

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

CHAMPION POWER EQUIPMENT, INC.,
Patent Owner.

IPR2025-00805
Patent 10,393,034

**PATENT OWNER CHAMPION POWER EQUIPMENT, INC.'S
REQUEST FOR REHEARING PURSUANT TO 37 C.F.R. § 42.71(d)**

TABLE OF CONTENTS

I. BACKGROUND2

II. LEGAL STANDARD3

III. ARGUMENT.....3

 A. Controlling law and new evidence support denial. 7

 1. Petitioner’s post-POPR indefiniteness positions should be rejected under *Revvo Techs. and Tesla*.....8

 2. Petitioner’s post-POPR contradictory claim constructions should be rejected under *Revvo Techs. and Tesla*.10

 B. The POPR correctly challenged Petitioner’s inconsistent indefiniteness allegations. 10

 1. The Board mis-applied *Cambridge Mobile*.11

 2. The Board disregarded evidence of Petitioner’s indefiniteness positions.12

IV. CONCLUSION15

TABLE OF AUTHORITIES

CASES

Cambridge Mobile Telematics, Inc. v. Sfara, Inc.,
IPR2024-00952, Paper 12 (P.T.A.B. Dec. 13, 2024) 3, 4, 11

Huawei Device Co., Ltd. v. Optis Cellular Tech., LLC,
IPR2018-00816, Paper 19 (P.T.A.B. Jan. 8, 2019) (precedential)3

Revvo Techs., Inc., v. Cerebrum Sensor Techs., Inc.,
IPR2025-00632, Paper 20 (P.T.A.B. Nov. 3, 2025)..... passim

Tesla, Inc., v. Intell. Ventures II LLC,
IPR2025-00340, Paper 18 (P.T.A.B. Nov. 5, 2025)..... passim

OTHER AUTHORITIES

Interim Director Discretionary Process, United States Patent and Trademark
Office, [https://www.uspto.gov/patents/ptab/interim-director-discretionary-
process](https://www.uspto.gov/patents/ptab/interim-director-discretionary-process).....7

Patent Trial and Appeal Board, Standard Operating Procedure 2 (Rev. 11),
[https://www.uspto.gov/sites/default/files/documents/20230724_ptab_sop2_rev1
1_.pdf](https://www.uspto.gov/sites/default/files/documents/20230724_ptab_sop2_rev11.pdf)12

United States Patent and Trademark Office, Patent Trial and Appeal Board
Consolidated Trial Practice Guide (November 2019)
[https://www.uspto.gov/sites/default/files/documents/tpgnov.pdf?MURL=TrialsPr
acticeGuideConsolidated](https://www.uspto.gov/sites/default/files/documents/tpgnov.pdf?MURL=TrialsPracticeGuideConsolidated)3

REGULATIONS

37 C.F.R. § 1.4(d)14

37 C.F.R. § 42.71(d)3

37 C.F.R. §11.18(b)14

TABLE OF EXHIBITS

Exhibit	Description
EX2001	Docket for Champion Power Equipment, Inc. v. Firman Power Equipment Inc., Case No. 2:23-cv-02371 (D. Az.) (“Firman Case”)
EX2002	Firman Case, Case Management Order, ECF No. 33
EX2003	Firman Case, First Amended Complaint, ECF No. 24
EX2004	Firman Case, Firman Answer to First Amended Complaint and Counterclaims, ECF No. 61
EX2005	Firman Case, Firman’s Motion to Amend Invalidity Contentions, ECF No. 115
EX2006	Firman Case, Declaration and Exhibit, ECF No. 116
EX2007	Firman Case, Order Granting Leave to Amend, ECF No. 124
EX2008	Firman Case, ECF No. 149
EX2009	Firman’s Nov. 2024 Subpoena to third-party Generac (Firman Case)
EX2010	Docket for Generac Case (E.D. Wis.)
EX2011	Generac Case, Generac’s First Amended Answer and Counterclaims, ECF No. 30
EX2012	Generac Case, Champion's First Amended Answer to Generac's Amended Counterclaims, ECF No. 31
EX2013	Defendant Generac’s Feb. 14, 2025 Subpoena to third-party Firman
EX2014	May 22, 2025 Defendant Generac’s Letter to third-party Firman
EX2015	July 23, 2025 Stipulation from Generac
EX2016	Docket for Harbor Freight Case (C.D. Cal.)
EX2017	Harbor Freight Case, Complaint for Declaratory Judgment, ECF No. 1
EX2018	Harbor Freight Case, Champion’s Answer and Counterclaims, ECF No. 47
EX2019	Harbor Freight Case, Harbor Freight’s Answer to Counterclaims, ECF No. 55
EX2020	Harbor Freight Case, Joint R26 Report, ECF No. 38
EX2021	Harbor Freight’s July 14, 2025 Preliminary Claim Constructions
EX2022	Harbor Freight’s July 18, 2025 Objections and Responses to Champion's Second Set of ROGs
EX2023	Harbor Freight’s Mar. 10, 2025 Subpoena on third-party Firman
EX2024	March 24, 2025 Email from third-party Firman to Harbor Freight (Harbor Freight Case)
EX2025	March 24, 2025 Letter from Firman to Harbor Freight (Harbor Freight Case)

