 2023 WL 3115579 (Fed. Cir. Apr. 27, 2023). The test for “practicing” a patent is essentially the same as it is for infringement, only it involves comparing the complainant’s own “domestic industry products” to one or more claims of the patent. *Alloc, Inc. v. Int’l Trade Comm’n*, 342 F.3d 1361, 1375 (Fed. Cir. 2003). It is sufficient that the domestic industry product practices at least one claim of each patent that serves as a basis for relief; it is not necessary for the complainant to practice the same claims it is asserting against the respondent. *Broadcom Corp. v. Int’l Trade Comm’n*, 28 F.4th 240, 250 (Fed. Cir. 2022).

“The economic prong considers whether ‘there is in the United States, with respect to the articles protected by the patent . . . concerned –

- (A) significant investment in plant and equipment;
- (B) significant employment of labor or capital; or
- (C) substantial investment in its exploitation, including engineering, research and development, or licensing.”

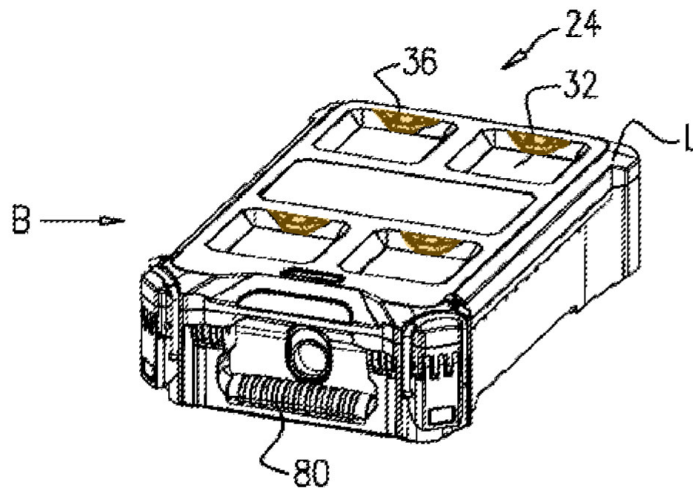
Wuhan Healthgen v. Int’l Trade Comm’n, 127 F.4th 1334, 1338 (Fed. Cir. 2025) (quoting 19 U.S.C. § 1337(a)(3)). Given that these criteria are listed in the disjunctive, parties need only satisfy one of subparagraphs (A), (B), or (C) to meet the economic prong of the domestic industry requirement. *Roku, Inc. v. Int’l Trade Comm’n.*, 90 F.4th 1367, 1370 n.1 (Fed. Cir. 2024).

1. Technical Prong of the Domestic Industry Requirement

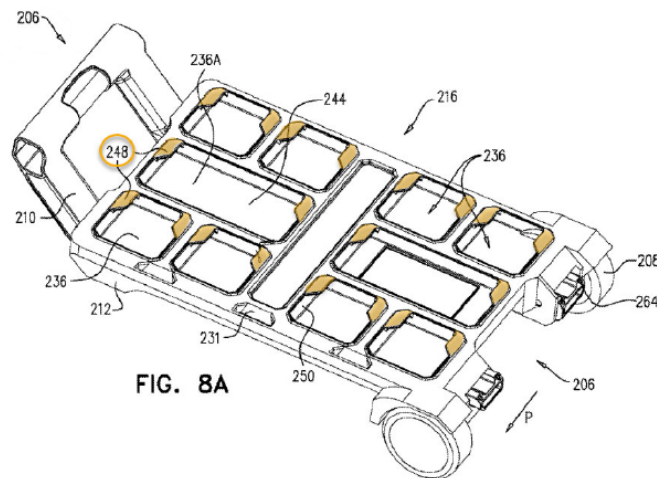
a. FID

The FID finds that the DI Products practice claims 3, 4, 8, and 16 of the ’952 patent, claims 2, 5, 8, 14, and 15 of the ’167 patent, and claims 4 and 8 of the ’026 patent, and thus that Complainants have satisfied the technical prong of the DI requirement. FID at 86-122, 146-166, 176-185.

Every asserted claim contains the limitation “rib extending [away] from the back wall.” The asserted patents describe a “single rib” embodiment and a “two locking ribs” embodiment:



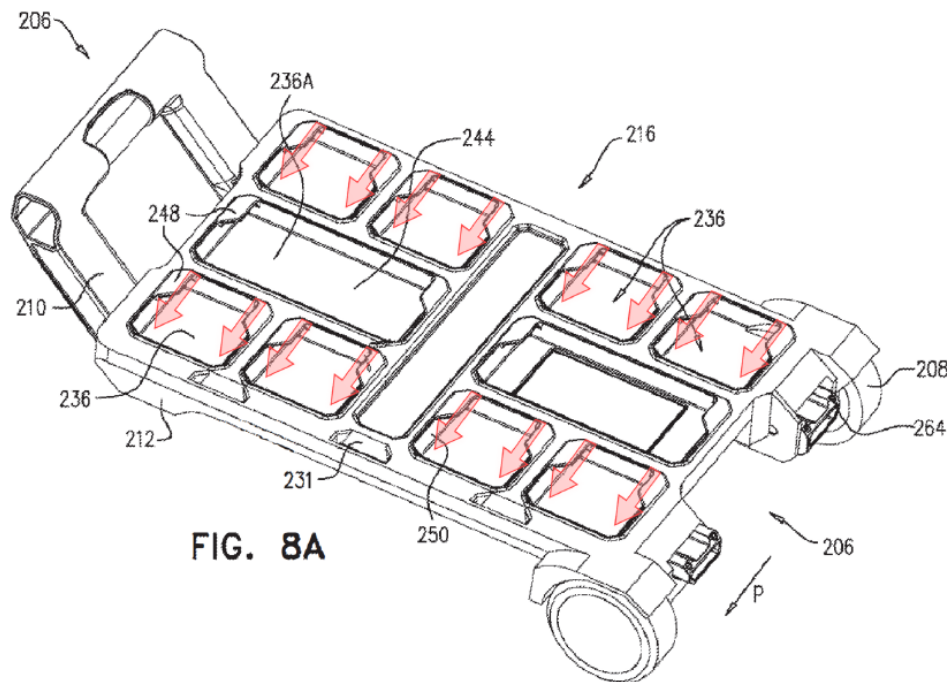
Id. at 96 (quoting '026 patent at Fig. 1B);



id. at 97 (quoting '026 patent at Fig. 8A). Klein argued to the CALJ that the claim language “rib extending [away] from the back wall” was limited to the “single rib” embodiment and did not cover the “two locking ribs” embodiment, and that the technical prong is therefore not satisfied for the “rib extending [away] from the back wall” limitation because the DI Products practice only the “two locking ribs” embodiment. FID at 97.

