

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APEX TOOL GROUP, LLC,
Petitioner,

v.

MILWAUKEE ELECTRIC TOOL CORPORATION,
Patent Owner.

Case No. PGR2020-00056
Patent 10,422,617

DECLARATION OF ABHIJEET A. KHANGAR

I, Abhijeet A. Khangar, declare:

1. I am currently the Vice President of Engineering at Milwaukee Electric Tool Corporation (“Milwaukee Tool”). Before my promotion to Vice President of Engineering, I was the Director of New Product Development (NPD) Engineering at Milwaukee Tool. I am receiving no extra compensation for providing this declaration other than my normal compensation for my employment with Milwaukee Tool. Unless otherwise stated, I have personal knowledge of the following facts and, if called upon, I would and could testify completely to them.

2. I am an inventor on U.S. Patent No. 10,422,617, which is entitled “Tape Measure with Tape Blade Profile Increasing Tape Standout.” I understand that the validity of this patent has been challenged and that the “CAWB 55 deg” tape measure design (which I will refer to as “CAWB 55 deg tape measure design” or “CAWB 55 deg” for simplicity herein) identified in Table 3 of the patent has been relied on as a part of the challenge to the patent’s validity. For reference, the header of Table 3 is reproduced below and the reference to CAWB 55 deg has been highlighted:

TABLE 3

	Prior Art 1	Prior Art 2	Prototype 1	Prototype 2	Prototype 3	Prototype 4	Prototype 5	Prototype 6
Design	(CAWB	(CAWB	(35 FW	(38 FW	(35 FW)	(38 FW)	(35 Super	(38 Super
Parameter	78 deg)	55 deg)	Deep)	Deep)			Deep)	Deep)

3. CAWB is an acronym used at Milwaukee Tool, and the acronym

stands for “Canadian Wide Blade.” Around January of 2016, we began an engineering project (the “CAWB project”) to design and build tape measure blades for the Canadian market that would have a standout of greater than 9 feet, and ideally even more. The CAWB 55 deg tape measure design referred to in Table 3 of the patent was one of the prototypes developed during the CAWB project. The CAWB 78 deg tape measure design (which I will refer to as “CAWB 78 deg tape measure design” or “CAWB 78 deg” for simplicity herein) that is also referred to in Table 3 of the patent was another one of the prototypes we developed during the CAWB project.

4. The CAWB 55 deg tape measure design went through internal engineering and market feasibility studies. During those internal studies, we identified potential mass production issues with the CAWB 55 deg tape measure design during our qualification build phase that created a potential for a high scrap rate and negative feedback, which made the CAWB 55 deg tape measure design commercially impractical at that time. The CAWB 55 deg tape measure design thus was not approved for commercialization.

5. On May 8, 2017 we held a meeting to discuss the status of the CAWB 55 deg and 78 deg tape measure designs. An excerpt of a presentation from this meeting is attached as Appendix A. This presentation was created under my direction, and this is a true and correct copy of the presentation that I have

maintained in the ordinary course of Milwaukee Tool's business.

6. During this meeting, we discussed engineering benchmark (EB) data, quality benchmark (QB) data, quality assurance (QA) data, and mass production (MP) data, as well as our concerns about the potential for a high scrap rate for the CAWB 55 deg tape measure design, a concern that we had since at least October 10, 2016. Appendix A, at page 2. Although we worked to improve our internal designs, we still had a high defect rate and low stand out performance for the CAWB 55 deg tape measure design. *Id.* at 3 (reporting a 50% failure rate). As such, to avoid disrupting the entire project, and in particular the CAWB 78 deg tape measure design, the CAWB 55 deg tape measure design was not approved for commercialization and was not disclosed publicly. *Id.* (confirming that the US team selected the CAWB 78 deg tape measure design for production and continued refinement).

7. Due to the above-described issues with the CAWB 55 deg tape measure design, the CAWB 55 deg tape measure design was never produced and never made publicly available. In other words, the CAWB 55 deg tape measure design was solely an internal Milwaukee Tool prototype design that was never sold or otherwise made available to the public in any form.

8. By contrast, we were eventually able to manufacture the CAWB 78 deg tape measure design better than the CAWB 55 deg tape measure design and

the CAWB 78 deg tape measure design was eventually produced as Milwaukee Tool product number 48-22-7525. That product was made available for sale in Canada in the Spring of 2017. A true and correct copy of the following website: <https://www.canadianwoodworking.com/wide-blade-tape-measures-exclusive-canada> is attached here as Appendix B, and this website reflects availability of product number 48-22-7525 in the Spring of 2017. For reference, a portion of the website is reproduced and highlighted below:

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