

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

CHAMPION POWER EQUIPMENT, INC.

Plaintiff,

v.

Case No. 24-cv-1281

GENERAC POWER SYSTEMS, INC.

Defendant.

**DEFENDANT’S RESPONSE TO
PLAINTIFF’S FIRST SET OF
INTERROGATORIES TO DEFENDANT
(NOS. 1-7)**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Generac Power Systems, Inc. (“Generac”), through its undersigned attorneys, hereby responds to Plaintiff Champion Power Equipment, Inc.’s (“Champion” or “Plaintiff”) First Set of Interrogatories to Defendant (Nos. 1-7) (“Interrogatories”).

GENERAL OBJECTIONS

The following General Objections shall be deemed incorporated into the objections and responses to each and every Request:

1. Generac objects to the Definitions set forth in the Interrogatories to the extent they are inconsistent with, seek to impose obligations not required by, or seek to expand the scope of permissible discovery under the Federal Rules of Civil Procedure and the Local Rules of this Court.
2. Generac objects to the definitions of “You,” “Your,” “Generac,” and “Powermate” as overly broad, unduly burdensome, and disproportionate, especially insofar as such definitions purport to include “current or former officers, directors, employees, representatives, agents, attorneys, and all others authorized to act on their behalf.” In responding to these Interrogatories,

Generac shall interpret Generac Power Systems Inc. to mean solely Generac Power Systems, Inc. and Powermate LLC to mean solely Powermate LLC.

3. Generac objects to the definition of “Document” to the extent that the definition includes any items beyond the scope of the Federal Rules of Civil Procedure. For example, Generac objects to the definition of “Document” to the extent it seeks to encompass telephone logs, tape recordings, and text messages or instant messages on cellular phones, iPads, tablets, computers, or the like. Such a request is overly broad, unduly burdensome, and disproportionate to the needs of the case. Generac will not search for nor produce text messages or instant messages on cellular phones, iPads, tablets, computers, or the like.

4. Generac objects to the use of the words “each” and “every” and “all” and “any” in the Interrogatories insofar as every fact, person, or thing that evidences, refers, or relates to the subject matter of the request sought. Literal compliance is impossible in most instances and, in others, imposes a burden and expense that outweighs any likely benefit. Generac seeks to provide fair and accurate responses to these Interrogatories, subject to any objections, and, where it agrees to produce documents, will engage in a reasonable search for the same.

5. Generac objects to the Interrogatories to the extent they seek information that is subject to the attorney-client privilege, is subject to the common-interest privilege, is subject to a confidentiality agreement between the parties or with a third party, is subject to a Protective Order in any separate proceeding, evidences or constitutes protected attorney work product, or that otherwise is not discoverable or is the subject of any other privilege, whether based on statute or recognized at common law. To the extent the Interrogatories can be construed to seek such information, Generac objects and will provide only non-privileged and non-protected information. Any inadvertent disclosure shall not be deemed to constitute a waiver of any privilege. Generac

also objects to responding to any discovery that concerns trial preparation materials in this case, or any other case, including communications between Generac and its counsel. Generac will serve an appropriate privilege log at a time to be agreed upon by the parties.

6. Generac objects to the Interrogatories to the extent they seek production of confidential documents, communications, and/or things prior to the entry of an appropriate Protective Order including a prosecution bar.

7. Generac objects to the Interrogatories to the extent they seek production of electronically stored information prior to the entry of an appropriate ESI Order.

8. Generac objects to the Interrogatories to the extent they are overbroad, unduly burdensome, disproportionate, and/or seek irrelevant information, taking into account the needs of the case, the amount in controversy, the limitations of the parties' resources, and the importance of the issues at stake.

9. Generac objects to the definition of "Accused Products" insofar as the general model description includes generators that do not have dual fuel capabilities, such as the GP7500E. Generac will not produce or search for information for any such models.