Exhibit	Description
EX2026	July 22, 2025 Stipulation from Harbor Freight
EX2027	Docket for Harbor Freight Wisconsin (E.D. Wis.)
EX2028	Docket for MWE Case (D. Nev.)
EX2029	Generac Case, Complaint, ECF No. 1
EX2030	Docket for Miscellaneous Case D. Az.
EX2031	Sept. 9, 2019 Letter from Champion to Firman
EX2032	Oct. 8, 2019 Firman Response Letter
EX2033	June 23, 2020 Letter from Champion to MWE
EX2034	July 31, 2020 MWE Response Letter
EX2035	Oct. 17, 2020 MWE Responsive Letter
EX2036	July 7, 2020 Letter from Champion to Generac
EX2037	July 31, 2020 Generac Response Letter
EX2038	March 27, 2024 Letter from Champion to Harbor Freight
EX2039	June 28, 2024 Letter from Champion to Harbor Freight
EX2040	Electronic Direct Injection (EDFI) for Small Two-Stroke Engines by Johnson et al. ("Johnson")
EX2041	US11143120 ("the '120 Patent")
EX2042	US10598101 ("the '101 Patent")
EX2043	US4335697 ("McClean")
EX2044	Kubota DF-972 Information Sheet
EX2045	Honda Owner's Manual for Generator EU2000i
EX2046	Champion Manual, #100263
EX2047	Docket Navigator - Time to Milestones for D. Az. (Trial)
EX2048	Docket Navigator - Time to Milestones for E.D. Wis. (Trial)
EX2049	US7905469 ("Nickels")
EX2050	Generac Case, Order Following Scheduling Conference, ECF No. 29
EX2051	MWE Case, Complaint, ECF No. 1
EX2052	July 29, 2025 Stipulation from MWE
EX2053	Oct. 11, 2018 Office Action, during examination of the '398 Patent
EX2054	<i>Reserved</i>
EX2055	
EX2056	
EX2057	
EX2058	
EX2059	
EX2060	
EX2061	

Exhibit	Description
EX2062	<i>Reserved</i>
EX2063	
EX2064	
EX2065	
EX2066	
EX2067	
EX2068	
EX2069	
EX2070	
EX2071	
EX2072	
EX2073	
EX2074	
EX2075	
EX2076	
EX2077	
EX2078	Declaration of Dr. William Singhose
EX2079	Curriculum Vitae of Dr. William Singhose
EX2080	US2012/0104008 (“DeNardo”)
EX2081	Propane 101 Internet Archive
EX2082	File History of U.S. Patent App. No. 14/925,441
EX2083	<i>Reserved</i>
EX2084	
EX2085	
EX2086	
EX2087	Declaration of Scott P. Amy in Support of Patent Owner's Notice of Intent to Designate a Provisionally Recognized PTAB Attorney as Backup Counsel
EX2088	<i>Reserved</i>
EX2089	
EX2090	
EX2091	
EX2092	
EX2093	
EX2094	
EX2095	Harbor Freight Case, Preliminary Proposed Claim Constructions
EX2096	<i>Reserved</i>