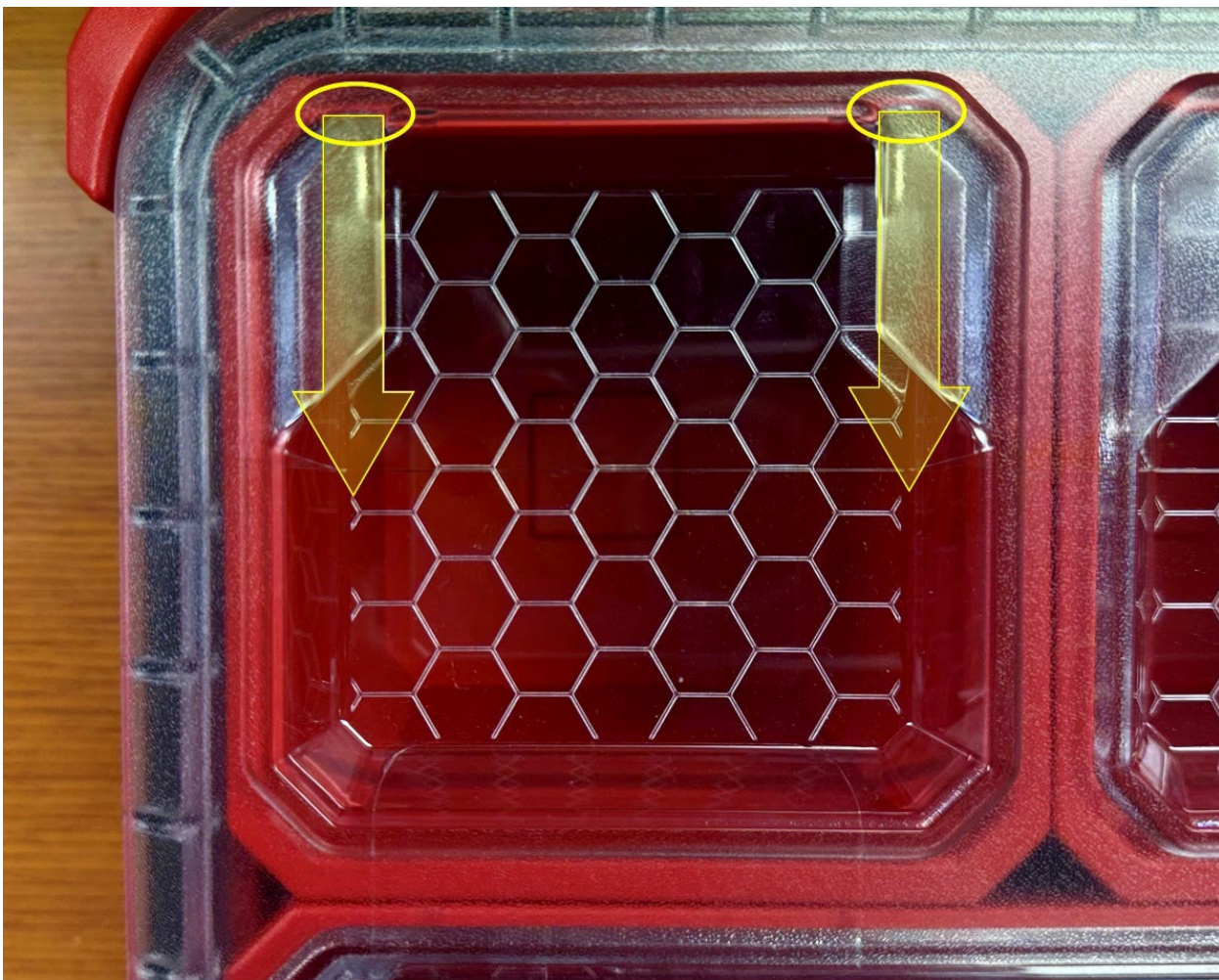
The FID rejects Klein’s argument. *Id.* at 98. Although Klein had argued that “the specification never describes any rib as both extending at a rear end and extending at side

edges,” the FID finds that Figure 8 depicted ribs that extended from both the rear end and side edges:



Id. at 98. The FID also reasoned that Klein had not shown that the patentee had disclaimed an invention that has a rib extended from both the rear and side. *Id.* at 98-99. After rejecting Klein’s construction, the FID finds that the technical prong was satisfied with respect to the “rib extending [away] from the back wall” limitation. *Id.* at 100. Relying on that finding, the FID finds that Complainants satisfied the technical prong of the domestic industry requirement for all three Asserted Patents. *Id.* at 279.

The FID also made an alternative finding that, “[e]ven if Klein’s construction were correct and the asserted claims were limited to an embodiment with a rib extending only from a rear wall, the Domestic Industry Products would satisfy such limitation.” *Id.* at 99. The FID relied on the picture:



and concluded that the coupler satisfied the limitation because “the coupler has a rib extending away from the rear wall.” *Id.* at 99 (citing JPX-0012).

b. Petition for Review

Klein argues that the FID erred by failing to construe the “rib extending [away] from the back wall” as limited to the “single rib” embodiment, and the FID further erred by finding that Figure 8A depicts ribs extending from both the rear and sides, as the specification describes Figure 8A as having ribs extending from the sides only. Pet. at 5-25. Klein further contends that its argument was based on the plain and ordinary meaning, and not disclaimer. *Id.* at 17-19.

Finally, Klein argues that the FID errs by finding that the DI Products satisfy the limitation even under Klein's construction. *Id.* at 22-25.

