

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

CHAMPION POWER EQUIPMENT, INC.,
Patent Owner.

IPR2025-00951
Patent 10,598,101

**PATENT OWNER CHAMPION POWER EQUIPMENT, INC.'S
PRELIMINARY RESPONSE**

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GLOSSARY

Abbreviation	Term
'101 Patent	U.S. Patent No. 10,598,101
Board	Patent Trial and Appeal Board
Challenged Claims	Claims 1-19 of the '101 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. 10,598,101 (Paper 4)
Petitioner	Harbor Freight, Generac, and MWE, collectively
POSITA	Person of Ordinary Skill in the Art
USPTO	United States Patent & Trademark Office

Pursuant to 37 C.F.R. § 42.107, Patent Owner Champion Power Equipment, Inc. hereby submits its Preliminary Response to the Petition filed by Generac Power Systems, Inc., Harbor Freight Tools USA, Inc., and MWE Investments, LLC (collectively, “Petitioner”), challenging Claims 1-19 of U.S. Patent No. 10,598,101.

I. INTRODUCTION

Petitioner’s proposed grounds are identified below:

Ground	Claims	Basis	Primary Reference	Secondary Reference(s)
1	1-5, 8-16, and 18-19	103	Duromax	De Vries
2	1-19	103	Duromax	De Vries; Olmr; and Duffy
3	1-4, 9-14, and 18-19	102	Fujisawa	
4	1-4, 8-14, 16, and 18-19	103	Fujisawa	Duromax
5	1-4, 6-14, and 16-19	103	Fujisawa	Duromax; Nakafushi; and Olmr

Discretionary denial pursuant to 35 U.S.C. § 314(a), 35 U.S.C. § 325(d), and the *Fintiv* and *Advanced Bionics* factors¹ is warranted for the reasons set forth in Patent Owner’s Brief in Support of its Request for Discretionary Denial of Institution

¹ *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (P.T.A.B. Mar. 20, 2020) (precedential); *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 (P.T.A.B. Feb. 13, 2020) (precedential).

(Paper 8). Moreover, denial is appropriate for three reasons. First, the proposed combination of DuroMax in view of De Vries (Grounds 1 and 2) does not disclose or otherwise render obvious the claimed invention—specifically absent are the claimed “selector switch” (Cls. 1, 17, 18) and “valve handle” (Cl. 10). Second, Petitioner improperly relies on Patent Owner’s “apparent construction” of “selector switch” and “valve assembly” (Grounds 3-5). Third, under Petitioner’s proposed construction of “valve assembly,” Fujisawa does not disclose or otherwise render obvious the claimed “valve assembly” (Grounds 3-5).

II. OVERVIEW OF THE ’101 PATENT

The ’101 Patent claims priority to and is a continuation of Application No. 14/069,747, which issued as U.S. Patent No. 9,435,273. EX1001, (63). The ’747 Application was originally filed on Nov. 1, 2013. *Id.*

The ’101 Patent is one of five issued patents in a patent family directed to multi-fuel generator technology, and collectively referred to as the “2013 Family.” The 2013 Family is depicted below:

App. No.	Filing Date	Pat. / Pub. No.	Relationship
14/069,747	Nov. 1, 2013	9,435,273	
15/015,205	Feb. 4, 2016	10,598,101	Continuation of ’273 Patent
16/789,722	Feb. 13, 2020	11,306,667	Continuation of ’101 Patent
17/651,245	Feb. 16, 2022	11,761,390	Continuation of ’667 Patent

18/330,807	Jun. 7, 2023	11,905,896	Continuation of '390 Patent
18/443,530	Feb. 16, 2024	2024/0183321	Continuation of '896 Patent
19/027,054	Jan. 17, 2025	2025/0154912	Continuation of '530 App.
19/027,095	Jan. 17, 2025	2025/0163860	Continuation of '530 App.

A. The Specification of the '101 Patent

The '101 Patent, titled Dual Fuel Selector Switch, is generally directed to a selector switch for a multi-fuel generator operable on both liquid fuel and gaseous fuel. EX1001, Abstract.