10. Generac makes the specific objection with respect to certain Interrogatories that they are vague and ambiguous as they do not describe with reasonable particularity the documents being sought. Since the scope of such Interrogatories is in question, Generac reserves the right to object to such Interrogatories as overly broad or unduly burdensome or as seeking irrelevant information once the scope of such Interrogatories is clarified.

11. Generac objects to the Interrogatories to the extent they seek information that is unreasonably cumulative or duplicative, information already in Champion's possession,

information equally accessible to Champion from some other source that is more convenient, less burdensome, or less expensive, or information that is a matter of public record.

12. Generac objects to these Interrogatories to the extent they seek information not in Generac's possession, custody, or control.

13. Any statement by Generac that it will produce responsive documents is only a statement that any such documents that can be located after a reasonable search will be produced, made available for inspection, or, if privilege is asserted, listed on a privilege log. Such a statement is not a representation that any such responsive documents exist or can be located with a reasonable search.

14. All documents produced by Generac in connection with Generac's responses to the Interrogatories are produced without waiver of, or prejudice to, any challenge by Generac to the relevancy or admissibility of such documents in this case.

SPECIFIC OBJECTIONS AND RESPONSES

INTERROGATORY NO. 1:

State when You first became aware of each of the Champion Patents and describe the circumstances under which You obtained such awareness, including the persons involved.

ANSWER:

Generac incorporates its General Objections. Generac objects to this Request to the extent it seeks information protected by the attorney-client privilege, the work product doctrine, common interest privilege, and/or any other applicable privilege or immunity. Generac further objects to this Interrogatory as irrelevant insofar as it seeks information related to patents that are not asserted in this case. Generac objects that this Interrogatory's use of "Champion Patents" as vague, ambiguous, and undefined. Using Champion's definition of "Champion," Generac has no way of

identifying all patents of Champion’s “agents, representatives, and all other persons acting on behalf of Champion.” Generac objects to this Request as premature to the extent that it seeks confidential information before entry of an appropriate Protective Order. Generac objects to this interrogatory as overly broad and unduly burdensome and not proportionate to the needs of the case. Generac further objects that the interrogatory is overly broad and burdensome as Champion has asserted 11 patents in this lawsuit from two separate patent families, one of which has multiple priority chains. Generac further objects that this interrogatory, to the extent it is understood, seeks separate and distinct inquiries as each patent family is a separate and distinct analysis. Generac will count this interrogatory as at least 2 interrogatories under Federal Rule of Civil Procedure 33(a)(1).

Subject to and without waiving the foregoing General Objections and Specific Objections, and reserving the right to assert additional objections, Generac states the following upon current information and belief based on its investigation to date, which remains ongoing: Generac is unable to provide an answer to this interrogatory as the term “Champion Patents” is not defined and is otherwise unintelligible and overly burdensome. Champion has defined the term “Asserted Patents” so “Champion Patents” means something different, but Generac does not and cannot know Champion’s intention and will not presume to know what Champion means. Champion has patents unrelated to the claims and defenses of this case such as United States Patent No. 8,727,233 directed to “Pressure spray washer and control.” To the extent Champion seeks information about irrelevant patents Generac objects as irrelevant, unduly burdensome, and not proportional to the needs of the case. Generac cannot provide a response to this unintelligible interrogatory.

INTERROGATORY NO. 2:

Describe in detail Generac’s involvement, in any manner, in developing, designing, manufacturing, acquiring, or importing the Accused Products, including but not limited to the identity and role of any persons, teams, and groups, including any corporate entity, involved in any manner in developing, designing, manufacturing, acquiring, or importing the Accused Products.

ANSWER:

Generac incorporates its General Objections. Generac objects to this Request to the extent it seeks information protected by the attorney-client privilege, the work product doctrine, common interest privilege, and/or any other applicable privilege or immunity. Generac objects to this Interrogatory as seeking information not relevant to any claim or defense in this case. Generac objects to this Request being overly broad, unduly burdensome, and disproportionate to the extent it seeks involvement “in any manner.” Generac further objects to this Interrogatory as vague and ambiguous as to “involvement, in any manner” and “involved in any manner.” Generac objects to this Interrogatory as seeking information not readily available to or within the possession, custody, or control of Generac. Generac objects to the definition of “Accused Products” insofar as the general model description includes generators that do not have dual fuel capabilities, such as the GP7500E. Generac will not produce or search for information for any such models. Generac objects to this Request as premature to the extent that it seeks confidential and/or Highly Confidential-Attorneys’ Eyes Only information before entry of an appropriate Protective Order.