Complainants respond that the FID correctly finds that the claim limitation "rib extending [away] from the back wall" should not be limited to a particular embodiment because there is no intrinsic or extrinsic evidentiary basis to do so and correctly finds that the DI Products satisfied the limitation under that construction. Pet. Resp. at 9-19. Complainants also argue that, even if Klein's claim construction were adopted, the FID's alternative analysis was correct because the each claimed rib extends from the back wall. *Id.* at 19-20.

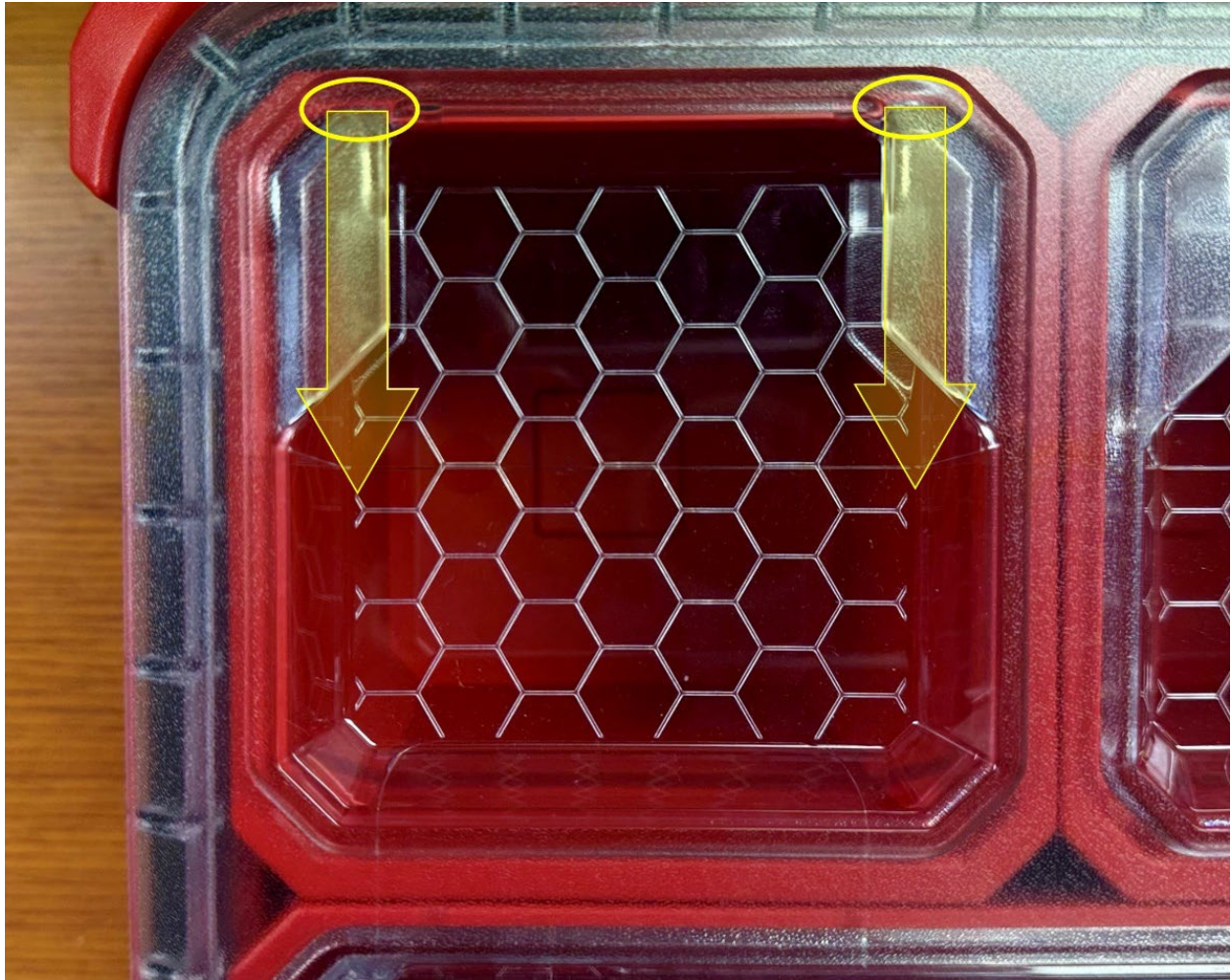
c. Analysis

The Commission has determined to affirm the FID's finding that Complainants have satisfied the technical prong of the DI requirement. Specifically, the Commission affirms the FID's primary claim construction and analysis. "[W]ords of a claim 'are generally given their ordinary and customary meaning.'" *Philips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (*en banc*) (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). Here, the claim language "rib extending [away] from the back wall" requires that the rib extend from the back wall but does not preclude the rib from also extending from another location, such as the side edge. Accordingly, the FID correctly finds that the plain and ordinary meaning of the claim language does not limit this language to ribs extending only in one direction.

Klein argues that "Klein's argument is (and always has been) that the plain and ordinary meaning of the claimed 'rib extending from the back wall,' as that phrase would be understood by a person of ordinary skill within the context of the intrinsic evidence as a whole, is limited to the first, 'single locking rib [that] extends from the rear end' embodiment of the specification of the Asserted Patents." Pet. at 6. Klein does not, however, explain how the language of the claim limitation itself (*i.e.*, its plain and ordinary meaning) limits the claims to the single locking rib

embodiment. There is nothing in the claim language itself that indicates that the rib must extend *only* from the back wall and not also from the side wall. While Klein cites the specification's descriptions of one- and two-rib embodiments, Klein does not contend that the patentee acted as a lexicographer or disclaimed claim scope to require that the "rib extending [away] from the back wall" limitation require that the rib extend exclusively from the back wall. *Thorner v. Sony Comput. Enter. Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012) (holding that terms are given their ordinary and customary meaning unless the patentee acts as a lexicographer or disclaims claim scope). Finally, Klein's claim construction proposal expressly seeks to limit the scope of the claims based on disclosed embodiments, which is contrary to Federal Circuit precedent. *E.g., Hill-Rom Servs., Inc. v. Stryker Corp.*, 755 F.3d 1367, 1381 (Fed. Cir. 2014) ("the scope of the claims is generally not limited to the embodiments disclosed in the patent."). Accordingly, the Commission affirms the FID's rejection of Klein's proposal to limit "rib extending [away] from the back wall" to the "single locking rib" embodiment.