As the '101 Patent explains, “[c]ertain generators are defined as ‘dual fuel’ generators that include an engine having the ability to be fueled with either of two fuels, such as either gasoline or liquefied petroleum gas (LPG), for example. These ‘dual fuel’ generators may selectively operate on gasoline or LPG as desired and controlled by an operator, such as being operated on LPG/gasoline for a first period of operation and selectively switching over to the other of LPG/gasoline for another period of operation, with such a switching of fuels being controlled as desired by an operator.” *Id.*, 1:32-41.

The '101 Patent explains that problems with previous multi-fuel generators included inadvertently allowing multiple fuel sources to be on at the same time:

Typical dual fuel generators utilize separate valves for each fuel type, such as an LPG valve and a gasoline valve, to control flow of the

respective fuels to the engine. While the existence of two separate valves allows one fuel type to have its valve “on” while the other has its valve “off,” there is nothing to prevent both valves from being “on” at the same time. As such, it is possible for both valves to be in the “on” position, which can lead to a potentially unsafe condition resulting from the mixture of the fuels.

EX1001, 1:41-50.

To address this problem, the ’101 Patent explains that “it would be desirable to provide a dual fuel generator with a selector switch that would prohibit the mixing of two differing types of fuels.” *Id.*, 1:51-53. More specifically, in one embodiment, the multi-fuel generator of the ’101 Patent includes “a fuel selector 22 constructed to provide for selection of a desired fuel source 18, 20 for supplying fuel to the engine 12. The fuel selector 22 not only provides for selection of a desired fuel source 18, 20 for supplying fuel to the engine 12, but also selectively restricts the selection of a fuel source so as to enable the use of only one fuel at a time.” *Id.*, 3:61-67. “As a result, fuel from the first fuel source 18 cannot flow to engine 12 while fuel from the second fuel source 20 is flowing to engine 12, and vice versa.” *Id.*, 3:67-4:3.

B. The Independent Claims of the ’101 Patent

Claims 1, 10, 17, and 18 are reproduced below:

1. Claim 1.

1. A fuel selector for use with a dual fuel generator, the fuel selector comprising:
 - a valve assembly fluidly connected to each of a first fuel source and a second fuel source, the valve assembly being operable to selectively control a first fuel flow and a second fuel flow from the first fuel source and the second fuel source, respectively, to an engine of the dual fuel generator; and
 - a selector switch positioned on the valve assembly to allow a user to manually select one of the first fuel flow and the second fuel flow;wherein the valve assembly comprises:
 - a first fuel valve having open and closed positions to selectively control the first fuel flow to the engine; and
 - a second fuel valve having open and closed positions to selectively control the second fuel flow to the engine; andwherein the first fuel valve and the second fuel valve are mechanical valves.

2. Claim 10.

10. A fuel selector for use with a dual fuel generator, the fuel selector comprising:
 - a valve assembly fluidly connected to each of a first fuel source and a second fuel source, the valve assembly being operable to selectively control a first fuel flow and a second fuel flow from the first fuel source and the second fuel source, respectively, to an engine of the dual fuel generator; and

at least one valve handle positioned on and operably connected to the valve assembly to actuate the valve assembly to enable one of the first fuel flow and the second fuel flow to the engine;

wherein the valve assembly comprises:

- a first fuel valve having open and closed positions to selectively control the first fuel flow to the engine; and

- a second fuel valve having open and closed positions to selectively control the second fuel flow to the engine; and

wherein the at least one valve handle is mechanically coupled to the first fuel valve and the second fuel valve to selectively open and close the first fuel valve and the second fuel valve responsive to actuation thereof.

3. Claim 17.

17. A fuel selector of a dual fuel generator comprising: a selector switch having a first fuel mode and a second fuel mode; a solenoid switch having open and closed positions; and a fuel solenoid having open and closed positions; wherein, when the selector switch is in the first fuel mode, the solenoid switch and the fuel solenoid are in the closed positions and when the selector switch is in the second fuel mode, the solenoid switch and the fuel solenoid are in the open positions, wherein the selector switch triggers the solenoid switch when changed from the second fuel mode to the first fuel mode, so as to cause the solenoid switch and the fuel solenoid to operate in the closed positions, and a valve assembly positioned on or adjacent the selector switch and fluidly connected to each of a first fuel source and a second fuel source, the valve assembly being operable to

selectively control a first fuel flow and a second fuel flow from the first fuel source and the second fuel source, respectively, to an engine of the dual fuel generator; and wherein positioning of the selector switch in the first fuel mode and the second fuel mode enables a selection of one of the first fuel flow and the second fuel flow.