Subject to and without waiving the foregoing General Objections and Specific Objections, and reserving the right to assert additional objections, Generac states the following upon current information and belief based on its investigation to date, which remains ongoing: This

interrogatory seeks confidential and proprietary information that would be designated Highly Confidential-Attorneys' Eyes Only under an appropriate Protective Order. Generac will provide a substantive answer upon entrance of such a Protective Order.

INTERROGATORY NO. 3:

Describe in detail Generac's involvement in any manner, in the marketing, valuation, licensing, offer for sale, and sales of the Accused Products, including but not limited to, the identity and role of any persons, teams, and groups, including any corporate entity, involved in any manner in the marketing, valuation, licensing, offer for sale, and sales of the Accused Products.

ANSWER:

Generac incorporates its General Objections. Generac objects to this Request to the extent it seeks information protected by the attorney-client privilege, the work product doctrine, common interest privilege, and/or any other applicable privilege or immunity. Generac objects to this Request to the extent it seeks information that is publicly available or can be derived from documents and information equally available to Champion. Generac objects to this Interrogatory as seeking information not readily available to or within the possession, custody, or control of Generac. Generac objects to this Request as being overly broad, unduly burdensome, and disproportionate to the extent it seeks involvement "in any manner." Generac further objects to this Interrogatory as vague and ambiguous as to "involvement, in any manner" and "involved in any manner." Generac further objects that this interrogatory seeks separate and distinct inquiries as each Accused Product requires a separate and distinct analysis related to marketing, licensing, valuation, and sales, which are each separate and distinct topics. Generac will count this interrogatory as four (4) separate interrogatories under Federal Rule of Civil Procedure 33(a)(1).

Generac objects to this request as vague and ambiguous as to valuation and licensing in the context of marketing and sales. Generac objects to the definition of “Accused Products” insofar as the general model description includes generators that do not have dual fuel capabilities, such as the GP7500E. Generac will not produce or search for information for any such models. Generac objects to this Request as premature to the extent that it seeks confidential and/or Highly Confidential-Attorneys’ Eyes Only information before entry of an appropriate Protective Order.

Subject to and without waiving the foregoing General Objections and Specific Objections, and reserving the right to assert additional objections, Generac states the following upon current information and belief based on its investigation to date, which remains ongoing: This interrogatory seeks confidential and proprietary information that would be designated Highly Confidential-Attorneys’ Eyes Only under an appropriate Protective Order. Generac will provide a substantive answer upon entrance of such a Protective Order.

INTERROGATORY NO. 4:

State and identify when the Accused Products were first offered for sale, first sold, first publicly used, first publicly disclosed, first disclosed to anyone, first tested, first imported, and first distributed, including but not limited to, when development began, when development was completed, where development occurred, and each reason or motivation for the development.

ANSWER:

Generac incorporates its General Objections. Generac objects to this Request to the extent it seeks information protected by the attorney-client privilege, the work product doctrine, common interest privilege, and/or any other applicable privilege or immunity. Generac objects to this Interrogatory as seeking information not relevant to any claim or defense in this case, particularly

with “each reason and motivation for the development.” Generac further objects that this Interrogatory is overly broad, unduly burdensome, and disproportionate to the extent it seeks dates for “when the Accused Products were first offered for sale, first sold, first publicly used, first publicly disclosed, first disclosed to anyone, first tested, first imported, and first distributed.” Generac further objects that this interrogatory seeks separate and distinct inquiries into topics of 1) sales, 2) development, 3) testing, 4) use and disclosure, and 5) importation and distribution. Generac will count this interrogatory as five (5) separate interrogatories under Federal Rule of Civil Procedure 33(a)(1). Generac objects to the definition of “Accused Products” insofar as the general model description includes generators that do not have dual fuel capabilities, such as the GP7500E. Generac will not produce or search for information for any such models. Generac objects to this Request as premature to the extent that it seeks confidential and/or Highly Confidential-Attorneys’ Eyes Only information before entry of an appropriate Protective Order.