The Commission also affirms the FID's finding of satisfaction of the technical prong under the FID's construction of "rib extending [away] from the back wall." As the FID finds, the DI Products have ribs that extend from both the back wall and side edges:



FID at 99 (citing JPX-0012). Klein does not contest the DI Products satisfy this limitation under the FID’s construction. *See* Pet. at 22-25 (arguing only that the technical prong is not satisfied under Klein’s construction).

The Commission has further determined to vacate the FID’s alternative finding that the DI Products satisfy the technical prong under Klein’s proposed construction of “rib extending [away] from the back wall.” If the limitation were construed to be limited to “a rib extending **only** from a rear wall,” FID at 99, the DI Products would not satisfy the limitation because the Commission finds that the DI Products have ribs that extend from both the rear wall and side

edges. For the reasons discussed above, however, the Commission declines to adopt Klein's claim construction proposal.

2. Economic Prong of the Domestic Industry Requirement

a. Overview of the Domestic Industry

Milwaukee is a tool company headquartered in Brookfield, Wisconsin, and Keter is a manufacturer of resin-based consumer products headquartered in Israel. Tr. at (5:1-11). On February 2, 2015, Milwaukee began developing ideas for variable-width stackable modular storage containers, and on February 17, 2015, Milwaukee met with Keter to discuss developing the system. JX-0046C.0011-12. In July of 2015, Keter proposed a single-width system, but in September of 2015, Milwaukee determined that the single-width system was not working well. JX-0046C.0013-.0014. Milwaukee again requested a multiple-width system, and Keter proposed multiple-width solutions in January and February of 2016 and presented a jobsite modular storage system in April of 2015. JX-0046.0015-0019. As a result of this process, both Milwaukee and Keter employees became named inventors for a series of patents claiming priority to May 2, 2016 (including the Asserted Patents), which resulted in Milwaukee and Keter becoming co-owners of the Asserted Patents. JX-0001C ('952 patent); JX-0003C ('167 patent); JX-0001C ('026 patent).

The patented technology was incorporated into some of Milwaukee's PACKOUT product line, which consists of approximately 100 modular tool storage products. Tr. (Harvey) at 384:6-

12.¹¹ The asserted DI Products are 36¹² plastic modular storage products¹³ within the Milwaukee PACKOUT product line. CDX-0001C.9. Those 36 products include 15 standalone products (such as rolling toolboxes, toolboxes, and organizers) and 21 “kits,” which are one of the 15 standalone products sold filled with tools (such as a rolling toolbox filled with plumber tools or an organizer filled with a ratchet set). *Id.* CDX-0001C.9. For example, the Low-Profile Organizer (JPX-0017), which is sold by itself as the standalone “PACKOUT Low-Profile Organizer” (SKU 48-22-8431), but is also sold in kits packaged with various ratchets and/or sockets: “SHOCKWAVE Impact Duty Socket 3/8” Dr. 36 PC PACKOUT set” (SKU 49-66-6805); “106pc 1/4” and 3/8” Metric Ratchet and Socket Set with PACKOUT Low-Profile Organizer” (SKU 48-22-9486); “47pc 1/2” Drive Ratchet & Socket Set with PACKOUT Low-Profile Organizer” (SKU 48-22-9487). CDX-0003.13 (as corrected by FID at 20 n.5); CDX-0001C.9.

Milwaukee’s domestic manufacturing investments are directed to [REDACTED] of the modular storage products—Compact Organizer (SKU 50-22-8435) and Compact Low-Profile Organizer (SKU 50-22-8436), which are sold only in kits and not as standalone products. FID at 21. Keter also produces identical Compact Organizers (SKU 48-22-8435) and Compact Low-Profile

¹¹ PACKOUT also includes non-DI Products such as wall mounts, soft storage, and drinkware. Tr. (Vargo) 145:7-18.

¹² As described Section II.D *supra*, although Complainants’ IPHB asserted 37 DI Products, Complainants provided evidence concerning the technical prong as to only 36 of those products.

¹³ The full list of the 37 DI Products is shown in CDX-0003C.13. *See* Tr. (Harvey) at 384:6-12. There are no allegations that any of the other 63 PACKOUT products practice any of the asserted patent claims.

Organizers (SKU 48-22-8436) (which are sold both as standalone products and in kits). *Id.*

M

Compact Organizer

K



M

Compact Low Profile Organizer

K



CDX-0001C.15-16. Complainants state that the domestically-manufactured Compact Organizers and Compact Low-Profile Organizers can be used in kits having the following SKUs: 49-66-6802, 49-66-6803, 49-66-6804, 49-66-7840, 49-22-5606, 49-56-9295, 49-66-6800, 49-66-6801,

48-22-9481, and 48-22-9482. In its first year of production, Milwaukee domestically produced around [REDACTED] units of SKUs 50-22-8435 and 50-22-8436. Tr. (Vargo) at 86:21-87:4.

b. FID

The FID credits towards the domestic industry Milwaukee's investments at three facilities: (1) an engineering, research, and development ("ER&D") facility in Milwaukee, Wisconsin; (2) a manufacturing facility in Cookeville, Tennessee; and (3) a distribution facility in Olive Branch, Mississippi. FID at 193. The ER&D and distribution expenditures are made with respect to all DI Products from 2021 until June 2024, but the manufacturing expenditures are made with respect to just the Compact Organizer (SKU 50-22-8435) and Compact Low-Profile Organizer (SKU 50-22-8436) from September 2023 until June 2024. *Id.* at 198-205. The FID credits the investments as follows:

[REDACTED]

Id.