Exhibit	Description
EX2097	<i>Reserved</i>
EX2098	
EX2099	
EX2100	
EX2101	
EX2102	
EX2103	
EX2104	
EX2105	
EX2106	
EX2107	
EX2108	
EX2109	
EX2110	Harbor Freight Case, HFT's Opening Claim Construction Brief
EX2111	Harbor Freight Case, HFT's Responsive Claim Construction Brief
EX2112	<i>Reserved</i>
EX2113	Generac Case, Generac's Supplemental Preliminary Invalidity Contentions, dated 2025-09-25 (redacted)
EX2114	Firman Case, Joint Claim Construction Statement and Identification of Intrinsic and Extrinsic Evidence, ECF 130
EX2115	August 14, 2025 Email from HFT to Champion
EX2116	August 21, 2025 Email from HFT to Champion
EX2117	August 29, 2025 Email from Champion to HFT
EX2118	September 3, 2025 Email from HFT to Champion
EX2119	<i>Reserved</i>
EX2120	November 20, 2025 email from Trials@USPTO.GOV in IPR2025-01099
EX2121	November 20, 2025 email from Trials@USPTO.GOV in IPR2025-01228

GLOSSARY

Abbreviation	Term
'034 Patent	U.S. Patent No. 10,393,034
'060 Application	U.S. Patent Application No. 14/738060
'398 Patent	U.S. Patent No. 10,697,398
'441 Application	U.S. Patent Application No. 14/925441
'780 Patent	U.S. Patent No. 10,221,780
Board	Patent Trial and Appeal Board
Challenged Claims	Claims 1-24 of the '034 Patent
Generac	Generac Power Systems, Inc.
Harbor Freight	Harbor Freight Tools USA, Inc.
MWE	MWE Investments, LLC
Patent Owner	Champion Power Equipment, Inc.
Petition	Petition for Inter Partes Review of U.S. Patent No. 10,393,034 (Paper 4)
Petitioner	Harbor Freight, Generac, and MWE, collectively
POSITA	Person of Ordinary Skill in the Art
USPTO	United States Patent & Trademark Office

The recently designated opinions in *Revvo Techs.* and *Tesla* make clear that an IPR petitioner must justify its decision to rely on narrow (and at times contradictory) claim construction and indefiniteness positions in parallel district court litigation, while maintaining broad invalidity challenges before the Board. As the Director explained, “[a]llowing a petitioner to advance a claim construction before the Board when that petitioner has made inconsistent ... arguments in district court fails to further, but instead detracts from, the Office’s goal of ‘providing greater predictability and certainty in the patent system.’” *Tesla, Inc., v. Intell. Ventures II LLC.*, IPR2025-00340, Paper 18 at 4 (P.T.A.B. Nov. 5, 2025) (informative) (citing *Revvo Techs., Inc., v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20 at 3-5 (P.T.A.B. Nov. 3, 2025) (precedential)).

Here, Petitioner relies on several contradictory claim constructions and indefiniteness arguments in district court, which were properly challenged by Patent Owner in its Preliminary Response. Under the new, controlling standard articulated by the Director in *Revvo Techs.* and *Tesla*, institution should have been denied because Petitioner has not (and cannot) articulate any reasonable explanation for its inconsistent claim construction positions and indefiniteness arguments in co-pending district court litigation. Patent Owner respectfully requests the Board reverse its institution decision for at least this reason.

I. BACKGROUND

Petitioner filed for IPR of the '034 Patent on April 29, 2025. Paper 4 (“Petition”). Patent Owner timely filed its Preliminary Response on August 29, 2025. Paper 12 (“POPR”). There, relying on *Cambridge Mobile Telematics, Inc. v. Sfara, Inc.*, Patent Owner argued that institution should be denied because (1) “Petitioner alleges it has not identified any claim terms that need construction in order to address the issues raised by this Petition,” (2) “Harbor Freight, however, previously argued that the terms ‘gaseous cutoff’ and ‘coupled to [verb]’ were indefinite in the co-pending parallel litigation,” and (3) “Petitioner did not address this discrepancy in the Petition.” POPR, 12-14 (citing IPR2024-00952, Paper 12 (P.T.A.B. Dec. 13, 2024) (informative)).