Subject to and without waiving the foregoing General Objections and Specific Objections, and reserving the right to assert additional objections, Generac states the following upon current information and belief based on its investigation to date, which remains ongoing: This interrogatory seeks confidential and proprietary information that would be designated Highly Confidential-Attorneys’ Eyes Only under an appropriate Protective Order. Generac will provide a substantive answer upon entrance of such a Protective Order.

INTERROGATORY NO. 5:

For each Accused Product sold by You since October 2018, for each quarter in each country in which such Accused Product was sold, identify the total number of units sold, total sales in dollar value, and the applicable gross and net profits in dollar value as computed by You.

ANSWER:

Generac incorporates its General Objections. Generac objects to this Request to the extent it seeks information protected by the attorney-client privilege, the work product doctrine, common interest privilege, and/or any other applicable privilege or immunity. Generac objects that this Interrogatory's use of "applicable gross and net profits" is vague, ambiguous, and undefined. Generac objects to this Interrogatory to the extent it seeks information not relevant to any claim or defense in this case, particularly with seeking financial information "in each country." Actions that occur outside the United States are irrelevant to Champion's claims in the present litigation and will not be disclosed. Generac objects to the definition of "Accused Products" insofar as the general model description includes generators that do not have dual fuel capabilities, such as the GP7500E. Generac will not produce or search for information for any such models. Generac objects to this Request as premature to the extent that it seeks confidential and/or Highly Confidential-Attorneys' Eyes Only information before entry of an appropriate Protective Order.

Subject to and without waiving the foregoing General Objections and Specific Objections, and reserving the right to assert additional objections, Generac states the following upon current information and belief based on its investigation to date, which remains ongoing: This interrogatory seeks confidential and proprietary information that would be designated Highly Confidential-Attorneys' Eyes Only under an appropriate Protective Order. Generac will provide a substantive answer upon entrance of such a Protective Order.

INTERROGATORY NO. 6:

For each Accused Product sold by You since October 2018, for each quarter in each country in which such Accused Product was sold, identify any persons or witnesses with knowledge of,

and Documents relating to, the total number of units sold, total sales in dollar value, and the applicable gross and net profits in dollar value as computed by You.

ANSWER:

Generac incorporates its General Objections. Generac objects to this Request to the extent it seeks information protected by the attorney-client privilege, the work product doctrine, common interest privilege, and/or any other applicable privilege or immunity. Generac objects that this Interrogatory's use of "applicable gross and net profits" and "[d]ocuments related to" is vague, ambiguous, and undefined. Generac objects to this Interrogatory to the extent it seeks information not relevant to any claim or defense in this case, particularly with seeking financial information "in each country." Sales that occur outside the United States are irrelevant to Champion's claims or any potential recovery. Generac objects to this Request being overly broad, unduly burdensome, and disproportionate to the extent it seeks "any persons or witness with knowledge of, and [d]ocuments relating to." Generac objects to the definition of "Accused Products" insofar as the general model description includes generators that do not have dual fuel capabilities, such as the GP7500E. Generac will not produce or search for information for any such models.

Subject to and without waiving the foregoing General Objections and Specific Objections, and reserving the right to assert additional objections, Generac states the following upon current information and belief based on its investigation to date, which remains ongoing: Generac identifies Roberta Blank, Finance Manager.

INTERROGATORY NO. 7:

Describe in detail all aspects of Greg Montgomery’s involvement with Generac, including but not limited to, the circumstances of his recruitment and hiring and his duties and responsibilities at Generac during his tenure.