The FID finds that Milwaukee's domestic industry investments are significant by first considering the importance of Milwaukee's domestic activities. *Id.* at 211-14. The FID finds that Milwaukee's investments in plant and equipment are significant because: (1) from 2021 until June 2024, Milwaukee's domestic ER&D plant and equipment investments were approximately [REDACTED] of Milwaukee's foreign ER&D expenditures in the entire PACKOUT product line; (2) from September 2023 until June 2024, Milwaukee's domestic manufacturing plant and equipment investments were [REDACTED] percent of the total cost to manufacture the [REDACTED]

domestically-manufactured organizers; and (3) from 2021 until June 2024, Milwaukee spent approximately [REDACTED] on plant and equipment for distribution, warehousing, quality testing, customer service, warranty service, and light remanufacture work. *Id.* at 214-15.

The FID finds that Milwaukee's employment of labor is significant because: (1) from 2021 until June 2024, Milwaukee's domestic ER&D labor employment was approximately [REDACTED] percent of Milwaukee's foreign ER&D expenditures in the entire PACKOUT product line; (2) from September 2023 until June 2024, Milwaukee's domestic manufacturing labor employment was [REDACTED] percent of the cost of goods sold ("COGS") for the [REDACTED] domestically-manufactured organizers and [REDACTED] percent of the COGS for kits that could include the [REDACTED] domestically-manufactured organizers; and (3) from 2021 until June 2024, Milwaukee spent approximately [REDACTED] million on labor for distribution, warehousing, quality testing, customer service, warranty service, and light remanufacture work. *Id.* at 215-16.

The FID does not reach whether Complainants satisfied the economic prong under subsection 337(a)(3)(C). *Id.* at 211.

c. Petition and Response

Klein argues that the FID's significance analysis is erroneous because: (1) Complainants did not properly allocate their ER&D investments; (2) the FID ignores Klein's proposed significance metrics; (3) the FID ignores that Complainants failed to provide ER&D figures for Keter, which co-owns the asserted patents and whose employees coinvented the asserted patents; (4) the FID's manufacturing significance analysis compares Milwaukee's expenditures for the two domestically-manufactured organizers to the COGS of those organizers (and the COGS of certain kits that may contain those organizers), and thus fails to consider the expenditures in the context of the entire alleged domestic industry; and (5) the FID erroneously relies on the Olive

Branch investments despite Complainants specifically disclaiming reliance on those investments before the CALJ. Klein Pet. at 25-38.

Complainants respond that: (1) the FID correctly allocates Milwaukee ER&D investments; (2) the FID correctly focuses on Complainants' proposed significance metrics over Klein's proposed significance metrics, which relied on Milwaukee's sales of thousands of unrelated products; (3) the FID correctly considers the domestic industry at the time of the filing of complaint, and need not consider Keter's old contributions; (4) the FID reasonably compares the domestic investments in manufacturing the [REDACTED] organizers to the COGS for those same organizers; and (5) the FID correctly considers the Olive Branch investments based on the Federal Circuit's intervening decision in *Lashify, Inc. v. Int'l Trade Comm'n*, 130 F.4th 948 (Fed. Cir. 2025). Compl. Pet. Resp. at 20-28.

d. Parties' Briefing to the Commission

The Commission determined to review the FID's findings concerning the economic prong. 91 Fed. Reg. at 3220. The Commission sought briefing with respect to the following questions:

- (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); and
- (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).

Id.

Klein generally responded that: (1) Milwaukee domestically manufactures only some of the non-standalone versions of the Compact and Low-Profile Compact Organizers and, because Milwaukee cannot attribute those organizers to specific kits, Milwaukee's manufacturing investments (excluding any ER&D investments) (██████████ in plant and equipment and ██████████ in labor, or ██████████ total) are not significant in view of the ██████████ million COGS of the 37 DI Products from 2017-June 2024, which provides a ██████████ percent investment-to-COGS ratio, or ██████████ million COGS of the 37 DI Products from 2021-June 2024, which provides a ██████████ percent ratio (Klein Init. Sub. at 1-7; Klein Rep. Sub. at 1-3); (2) a holistic significance analysis should include Keter's pre-2021 ER&D investments that led to the release of the DI Products, because an analysis of Klein's investments-to-sales is appropriate and demonstrates that Milwaukee's post-release ER&D and minor manufacturing investments are not significant (Klein Init. Sub. 8-20; Klein Rep. Sub. 3-9); (3) the Olive Branch investments should not be included

because Complainants specifically disclaimed them before the CALJ (Klein Init. Sub. at 20-22; Klein Rep. Sub. at 9-17); and (4) Complainants cannot rely on subsection 337(a)(3)(C) because Complainants failed to show a nexus between the patented invention and the protected article, and the economic prong nexus is different from the commercial success nexus (Klein Init. Sub. at 22-29; Klein Rep. Sub. 17-19).

Complainants generally argue that: (1) Milwaukee relied on only its domestic investments, so the relevant context is Milwaukee's business, not Keter's; (2) Klein unreasonably proposes comparing nine months of Milwaukee's domestic manufacturing to six years of Keter investments (Compl. Init. Sub. at 1-4; Compl. Rep. Sub. at 1-4); (3) the FID correctly finds significance based on Complainants' comparisons, and there is no requirement to make comparisons to foreign manufacturing (Compl. Init. Sub. at 5-8; Compl. Init. Sub. 5-13); (4) the Commission should credit the Olive Branch Facility investments under *Lashify*, but Complainants investments are significant even without them (Compl. Init. Sub. at 10-16); and (4) the Commission should find satisfaction of the economic prong under subsection 337(a)(3)(C) because the FID finds a nexus for secondary considerations, which is the same nexus needed for subsection 337(a)(3)(C) (Compl Init. Sub. at 16-17).

e. Analysis

The Commission affirms, under modified reasoning, the FID's finding that Complainants have satisfied the economic prong of the domestic industry requirement with respect to the '026 and '952 patents under section 337(a)(3)(B) and takes no position on the FID's findings under section 337(a)(3)(A) with respect to those patents.

For patent-infringement-based section 337 investigations, the domestic industry requirement can be satisfied by showing a "significant employment of labor or capital . . . with respect to the articles protected by the patent." 19 U.S.C. § 1337(a)(3)(B). Evaluating whether a

complainant satisfies the economic prong of the domestic industry requirement “cannot hinge on a threshold dollar value or require a rigid formula; rather, the analysis requires a holistic review of all relevant considerations that is very context dependent.” *Wuhan Biotechnology Corp. v. U.S. Int’l Trade Comm’n*, 127 F.4th 1334, 1339 (Fed. Cir. 2025).