The Board entered an Institution Decision on November 13, 2025, where it explicitly rejected Patent Owner’s argument, stating that “the decision in *Cambridge Mobile* does not support denial even assuming the facts alleged by Patent Owner” because (1) “an informative decision is not binding authority on the Board” and (2) “neither party here has raised the issue of means-plus-function limitations, and Patent Owner has not identified applicable authority supporting denial merely because Petitioner (allegedly) argues indefiniteness of certain claim terms in district court.” Paper 24 (“Institution Decision”), 13-15. In light of now-controlling law, the Board’s decision should be reversed and institution should be denied.

II. LEGAL STANDARD

“A party dissatisfied with a decision may file a single request for rehearing without prior authorization from the Board. The burden of showing a decision should be modified lies with the party challenging the decision. The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, a reply, or a sur-reply.” 37 C.F.R. § 42.71(d).

“Absent a showing of ‘good cause’ prior to filing the request for rehearing or in the request for rehearing itself, new evidence will not be admitted.” Consolidated Trial Practice Guide, 90 (citing *Huawei Device Co., Ltd. v. Optis Cellular Tech., LLC*, IPR2018-00816, Paper 19, slip op. at 4 (P.T.A.B. Jan. 8, 2019) (precedential)). “[A] party may argue ‘good cause’ exists in the rehearing itself.” *Id.*

III. ARGUMENT

On November 3, 2025 (mere days before the instant Institution Decision issued), the Director issued a precedential order, holding that “when a petitioner takes alternative positions before the Board and a district court, that petitioner should, at a minimum, explain why alternative positions are warranted.” *Revvo Techs.*, IPR2025-00632, Paper 20 at 3-4 (citing *Cambridge Mobile Telematics, Inc. v. Sfara, Inc.*, IPR2024-00952, Paper 12 at 8-9 (P.T.A.B. Dec. 13, 2024)).

In *Revvo Techs.*, the petitioner did not propose “its own constructions for

claim terms in the Petition, but instead” merely accepted the patent owner’s “proposed constructions from the parties’ district court litigation.” *Id.* at 2. Importantly, the Director explained that while the petitioner “proposed different constructions for the claim terms in the district court litigation, [it] did not explain why it was taking a different position” before the Board. *Id.*

The decision in *Revvo Techs.* explicitly found error where the Board “limit[ed] its consideration of a petitioner’s differing claim construction positions to instances that implicate means-plus-function interpretation under Section 112(f).” *Id.* at 3; *see also id.* at 5 (“The Board also erred when it found that a petitioner is only required to explain its different positions when Section 112(f) is implicated”). Because the underlying decision was predicated on an erroneous interpretation of controlling law the Director found that “the appropriate course of action [was] to vacate the Board’s decision and remand the case to the Board ... to determine whether Petitioner has provided a sufficient reason why different claim construction positions are warranted.” *Id.* at 5.

Two days later, on November 5, 2025, the Director issued an informative Order applying *Cambridge Mobile* and *Revvo Techs.*, holding that “when a petitioner advances different positions before the Board and a district court, that petitioner is *required* to explain why those different positions are warranted.” *Tesla*, IPR2025-00340, Paper 18 at 3 (citing *Cambridge Mobile*, IPR2024-00942, Paper 12 at 8-9;

Revvo Techs., IPR2025-00632, Paper 20 at 3-5) (emphasis in original).

In *Tesla*, the petitioner had “argued indefiniteness in the district court and then adopted Patent Owner’s plain and ordinary meaning construction from the district court litigation in its Petition.” *Id.* at 4. Specifically, the Director explained that “[a]llowing a petitioner to advance a claim construction before the Board when that petitioner has made inconsistent indefiniteness arguments in district court fails to further, but instead detracts from, the Office’s goal of ‘providing greater predictability and certainty in the patent system.’” *Id.* (citing *Revvo Techs.*, IPR2025-00632, Paper 20 at 3–5).