4. Claim 18.

18. A fuel selector for use with a dual fuel generator, the fuel selector comprising: a valve assembly fluidly connected to each of a first fuel source and a second fuel source, the valve assembly being operable to selectively control a first fuel flow and a second fuel flow from the first fuel source and the second fuel source, respectively, to an engine of the dual fuel generator; and a selector switch positioned on the valve assembly to allow a user to manually select one of the first fuel flow and the second fuel flow; wherein the valve assembly comprises: two fuel inputs, with a first fuel input connected to the first fuel source and a second fuel input connected to the second fuel source; and two fuel outputs supplying fuel from only one of the first fuel source or the second fuel source, wherein the valve assembly comprises a first fuel valve having open and closed positions to selectively control the first fuel flow to the engine; and a second fuel valve having open and closed positions to selectively control the second fuel flow to the engine.

C. The Prosecution History of the '101 Patent

The '101 Patent was filed as U.S. Patent Application No. 15/015,205 on February 4, 2016. EX1001, (21), (22). On January 5, 2018 the Examiner issued a non-final rejection, alleging *inter alia* that then-pending Claims 1-4, 9-14, and 17-20 were rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 4,489,699 (“Poehlman”). EX1002, 264. Specifically, the Examiner found that “it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Poehlman to incorporate the system to be used within a generator for the purpose of allowing the duel fuel system to supply power to a generator to provide electrical power.” *Id.*, 265.

In response, Patent Owner argued that (1) “there is no disclosure provided in Poehlman that fuel selector switch 51 is positioned on the valve assembly” and (2) “it would not be a mere ‘rearrangement of parts’ to modify the systems of Poehlman to have the selector switch positioned on the first and second fuel valves, as alleged by the Examiner.” EX1002, 245, 247 (emphasis in original). The rejection was made final on August 9, 2018. EX1002, 212.

Patent Owner filed an appeal brief explaining that Poehlman failed to disclose the “valve assembly” and “selector switch” limitations of the claimed fuel selector. EX1002, 174-182. Following Patent Owner’s appeal brief, the Examiner issued a non-final rejection asserting, *inter alia*, that then-pending claims 1 and 18-19 were

anticipated by U.S. Patent Pub. No. 2007/0137591 (“Sugimoto”). EX1002, 147. Subsequently, Patent Owner amended the pending claims on October 25, 2019 to further define the claimed valve assembly. EX1002, 119.

1. (Currently Amended) A fuel selector for use with a dual fuel generator, the fuel selector comprising:

a valve assembly fluidly connected to each of a first fuel source and a second fuel source, the valve assembly being operable to selectively control a first fuel flow and a second fuel flow from the first fuel source and the second fuel source, respectively, to an engine of the dual fuel generator; and

a selector switch positioned on the valve assembly to allow a user to manually select one of the first fuel flow and the second fuel flow;

wherein the valve assembly comprises:

a first fuel valve having open and closed positions to selectively control the first fuel flow to the engine; and

a second fuel valve having open and closed positions to selectively control the second fuel flow to the engine; and

wherein the first fuel valve and the second fuel valve are mechanical valves.

Following an Examiner-initiated interview on December 16, 2019, the Examiner stated that “[a]greement was reached as to what amendments would overcome the prior art of record. A terminal disclaimer will be filed and the notice of allowability will be sent along with examiner’s amendments.” EX1002, 019; *see also id.*, 015-018.

III. LEVEL OF ORDINARY SKILL IN THE ART

A POSITA pertinent to the Challenged Claims would have a four-year degree in mechanical engineering or a closely related field and at least one year of experience designing, developing, servicing, or operating fuel-powered machinery. Additional education could substitute for professional experience and significant work experience—such as working with, servicing, or operating such machinery in the field—could substitute for formal education.

Petitioner alleged that a POSITA:

[W]ould have a college degree in mechanical engineering, physics, or related fields, and three years of work experience in combustion engines operating on various fuel sources. Additional higher graduate education could substitute for work experience, and additional work experience/training could substitute for formal education.