The Commission finds that Complainants have shown significant employment of labor with respect to the [REDACTED] domestically-manufactured organizers practicing the ’026 and ’952 patents. It is undisputed that, from September 2023 until June 2024, Milwaukee spent [REDACTED] on the employment of labor to manufacture approximately [REDACTED] Compact Organizers and Low-Profile Compact Organizers at its Cookeville facility in the United States. FID at 203-04; Klein Pet. at 35-36; CDX-0004C.30; CDX-0024C; JPX-0042C; Tr. (Vargo) at 86:21-87:4. It is also undisputed that, for that same period, the COGS for those [REDACTED] domestically-manufactured organizers was [REDACTED]; thus, the domestic labor constitutes [REDACTED] of the COGS of those products. FID at 215-16; Klein Pet. at 35-36; CDX-0004C.47; CDX-0017C; CDX-0027C; CDX-0024C; JPX-0042C. The Commission also notes that the Compact Organizers and Low-Profile Compact Organizers were previously manufactured exclusively abroad and finds that Milwaukee’s onshoring of a substantial volume of production of these products further supports a finding of significance. *See Certain Icemaking Machines and Components Thereof*, Inv. No. 337-TA-1369, Comm’n Notice at 2 (May 29, 2025) (finding significant employment of labor based in part on increased domestic manufacturing due to transferring manufacturing from abroad). Accordingly, based on a holistic review of the evidence, the Commission finds that Complainants have shown a significant employment of labor under section 337(a)(3)(B) with respect to the ’026 and ’952 patents based on the two

domestically-manufactured organizers.¹⁴ The Commission takes no position with respect to the ID's other domestic industry findings under section 337(a)(3)(B) with respect to the '026 and '952 patents.

Klein argues that the FID errs in comparing the [REDACTED] labor expenditures to the COGS of just the [REDACTED] domestically-manufactured organizers and should have instead compared the labor expenditure to the COGS of all DI Products. Klein Pet. at 35-37. The Commission disagrees. Rather, the Commission finds that the record evidence shows that the combination of the Compact Organizers and/or Low-Profile Compact Organizers each practice claim 3 of the '952 patent and claim 4 of the '026 patent (*i.e.*, "articles protected by the patent"). FID at 88-113, 176-83. The Commission finds that comparing the labor expenditures with respect to the manufacture of the [REDACTED] products to the COGS for those [REDACTED] products is an appropriate metric in considering whether there is a "significant employment of labor" that is "with respect to the articles." 19 U.S.C. § 1337(a)(3)(B). Accordingly, as discussed above, the Commission finds that Complainants satisfied the domestic industry requirement with respect to the '952 and '026 patents.

Based on the preceding discussion, the Commission finds a violation of section 337 with respect to the '026 and '952 patents. The issue of whether Complainants have established the existence of a domestic industry for the '167 patent remains pending.

¹⁴ Commissioner Thanhauser notes that all DI Products would benefit from an exclusion order issued under either of the '952 or '026 patents, and given this, he is sympathetic to Klein's argument that the domestic and foreign investment behind all DI Products should be considered, not just the [REDACTED] domestically-manufactured organizers. Commissioner Thanhauser also agrees, however, that the investment behind the two domestically-manufactured organizers is significant under the statute.

V. REMEDY, BONDING, AND THE PUBLIC INTEREST

A. Remedy

The Commission has “broad discretion in selecting the form, scope, and extent of the remedy.” *Viscofan, S.A. v. US. Int’l Trade Comm’n*, 787 F.2d 544, 548 (Fed. Cir. 1986).

1. Limited Exclusion Order

Section 337(d)(1) provides that “[i]f the Commission determines, as a result of an investigation under this section, that there is a violation of this section, it shall direct that the articles concerned, imported by any person violating the provision of this section, be excluded from entry into the United States, unless, after considering the [public interest], it finds that such articles should not be excluded from entry.” 19 U.S.C. § 1337(d)(1). Here, Complainants seek an LEO and Klein does not contest that an LEO is appropriate if a violation is found.

Recommended Determination (“RD”) at 280.¹⁵ Accordingly, the CALJ recommended that the Commission issue a LEO against Klein’s infringing products if the public interest factors do not weigh against imposing a remedy. *Id.*

Klein does not dispute that that a LEO is an appropriate remedy if the Commission finds a violation of section 337. Klein Init. Sub. at 32. Accordingly, the Commission finds that an LEO against Klein’s products is an appropriate remedy.

2. Cease and Desist Order

Section 337(f)(1) provides that in addition to, or in lieu of, the issuance of an exclusion order, the Commission may issue a cease and desist order (“CDO”) as a remedy for violation of section 337. *See* 19 U.S.C. § 1337(f)(1). CDOs are generally issued when, with respect to the

¹⁵ In the CALJ’s Initial Determination on Violation of Section 337 and Recommendation on Remedy and Bond, the Final Initial Determination constitutes pages 1-279 and 286-87, and the Recommended Determination constitutes pages 280-286.

imported infringing products, respondents maintain commercially significant inventories in the United States or have significant domestic operations that could undercut the remedy provided by an exclusion order. *See, e.g., Certain Tobacco Heating Articles and Components Thereof*, Inv. No. 337-TA-1199, Comm’n Op. at 49 (Sept. 29, 2021), *aff’d*, *Philip Morris Products S.A.*, 63 F.4th at 1332; *Certain Audio Players and Controllers, Components Thereof, and Products Containing Same*, Inv. No. 337-TA-1191, Comm’n Op. at 26 (Jan. 6, 2022), *aff’d*, *Sonos, Inc. v. Int’l Trade Comm’n*, 2024 WL 1507605 (Fed. Cir. Apr. 8, 2024). Complainants bear the burden on this issue. “A complainant seeking a cease and desist order must demonstrate, based on the record, that this remedy is necessary to address the violation found in the investigation so as to not undercut the relief provided by the exclusion order.” *Tobacco Heating Articles*, Comm’n Op. at 49-50 (citations omitted); *Audio Players*, Comm’n Op. at 26-27 (citations omitted); *see also* H.R. REP. No. 100-40, at 160 (1987).