At the time Patent Owner filed its Preliminary Response in the instant action, reasonable minds could differ on the scope of the burden to explain contradictory claim construction positions created by *Cambridge Mobile*. Patent Owner argued that *Cambridge Mobile* required petitioners to explain *all* contradictory indefiniteness positions. POPR, 12-14. In contrast, the Institution Decision makes clear that the Board adopted the same approach advanced by the petitioner in *Tesla*, namely, that *Cambridge Mobile* was only limited to cases alleging the indefiniteness of means-plus-function terms. Institution Decision at 13-15 (“In the [*Cambridge Mobile*] analysis, the panel noted the *express* requirement in Rule 104(b)(3) to construe means-plus-function limitations and highlighted the petitioner characterized the construction of those limitations as a ‘dispositive issue’ in the

district court but failed to even address the issue at the Board.”). However, this approach has now been *expressly rejected* by the Director.

The *Revvo Techs.* and *Tesla* decisions make clear that *Cambridge Mobile* is not limited to terms involving indefinite means-plus-function claims (or even indefiniteness positions generally, as Patent Owner argued), but rather: a petitioner must explain *all alternative claim construction positions*. Under the new, controlling standard articulated by the Director in *Revvo Techs.* and *Tesla*, good cause exists for the Board to consider Patent Owner’s new, post-POPR evidence, which makes clear that institution should be denied because Petitioner has not (and cannot) articulate any reasonable explanation for its inconsistent claim construction positions and indefiniteness arguments in co-pending district court litigation.¹ *See* § III.A, *infra*.

Moreover, Patent Owner’s Preliminary Response properly challenged Petitioner’s inconsistent indefiniteness positions. *See* § III.B, *infra*. As such,

¹ In light of the guidance provided by *Revvo Techs.*, Patent Owner does not oppose a response to the arguments and new evidence in § III.A. *See e.g., Revvo Techs.*, IPR2025-00632, Paper 20 at 5 (“the appropriate course of action is to vacate the Board’s decision and remand the case to the Board ... to determine whether Petitioner has provided a sufficient reason why different claim construction positions are warranted”).

regardless of any changes in law or subsequent developments, the Board should reconsider its Institution Decision, and institution should be denied.

A. Controlling law and new evidence support denial.

Petitioner’s district court positions include both (1) arguments that the ’034 Patent is invalid as indefinite, and (2) claim constructions that are inconsistent with the plain and ordinary meaning applied before the Board. In light of the change in law afforded by *Revvo Techs.* and *Tesla*, and given the fact that the vast majority of Petitioner’s district-court arguments did not crystalize until *after* Patent Owner’s POPR deadline, good cause exists for the board to consider Patent Owner’s additional evidence and arguments. *See e.g.*, Interim Director Discretionary Process, §V.D (“A party may raise changed circumstances, for example, a change in trial date, in a request for rehearing or a request for Director Review filed within the applicable time period.”) (accessible via <https://www.uspto.gov/patents/ptab/interim-director-discretionary-process>).

In related proceedings (which are pre-institution, but post-POPR), the Board acknowledged that “the recent precedential decision in *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20 (P.T.A.B. Nov. 3, 2025), and the recent informative decision in *Tesla, Inc. v. Intell. Ventures II LLC*, IPR2025-00340, Paper 18 (P.T.A.B. Nov. 5, 2025)) ... address a petitioner’s different claim construction positions in district court and at the Board.” EX2120;

EX2121. There, the Board recognized the benefit of additional briefing “to address the impact of the *Revvo* and *Tesla* decisions on these proceedings in view of Petitioner’s claim construction positions.” *Id.* The same considerations apply for considering additional post-POPR evidence here.

1. Petitioner’s post-POPR indefiniteness positions should be rejected under *Revvo Techs. and Tesla*.

Tesla is clear: “Allowing a petitioner to advance a claim construction before the Board when that petitioner has made inconsistent indefiniteness arguments in district court fails to further, but instead detracts from, the Office’s goal of ‘providing greater predictability and certainty in the patent system.’” *Tesla*, Paper 18 at 4 (citing *Revvo Techs.*, IPR2025-00632, Paper 20 at 4-5). Here, Petitioner’s district court indefiniteness positions are directly contradictory to its IPR arguments, and the *only* explanation for Petitioner’s contradictory positions among and between the various proceedings is unabashed gamesmanship.

