

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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HARBOR FREIGHT TOOLS USA INC.,  
GENERAC POWER SYSTEMS, INC. and MWE INVESTMENTS, LLC,  
Petitioner,

v.

CHAMPION POWER EQUIPMENT, INC.,  
Patent Owner.

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IPR2025-00805  
Patent 10,393,034 B2

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

DECISION  
Referring the Petition to the Board

Champion Power Equipment, Inc. (“Patent Owner”) filed a request for discretionary denial (Paper 8, “DD Req.”) in the above-captioned case, and Harbor Freight Tools USA Inc., Generac Power Systems, Inc., and MWE Investments, LLC (collectively, “Petitioner”) filed an opposition (Paper 14, “DD Opp.”).

After considering the parties’ arguments and the record, and in view of all relevant considerations, discretionary denial of institution is not appropriate in this proceeding. This determination is based on the totality of the evidence and arguments the parties have presented.

In particular, Patent Owner has sued a large number of parties in a multitude of districts. Specifically, the district court litigations involve thirteen patents asserted in multiple district courts. DD Opp. 3–6. Because the litigation between the parties would proceed to several district court trials in different jurisdictions, resolving the dispute between the parties at the Office would be more efficient.<sup>1</sup> See *Berkshire Hathaway Energy Co. v. Birchtech Corp.*, IPR2025-00274, Paper 23 (Director July 2, 2025). In addition, no trial date has been set in any of the parallel proceedings, and the parties have made relatively little investment into the multi-district litigation. *Id.* at 16–18.

Further, Petitioner provides persuasive reasoning, supported by evidence, that discretionary denial under 35 U.S.C. § 325(d) is not appropriate. Petitioner provides persuasive evidence that the Office erred in a manner material to the patentability of the challenged claims by

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<sup>1</sup> Petitioner indicates that it has challenged all thirteen patents at the Office. *Id.* at 4.

overlooking the teachings of Tsuda.<sup>2</sup> DD Opp. 28–38. Although the Office cited Tsuda against a parent application for teaching “a liquid cut-off incorporated into a carburetor,” the Examiner failed to cite Tsuda for a similar limitation in the challenged patent. *Id.* at 35, 38. Petitioner persuasively argues that the Examiner overlooked Tsuda’s teachings, thus demonstrating that the Office erred in a manner material to the patentability of the claims.

Although certain arguments are highlighted above, the determination not to exercise discretion to deny institution is based on a holistic assessment of all of the evidence and arguments presented. Accordingly, the Petition is referred to the Board to handle the case in the normal course, including by issuing a decision on institution addressing the merits and other non-discretionary considerations, as appropriate.

In consideration of the foregoing, it is:

ORDERED that Patent Owner’s request for discretionary denial is *denied*;

FURTHER ORDERED that the Petition is referred to the Board; and

FURTHER ORDERED that neither party shall file a request for rehearing or Director Review of this decision until the Board issues a decision on institution.

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<sup>2</sup> U.S. Pat. 5,809,979, issued Sept. 22, 1998 (Ex. 1018).

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