Here, the parties stipulated that, as of June 30, 2024, Klein had a domestic inventory of approximately [REDACTED] Accused Products valued at approximately [REDACTED] million, which is [REDACTED] days of sales. RD at 281. The CALJ found that Klein maintained a commercially significant inventory of Accused Products in the United States and recommended that the Commission issue a CDO against Klein if the public interest factors do not weigh against imposing a remedy. *Id.*

Klein does not dispute that a CDO against Klein is an appropriate remedy if the Commission finds a violation of section 337. Klein Init. Sub. at 32. Accordingly, the Commission finds that a CDO against Klein is an appropriate remedy.

B. Public Interest

Section 337 requires the Commission, upon finding a violation of section 337, to issue a limited exclusion order “unless, after considering the effect of such exclusion upon the public

health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.” 19 U.S.C. § 1337(d)(1). Similarly, the Commission must consider these public interest factors before issuing a CDO. 19 U.S.C. § 1337(f)(1).

Under appropriate facts and circumstances, the Commission may determine that no remedy should issue because of the adverse impacts on the public interest. *See, e.g., Certain Fluidized Supporting Apparatus & Components Thereof*, Inv. Nos. 337-TA-182/188, USITC Pub. 1667, Comm’n Op. at 1-2, 23-25 (Oct. 1984) (finding that the public interest warranted denying complainant’s requested relief); *see Philip Morris Products S.A.*, 63 F.4th at 1339-1340 (the Commission has “wide latitude for judgment and the courts will not interfere except where the remedy selected has no reasonable relation to the unlawful practices found to exist”) (citation omitted). Moreover, when the circumstances of a particular investigation require, the Commission has tailored its relief in light of the statutory public interest factors. For example, the Commission has allowed continued importation for ongoing medical research, exempted service parts, grandfathered certain infringing products, and delayed the imposition of remedies to allow affected third-party consumers to transition to non-infringing products. *E.g., Certain Microfluidic Devices*, Inv. No. 337-TA-1068 Comm’n Op. at 1, 22-48, 53-54 (analyzing the public interest, discussing applicable precedent, and ultimately issuing a tailored LEO and a tailored CDO); *Certain Road Milling Machines & Components Thereof*, Inv. No. 337-TA-1067, Comm’n Op. at 32-33 (July 18, 2019) (exempting service parts); *Certain Baseband Processor Chips & Chipsets, Transmitter, & Receiver (Radio) Chips, Power Control Chips, & Prods. Containing Same, Including Cellular Tel. Handsets*, 337-TA-543, USITC Pub. No. 4258,

Comm'n Op. at 150-151 (Oct. 2011) (grandfathering certain products); *Certain Personal Data & Mobile Comm'n Devices & Related Software*, 337-TA-710, USITC Pub. No. 4331, Comm'n Op., at 72-73, 80-81 (June 2012) (delaying imposition of remedy).

The statute requires the Commission to consider and make findings on the public interest in every case in which a violation is found regardless of the quality or quantity of public interest information supplied by the parties. 19 U.S.C. § 1337(d)(1), (f)(1). Thus, the Commission publishes a notice inviting the parties as well as interested members of the public and interested government agencies to gather and present evidence on the public interest at multiple junctures in the proceeding. 19 U.S.C. § 1337(d)(1) & (f)(1). The Commission did not receive any public interest submissions from the public. *See* 90 Fed. Reg. 38175-76 (Aug. 7, 2025).

1. Public Health and Welfare

No party argues that the infringing storage containers, toolboxes, organizers, component boxes, and coolers affect public health and welfare. Klein Init. Sub. at 34; Klein Rep. Sub. at 24-25; Compl. Init. Sub. at 26-27; Compl. Rep. Sub. at 21-23. The Commission finds no evidence in the record suggesting that a remedy would negatively impact public health and welfare. Accordingly, the Commission finds that this factor does not weigh against issuing a remedy.

2. Competitive Conditions in the United States

Klein contends that a remedy would negatively impact competitive conditions in the United States. Klein Init. Sub. at 34. Klein argues that each company's modular storage products are exclusively compatible with only that company's products, which creates a "lock-in" effect that encourages a customer of one company's modular storage products to continue to buy modular storage products from that company. *Id.*; Klein Rep. Sub. at 24. Complainants respond that any "lock-in" effect is due to the patented invention, and that, besides Milwaukee,

there are numerous alternative modular storage options companies, including Stanley Black & Decker, DEWALT Industrial Tools Co., Ryobi Limited, Husky Corporation, Ridge Tool, Company, Flex Power Tools, and Toughbuilt Industries. Compl. Rep. Sub. at 23.

The Commission finds that the competitive conditions in the United States do not weigh against issuing a remedy. In assessing this factor, the Commission often considers whether “reasonable substitutes exist for the articles subject to the [remedy]” and the complainant and other manufacturers “have the capacity to replace the subject articles once they are excluded.”

Certain Automated Put Walls and Automated Storage and Retrieval Systems, Associated Control Software, and Component Parts Thereof, Inv. No. 337-TA-1293, Comm’n Op. at 41 (Aug. 17, 2023). Here, Complainants have shown that there are other reasonable substitutes, and there is no evidence that these manufacturers lack capacity to replace the subject articles. While the “lock-in” effect might encourage customers of one modular storage company to buy additional units from that company, the Commission does not view the evidence here as precluding the issuance of a remedy based on any adverse impact on the competitive conditions in the United States economy.

3. The Production of Like or Directly Competitive Articles in the United States

No party argues that exclusion of the infringing storage containers, toolboxes, organizers, component boxes, and coolers would affect the production of like or directly competitive articles in the United States. Klein Init. Sub. at 34; Klein Rep. Sub. at 24-25; Compl. Init. Sub. at 27-28; Compl. Rep. Sub. at 21-23. There is no evidence that Klein produces infringing articles in the United States, so excluding Klein products may contribute to an increase in Milwaukee’s domestic production of those articles. Accordingly, the Commission finds that this factor does not weigh against issuing a remedy.