For example, Harbor Freight’s September 9, 2025 claim construction brief argued the terms “gaseous cutoff” and “coupled to [verb]” were indefinite. EX2110, 26-30. Specifically, Harbor Freight argued “[t]he term ‘gaseous cutoff’ has no commonly accepted meaning to a POSITA” and “provides no structural guidance whatsoever.” EX2110, 27-28. Here, conversely, Petitioner argued these “terms should be given their plain and ordinary meaning” and identified (for example)

Nakafushi's "LPG cut valve 18" as the claimed "gaseous cutoff." *See e.g.*, Pet., 34. Despite allegedly having "no commonly accepted meaning," both Petitioner and Petitioner's expert claimed to be able to identify the "gaseous cutoff" within the prior art. *See also* Pet., 34 (purporting to identify the alleged "gaseous cutoff coupled to open and close a gaseous fuel source to the engine" despite previously arguing that POSITAs are "without guidance about the coupling relationship"); EX2110, 29.

Generac also served "Supplemental Preliminary Invalidation Contentions" on September 25, 2025, which "incorporate[d] by reference any indefiniteness arguments" made by Firman, Harbor Freight, and MWE. EX2113, 51. Thus, the explicit contradictions created by Harbor Freight's indefiniteness positions apply with equal force to Generac. Moreover, Generac also incorporated non-petitioner Firman's argument that the term "coupled to" is indefinite. EX2113, 51; EX2114, 84-85.

Under the controlling standard articulated in *Revvo Techs.* and *Tesla*, Petitioner should not be allowed to advance inconsistent indefiniteness positions simply because those positions did not crystalize until *after* Patent Owner's POPR deadline. Moreover, there is no sufficient explanation for Petitioner's differing claim construction positions, which are inherently contradictory. Denial is appropriate.

2. Petitioner’s post-POPR contradictory claim constructions should be rejected under *Revvo Techs. and Tesla*.

In district court, Harbor Freight also alleged that the proper construction of “pressure regulator” is “a device that reduces and controls the pressure of gaseous fuel.” EX2110, 24-25. And yet, Petitioner did not offer any construction of “pressure regulator” before the Board, nor did it offer any explanation for the discrepancy. Pet., 12. Petitioner’s contradictory claim construction positions are particularly egregious here, where Petitioner’s district court construction is directly counter to the arguments it advanced before the Board. For example, the Petition explicitly argues that the “Primary Chamber” of vaporizer disclosed by the Kubota Workshop Manual constitutes the claimed primary “pressure regulator,” explaining that “in the Primary Chamber, *liquid fuel* is decompressed (the first decompression) and it is evaporated.” Pet., 97 (emphasis added); *see also* IPR2025-01121, Paper 19 at 3 (conflating vaporizers (which vaporize *liquid fuel*) and pressure regulators in direct contradiction of Petitioner’s district court construction, which explicitly requires the “pressure regulator” regulate the pressure of *gaseous fuel*). This contradictory approach is precisely the outcome *Revvo Techs.* counsels against. Institution should be denied.

B. The POPR correctly challenged Petitioner’s inconsistent indefiniteness allegations.

Regardless of any changes in law or subsequent developments, Patent

Owner’s Preliminary Response correctly argued that institution should be denied because (1) “Petitioner alleges it has not identified any claim terms that need construction in order to address the issues raised by this Petition,” (2) “Harbor Freight, however, previously argued that the terms ‘gaseous cutoff’ and ‘coupled to [verb]’ were indefinite in the co-pending parallel litigation,” and (3) “Petitioner did not address this discrepancy in the Petition.” POPR, 12-14 (citing *Cambridge Mobile*, IPR2024-00952, Paper 12 (P.T.A.B. Dec. 13, 2024) (informative)). These facts remain undisputed.

1. The Board mis-applied *Cambridge Mobile*.

The Board erroneously rejected Patent Owner’s challenge under a limited interpretation of *Cambridge Mobile* because “neither party has raised the issue of means-plus-function limitations, and Patent Owner has not identified applicable authority supporting denial merely because Petitioner (allegedly) argues indefiniteness of certain claim terms in district court.” Paper 24, 14-15.² As explained above, the Board’s approach is defunct in light of the *Revvo Techs.* and

² Tellingly, Petitioner waited until *after* Patent Owner’s Preliminary Response to argue that “gaseous cutoff” was a “means-plus-function limitation[] and indefinite for lack of corresponding structure.” EX2111, 25-27. Thus, even under the Board’s limited interpretation of *Cambridge Mobile*, institution is improper.

