

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

CHAMPION POWER EQUIPMENT, INC.,
Patent Owner.

IPR2025-01384
Patent 11,905,895

**PATENT OWNER CHAMPION POWER EQUIPMENT, INC.'S
BRIEFING ON IMPACT OF *REVVO* AND *TESLA* DECISIONS**

Patent Owner’s Preliminary Response set forth three distinct arguments that denial is proper in light of *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20 (P.T.A.B. Nov. 3, 2025), and *Tesla, Inc. v. Intell. Ventures II LLC*, IPR2025-00340, Paper 18 (P.T.A.B. Nov. 5, 2025). First, despite arguing for constructions of the terms “a mechanical fuel valve” and “communicate” / “communication” in the Harbor Freight proceeding, Petitioner applies the plain and ordinary meaning of each term before the Board. Paper 13 (“POPR”), 13-15. Second, despite arguing that the terms “A mechanical fuel valve actuatable ... to selectively control fuel flow,” and “desired pressure” are indefinite in the Generac proceeding, Petitioner again applies the plain and ordinary meaning of each term here. POPR, 16-17. Third, Petitioner improperly relies on unsupported and contradictory “apparent” constructions for Grounds 3A, 3B, and 4 that are allegedly based on Patent Owner’s litigation positions. *Id.*, 17-22. In each instance, Petitioner’s failure to justify its contradictory claim construction positions merits denial.

I. HARBOR FREIGHT’S INCONSISTENT CONSTRUCTIONS

Harbor Freight proposed for narrow constructions of the terms “a mechanical fuel valve” and “communicate” / “communication” in co-pending district court litigation. POPR, 10 (citing EX2095, 36-37; EX2110, 15-16, 20-21). However, Petitioner argued that the ordinary and customary meaning applies here. *Id.*

In prior attempts to avoid discretionary denial, Petitioner repeatedly argued

that “Generac ... expect[s] to take the same claim construction positions [as Harbor Freight] at the time such disclosures are due.” IPR2025-01185, Paper 20 at 1; *see also* IPR2025-01099, Paper 20 at 1; IPR2025-01228, Paper 23 at 1. Now, however, Petitioner does not address Harbor Freight’s inconsistent claim construction positions at all, but rather asserts that “any claim construction positions taken by Harbor Freight should not be held against Generac in this proceeding” because “that litigation has settled ... thereby eliminating any opportunity for inconsistency in claim construction.” Paper 15 (“Br.”), 3 (citing *Revvo* at 4) (cleaned up).

Petitioner does not address this explicit contradiction—*i.e.*, simultaneously arguing both that Generac intends to adopt Harbor Freight’s claim constructions, and that those same constructions “should not be held against Generac”—in either the instant proceeding or in any of IPR2025-01099, IPR2025-01185, or IPR2025-01228. As such, for purposes of determining institution, Harbor Freight’s claim construction positions in parallel litigation should be held to apply to Petitioner regardless of Harbor Freight’s requested withdrawal.

Moreover, Petitioner’s new position (disclaiming Harbor Freight’s contradictory constructions) is directly counter to the policy espoused by *Revvo Techs.* and *Tesla*. According to Petitioner, inconsistent positions should be allowed so long as the entity taking those positions is able to successfully leverage a settlement prior to institution. Petitioner’s argument exhibits the very gamesmanship

Revvo Techs. and *Tesla* were designed to combat. Institution is properly denied.

II. GENERAC'S INCONSISTENT INDEFINITENESS ARGUMENTS

Generac argued the terms “A mechanical fuel valve actuatable ... to selectively control fuel flow” and “desired pressure” were indefinite in parallel litigation. POPR, 10. Now, Petitioner asserts no inconsistency exists because the disputed terms are only indefinite for purposes of an infringement analysis, *not* an invalidity analysis. Br., 3-4. But, in each instance Petitioner’s argument depends on construction of the disputed terms, and no construction was proffered in the Petition.

First, Petitioner argues that Generac’s indefiniteness argument regarding “A mechanical fuel valve actuatable ... to selectively control fuel flow” is consistent with the Petition because “a proper construction of the claim should encompass the DuroMax-Elsdon combination.” *Id.*, 4. But presumably, *every* IPR relies on prior art that it believes is “encompassed” by a proper construction of the claim—this is necessary for a petition to succeed. Thus, the mere fact that a purportedly “proper” construction of the claim allegedly encompasses the prior art is not sufficient to support contradictory indefiniteness positions, particularly where (1) the Petition did not actually propose *any* construction of the disputed term, and (2) Petitioner’s Brief lacks any evidentiary support for the conclusory attorney argument therein.

Second, Petitioner’s treatment of the term “desired pressure” implicitly construes the term to “include[] the pressure used to operate the engine of the dual

fuel generator.” Petitioner, however, lacks any evidentiary support for its construction of “desired pressure,” which is wholly based on attorney argument. Again, Petitioner’s late-stage implicit construction was absent from the Petition, and therefore cannot justify Petitioner’s contradictory indefiniteness positions.

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 attempts to justify its inconsistent district court-indefiniteness positions by improperly offering constructions (or suggesting the presence of “proper” constructions) of the disputed terms for the first time on eve of institution. Institution should be denied.

III. PETITIONER’S IMPROPER “APPARENT” CONSTRUCTIONS

In attempting to rationalize its reliance on “apparent” constructions, Petitioner now states that “Generac ... expects to take positions consistent with the Petition when such disclosures are due.” Br., 1. But, Petitioner does not (and cannot) explain how Generac intends to take positions that are consistent with the Petition, when the Petition itself relies on two different constructions of “fuel lockout apparatus,” “prevent ... coupling” and “permit ... to couple.” Pet., 22-32; POPR, 8-10.

Petitioner’s gamesmanship is clear. Petitioner advanced narrow constructions

in parallel district court litigation (and IPR Grounds 1 and 2) to manufacture non-infringement positions. POPR, 17-22. In stark contrast, Petitioner now attempts to rely on broad and amorphous “apparent” constructions of those same terms in Grounds 3A, 3B, and 4—without actually defining or supporting the constructions—in the hopes of convincing the Board to institute. Petitioner put forth two competing theories and suggested that the Board choose which was more persuasive—the very strategy *Revvo Techs.* and *Tesla* were designed to prevent.

Now, Petitioner attempts to salvage its deficient Petition by arguing that “The Board does not need to ... analyze the invalidity grounds presented under the alternative construction.” Br., 2. But, a petition cannot be instituted on fewer than all grounds. If instituted, Patent Owner will be forced to defend against invalidity challenges that (1) were not clearly articulated in the Petition, (2) Petitioner explicitly asserts are “wrong,” and (3) Petitioner now suggests should be disregarded entirely. Pet., 31-32; Br., 2. There can be no reasonable explanation (other than rampant gamesmanship) for Petitioner’s reliance on alternative “apparent” constructions. Thus, like in *Revvo Techs.*, Petitioner’s reliance on inconsistent claim constructions “[sh]ould mean a denial of institution.” *Revvo Techs.*, Paper 20 at 5.¹

¹ Institution was previously denied in related IPR2025-01099 and -01228 due to Petitioner’s reliance on “apparent” constructions. The same outcome applies here.

Dated: January 8, 2026

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CERTIFICATE OF COMPLIANCE

This paper complies with the page limits set forth in the Board's December 30, 2025 email authorization for this brief.

Dated: January 8, 2026

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CERTIFICATE OF SERVICE

In accordance with 37 C.F.R. § 42.6(e), the undersigned certifies that on January 8, 2026, a complete and entire copy of the foregoing document was served on counsel of record for Petitioner, as follows:

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