4. United States Consumers

Klein argues a remedy would harm electrical and telecommunications U.S. consumers because Klein's products are specifically tailored for electricians and utility workers. Klein Init. Sub. at 34; Klein Rep. Sub. at 24-25. Complainants respond that Klein presented no evidence that its modular storage products are specifically tailored for electricians and utility workers, and that such professionals can use products of alternative modular storage companies. Compl. Rep. Sub. at 23.

The Commission finds no evidence that issuing the remedy would have a significant impact on U.S. consumers. As discussed above, besides Milwaukee's products, there are non-infringing alternative products from a number of firms. Moreover, Klein has not shown that its products are specifically tailored for electricians and utility workers, or that such professionals could not switch to alternative modular storage products or to non-modular storage.

5. Conclusion

The Commission finds that the public interest factors do not weigh against issuance of an LEO or a CDO.

C. Bonding

If the Commission enters an exclusion order or a CDO, a respondent may continue to import and sell its products during the 60-day period of Presidential review under a bond in an amount determined by the Commission to be "sufficient to protect the complainant from any injury." 19 U.S.C. § 1337(j)(3); *see also* 19 C.F.R. § 210.50(a)(3). When reliable price information is available in the record, the Commission has often set the bond in an amount that would eliminate the price differential between the domestic product and the imported, infringing product. *See Streaming Players*, Comm'n Op. at 41-42 (citations omitted); *Tobacco Heating Articles*, Comm'n Op. at 77 (citations omitted). The Commission also has used a reasonable

royalty rate to set the bond amount where a reasonable royalty rate could be ascertained from the evidence in the record. *See, e.g., id.* Where the record establishes that the calculation of a price differential is impractical or there is insufficient evidence in the record to determine a reasonable royalty, the Commission has imposed a 100 percent bond. *See, e.g., id.*

1. Recommended Determination

The CALJ recommended that the bond be set at ■ percent of the entered value of the infringing articles. RD at 286. Although Complainants requested a bond of 18 percent of entered value based on a weighted-average price comparison between nine of Complainants' and Klein's competing products (which when individually compared had price differentials ranging from ■ percent to ■ percent), the CALJ recommended that the bond be set at the largest price differential—■ percent—to ensure that the Complainants are protected from “any injury” as required by 19 U.S.C. § 1337(j)(3). *Id.* at 285-86.

2. Parties' Arguments

Klein argues that setting a bond based on the highest price differential of ■ percent exceeds Complainants injury, and that Complainants waived any argument supporting that rate by never presenting any such argument to the CALJ. Klein Init. Sub. at 32-33; Klein Rep. Sub. at 23. Klein further argues that the parties compete at the retail level, not the wholesale level, so Complainants' request for an 18 percent bond should be rejected because it is based on wholesale price differential. Klein Init. Sub. at 33. According to Klein, the retail price differential is ■ and thus a bond of ■ is warranted. *Id.*

Complainants argue that Milwaukee and Klein are direct competitors, that the CALJ was free to recommend a bond greater than what the parties proposed, and that a ■ percent bond protects Complainants from any injury. Compl. Init. Sub. at 24-25; Compl. Rep. Sub. at 19-21.

3. Analysis

The Commission finds that the bond should be set in the amount of 18 percent of entered value based on the weighted wholesale price differential, as proposed by Complainants to the CALJ. Compl. IPHB at 134. The Commission often sets its bonds to eliminate the price differential between the domestic and infringing products. *Certain Microsphere Adhesives, Processes for Making Same, & Prods. Containing Same, Including Self-stick Repositionable Notes*, Inv. No. 337-TA-366, USITC Pub. No. 2949, Comm’n Op. at 24 (Jan. 16, 1996). When there is a range of domestic and infringing products, the Commission has relied on a weighted average of the price differential to determine the appropriate bond. *Certain Icemaking Machines and Components Thereof*, Inv. No. 337-TA-1369, Comm’n Op. at 18 (Feb. 27, 2025).

The Commission finds that a [REDACTED] percent bond is not appropriate. Under subsection 337(j)(3), the bond is “to protect the complainant from any injury.” Here, Complainants compared nine competitive products, and calculated the various price differentials. FID at 285-286. If the Commission were to impose a bond of [REDACTED] percent on all infringing products, the resulting bond would greatly exceed the price differential when applied to every product except one (coolers). The Commission finds that such a bond is greater than that necessary to protect Complainant from injury.

The Commission also finds that Klein’s proposal for a [REDACTED] percent bond based on retail price differential is inappropriate. As Klein acknowledges, Milwaukee sells to Home Depot and Klein sells to Lowe’s, both at the wholesale level. Klein Init. Sub. at 23. Milwaukee and Klein therefore compete on the wholesale level, so the Commission finds that it is more appropriate to rely on wholesale price differential as proposed by Complainants than on retail price differential as proposed by Klein. Although Klein cites *Certain Robotic Floor Cleaning Devices and Components Thereof* as an example of the Commission imposing a bond based on retail price

differential, the Commission did so there because the retail price differential was larger than the wholesale price differential, and the Commission found that the larger retail price differential was necessary to protect the complaint from any injury. Inv. No. 337-TA-1252, Comm'n Op. at 83-85 (Apr. 13, 2023). Here, the Commission finds that the higher wholesale price differential is more effective to protect Complainant from injury than the lower retail price differential.

The Commission has determined to set a bond in the amount of 18 percent of entered value for infringing products imported during the period of Presidential review.

VI. CONCLUSION

For the reasons set forth herein, the Commission determines that Complainants have established a violation of section 337 by Klein with respect to the '952 and '026 patents. The Commission determines that the appropriate remedy is the issuance of a LEO against Klein's products and the issuance of a CDO against Klein, that the public interest does not preclude that remedy, and sets a bond in the amount of 18 percent of entered valued for infringing articles imported during the period of Presidential review. The Commission has not reached a final determination with respect to the '167 patent.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

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