Tesla decisions.

Moreover, the Board justified Petitioner’s contradictory indefiniteness positions, because indefiniteness “arguments are not even available in *inter partes* review.” Institution Decision, 14-15. But, the Director explicitly rejected this reasoning in *Tesla*, finding that “the statement amounts to an assertion that a petitioner should be permitted to raise inconsistent invalidity challenges in the two forums.” *Tesla*, Paper 18 at 3.

Finally, the Board’s institution decision explained that “Informative decisions set forth Board norms that should be followed in most cases, absent justification, although *an informative decision is not binding authority on the Board.*” Paper 24 at 13-14 (citing Standard Operating Procedure 2 (Revision 11)) (emphasis in original). Here, the Director’s *Revvo Techs.* decision is *precedential*, which obviates the Board’s concern. Moreover, there is no reasonable justification for Petitioner’s contradictory positions.

2. The Board disregarded evidence of Petitioner’s indefiniteness positions.

In addition to mis-applying the law, the Institution Decision also condones Petitioner’s inconsistent claim constructions because Patent Owner allegedly did not “provide any specific citations to Petitioner’s alleged indefiniteness arguments.” Institution Decision, 13. The Board is incorrect. Patent Owner’s sworn attorney

argument accurately conveying Petitioner’s district court positions was the best evidence available at Patent Owner’s POPR deadline.

The claim construction and invalidity positions in the Generac, Harbor Freight, MWE, and Firman actions are an ever-shifting quagmire of supplemental contentions, inter-action incorporation by reference, and repeatedly revised positions. For example, Harbor Freight served “preliminary” proposed claim constructions on July 14, 2025 where it suggested that three terms from the ’034 Patent were indefinite, but explicitly “reserve[d] the right to supplement or amend the information contained [t]herein,” “change its position,” and “assert that a term should be given its plain and ordinary meaning or that the term need not be construed.” EX2095, 2-3, 23-24.³

On August 14, 2025 (two weeks before Patent Owner’s POPR deadline), Harbor Freight limited its prior indefiniteness allegations to two terms (“gaseous cutoff” and “coupled to [verb]”). EX2115 (email correspondence between Harbor Freight and backup counsel Timothy Ziolkowski and Jacob Fritz). On August 21,

³ Exhibits 2095 and 2115-2118, while newly cited in this proceeding, are intended only to provide context regarding the nature of the co-pending district court proceedings as of Patent Owner’s POPR deadline. It is not necessary to consider this evidence in order to deny institution.

2025 (eight days before Patent Owner’s POPR deadline), Harbor Freight indicated that it was “still considering” further narrowing the list of proposed terms. EX2116. As of August 29, 2025 (the deadline for Patent Owner’s Preliminary Response), HFT and Champion were actively discussing claim construction. EX2117. Those discussions continued *after* Patent Owner’s POPR deadline. *See e.g.*, EX2118.

Based on the information available to it at the time, Patent Owner accurately represented in its Preliminary Response that Harbor Freight “previously argued that the terms ‘gaseous cutoff’ and ‘coupled to [verb]’ were indefinite in the co-pending parallel litigation.” POPR, 12-13. Notably, Petitioner did not amend its district court positions to withdraw its indefiniteness challenges. Moreover, despite filing a Reply (Paper 15), Petitioner did not dispute Patent Owner’s representations regarding its indefiniteness challenges.

Given the ongoing nature of the discussions between Champion and Harbor Freight, and the lack of a concrete “exhibit” depicting Harbor Freight’s positions *at the time the POPR was filed*, no exhibit was cited for this proposition. However, submission of the POPR “constitutes a certification under § 11.18(b) of this subchapter” that “[a]ll statements made therein of the party’s own knowledge are true ... subject to the penalties set forth under 18 U.S.C. 1001.” 37 C.F.R. § 1.4(d)(5); 37 C.F.R. §11.18(b).