ANSWER:

Generac incorporates its General Objections. Generac objects to this Request to the extent it seeks information protected by the attorney-client privilege, the work product doctrine, common interest privilege, and/or any other applicable privilege or immunity. Generac objects to this Interrogatory to the extent it seeks information not relevant to any claim or defense in this case. Whether and to what extent Greg Montgomery worked for Generac is irrelevant to the question of whether the Accused Products infringe the Asserted Patents. Generac further objects that this interrogatory constitutes an impermissible fishing expedition untethered to the claims and defenses of the litigation. Generac objects to this Interrogatory to the extent it seeks documents outside its possession, custody, or control. Generac further objects to this Request being overly broad, unduly burdensome, and disproportionate to the extent it seeks “all aspects of Greg Montgomery’s involvement”, “circumstances of his recruitment and hiring”, and “his duties and responsibilities at Generac during his tenure”. Generac objects to this Request as premature to the extent that it seeks confidential information before entry of an appropriate Protective Order.

Subject to and without waiving the foregoing General Objections and Specific Objections, and reserving the right to assert additional objections, Generac states the following upon current information and belief based on its investigation to date, which remains ongoing: In December 2014, Greg Montgomery was hired to lead Generac’s newly acquired Powermate business as General Manager given his sales and marketing background. Generac had acquired Pramac

America, which owned Powermate, in August 2014. In that role, he was responsible for direct sales, marketing, product management and the Atlanta Powermate distribution facility. Shortly after Greg Montgomery started in his position, Generac decided that Powermate would not continue to be operated as a standalone business and instead the operations would be brought into Generac corporate. Around April 2015, Greg was offered and accepted a VP Retail Sales for Generac – a position located out of Wisconsin. Although Greg initially accepted the position, he ultimately withdrew his acceptance because he decided he did not want to relocate. He left Generac shortly thereafter with May 11, 2015, being his last day.

Dated: April 23, 2025

Respectfully submitted,

MERCHANT & GOULD P.C.

/s/ Thomas J. Leach

Thomas J. Leach (MN # 0311844)

Michael Erbele (MN # 0393635)

Joe Dubis (MN # 0398344)

MERCHANT & GOULD P.C.

150 South Fifth Street, Suite 2200

Minneapolis, MN 55402

(612) 332-5300

tleach@merchantgould.com

merbele@merchantgould.com

jdubis@merchantgould.com

REINHART BOERNER VAN DEUREN, S.C.

Paul J. Stockhausen

Monica A. Mark

REINHART BOERNER VAN DEUREN, S.C.

22 East Mifflin Street, Suite 700

Madison, WI 53703

Tel.: 608-229-2200

Fax: 608-229-2100

pstockhausen@reinhartlaw.com

mmark@reinhartlaw.com

Attorneys for Defendant

CERTIFICATE OF SERVICE

I, Elizabeth Enstad, hereby certify that on April 23, 2025, I caused a true and correct copy of the foregoing document to be served upon the following counsel for Plaintiff via electronic mail:

Thomas P. Heneghan (WI # 1024057)
33 East Main Street, Suite 300
Madison, Wisconsin 53703
Telephone: 608.255.4440
Facsimile: 608.258.7138
Tom.Heneghan@huschblackwell.com

Jennifer E. Hoekel (MO # 45880)
8001 Forsyth Blvd, Suite 1500
St. Louis, MO 63105
Telephone: 314.480.1500
Facsimile: 314.480.1505
Jennifer.Hoekel@huschblackwell.com

Timothy J. Ziolkowski, 1020984
Jacob M. Fritz, 1094547
ZIOLKOWSKI PATENT SOLUTIONS GROUP, SC
136 South Wisconsin Street
Port Washington, WI 53074
Telephone: 262.268.8100
Facsimile: 262.268.8185
tjz@zpatents.com
jmf@zpatents.com

Attorneys for Plaintiff Champion Power Equipment, Inc.

/s/Elizabeth Enstad