Harbor Freight directly presented its indefiniteness challenges to Patent

Owner's backup counsel Timothy Ziolkowski and Jacob Fritz. EX2115. Patent Owner's Lead Counsel (Joseph Staley) then certified that Harbor Freight "previously argued that the terms 'gaseous cutoff' and 'coupled to [verb]' were indefinite in the co-pending parallel litigation." POPR, 12-13. Given the amorphous nature of Petitioner's district court positions as of August 29, 2025, sworn attorney argument accurately representing the ongoing state of the Harbor Freight negotiations was the best evidence available at the time.

In light of Patent Owner's sworn certification accurately representing Harbor Freight's indefiniteness positions, the Board's statement that "Patent Owner fails to provide any specific citations to Petitioner's alleged indefiniteness arguments in the California litigation" (while accurate) does not mandate that Patent Owner's argument should be discarded entirely. Institution Decision, 13. Under controlling standard articulated by the Director in *Revvo Techs.* and *Tesla*, Patent Owner's Preliminary Response properly challenged Petitioner's inconsistent indefiniteness positions, and institution should be denied.

IV. CONCLUSION

Patent Owner respectfully asserts that the Board's Institution Decision should be reversed and institution should be denied because Petitioner's contradictory indefiniteness and claim construction positions are prohibited in light of the Director's recently-designated *Revvo Techs.* and *Tesla* cases.

Dated: November 26, 2025

Respectfully submitted,

By: /Joseph W. Staley/

Joseph W. Staley, Reg. No. 60,732

Scott P. Amy (Admitted *pro hac vice*)

Thomas F. Finch, Reg. No. 82,341

PERILLA KNOX & HILDEBRANDT LLP

5871 Glenridge Dr.

Suite 350

Atlanta, Georgia 30328

Tel: (770) 927-7802

Fax: (877) 389-6779

Email:

j.staley@pkhip.com

s.amy@pkhip.com

t.finch@pkhip.com

Timothy J. Ziolkowski, Reg. No. 38,368

Jacob M. Fritz, Reg. No. 71,459

**ZIOLKOWSKI PATENT SOLUTIONS
GROUP, SC**

136 South Wisconsin Street

Port Washington, WI 53074

(262) 268-8100 Tel

(262) 268-8185 Fax

Email:

tjz@zpatents.com

jmf@zpatents.com

Counsel for Patent Owner

CERTIFICATE OF SERVICE

In accordance with 37 C.F.R. § 42.6(e), the undersigned certifies that on November 26, 2025, a complete and entire copy of the foregoing document was served on counsel of record for Petitioner, as follows:

Michael Houston, Reg. No. 58,486
FOLEY & LARDNER LLP
321 N. Clark St., Suite 3000
Chicago, Illinois 60654
Tel: 312-832-4500
mhouston@foley.com
HarborFreight-Champion-
034IPR@foley.com

Jeffrey S. Gundersen, Reg. No. 47,619
Kimberly K. Dodd, Reg. No. 54,646
FOLEY & LARDNER LLP
777 E Wisconsin Ave
Milwaukee, WI 53202-5306
Tel: 414-271-2400
jgundersen@foley.com
kdodd@foley.com

Thomas J. Leach, Reg. No. 53,188
Taylor R. Stemler, Reg. No. 79,777
MERCHANT & GOULD P.C.
150 South Fifth Street, Suite 2200
Minneapolis, MN 55402
Tel: 612-336-4665
Tel: 612-371-5215
TLeach@merchantgould.com
TStemler@MerchantGould.com

Thomas A. Walsh, Reg. No. 45,196
ICE MILLER LLP
One American Square, Suite 2900
Indianapolis, IN 46282
Tel: 317-236-5946
thomas.walsh@icemiller.com

Thomas A. Rammer, Reg. No. 62,591
Alexas D. Siliunas, Reg. No. 79,826
ICE MILLER LLP
200 W. Madison Street, Suite 3500
Chicago, IL 60606
Tel: 312-705-6016
Tel: 312-726-8174
tom.rammer@icemiller.com
alek.siliunas@icemiller.com

Dated: November 26, 2025

Respectfully submitted,

By: /Joseph W. Staley/
Joseph W. Staley, Reg. No. 60,732
Counsel for Patent Owner