Petition, 14 (citing EX. 1003, ¶106). Petitioner's proposed definition is deficient. Specifically, Petitioner has failed to support its contention that an undergraduate physics degree is pertinent to the Challenged Claims, or that three years of work experience in combustion engines operating on various fuel sources is necessary, particularly where the Challenged Claims recite fuel selectors, *not* combustion engines. Regardless, the arguments advanced herein are not impacted based on which definition is applied.

IV. CLAIM CONSTRUCTION

Claim terms are to be construed in accordance with the standard set forth in *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (*en banc*). But “[o]nly terms which are in controversy need to be construed, and then only to the extent necessary to resolve the controversy and material to the decision.” *Facebook, Inc. v. Sound View Innovations, LLC*, IPR2017-01005, Paper No. 13 at 6 (P.T.A.B. Sept. 1, 2017) (citing *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)). For purposes of the arguments set forth in this Preliminary Response, Patent Owner applies the plain and ordinary meaning of each claim limitation which is addressed.

Petitioner, meanwhile, spends more than *ten pages* of its 83-page Petition arguing for specific constructions—which it deems the “proper” constructions—of the terms “selector switch” and “valve assembly.” Pet., 21-31. Petitioner’s proposed constructions (1) mirror the constructions applied by Petitioner in district court (EX2095, 4), and (2) are applied for Petitioner’s Grounds 1 and 2. Pet., 21-31. Patent Owner reserves the right to address the substance of Petitioner’s arguments regarding claim construction if this Petition is instituted.

According to Petitioner:

“[S]elector switch” is properly construed as “a movable component where positioning enables subsequent user selection of only one fuel source.” Pet., 22.

...

“[V]alve assembly” is properly construed as “having at least one fuel valve and corresponding valve handle” and “being a separate structure from the selector switch.”

Pet., 22, 26. After spending vast swathes of its Petition detailing the purported “correct construction” of “valve assembly” and “selector switch” (Pet., 21-31), Petitioner spends a mere two paragraphs purportedly identifying alternative “apparent” constructions (Pet., 32-33) that allegedly control Grounds 3-5. *Id.*, 57.²

Despite relying on two different constructions of “selector switch” before the Board, Generac previously argued that the term was indefinite in the co-pending parallel litigation. To be clear, Patent Owner disputes that *any* terms of the ’101 Patent are indefinite. However, Petitioner did not address this discrepancy in the Petition. Pet., 21-31. Specifically, Petitioner failed to explain how the term “selector

² Confusingly, Petitioner also applies both its proposed construction of “valve assembly” and what it deems Patent Owner’s “apparent” construction of “valve assembly” with respect to Grounds 3-5. *See, e.g., id.* at 60, 65-66 (applying two different constructions of “valve assembly”).

switch,” when “read in light of the specification delineating the patent, and the prosecution history” is both (1) sufficiently definite so as to inform Petitioner’s invalidity challenges raised in the Petition, and (2) “fail[s] to inform, with reasonable certainty, those skilled in the art about the scope of the invention.” *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 901 (2014).

The Petition should be denied on this basis alone. *See, e.g., Cambridge Mobile Telematics, Inc. v. Sfara, Inc.*, IPR2024-00952, Paper 12 (P.T.A.B. Dec. 13, 2024) (informative) (declining to institute where Petitioner (1) alleged certain terms were indefinite in parallel district court litigation, and (2) failed to “explain[] why the plain and ordinary meaning of the [challenged] terms should apply in this proceeding (why the inconsistent positions are warranted) or set forth an alternative claim construction”) (citing Consolidated Trial Practice Guide at 45); *see also Microchip Tech. Inc. v. Aptive Technologies AG*, IPR2024-00494, Paper 12 at 10 (PTAB October 7, 2024).

V. THE PRIOR ART

The Petition asserts invalidity over five different grounds—including numerous alternative arguments based on Petitioner’s vague and confusing claim construction positions—which include multiple combinations of five different prior art references. Each ground relies on one of two primary references. However, as explained in Section VI, the Petition can be summarily denied in light of deficiencies

in (1) DuroMax in view of De Vries (Grounds 1-2) and (2) Fujisawa (Grounds 3-5).

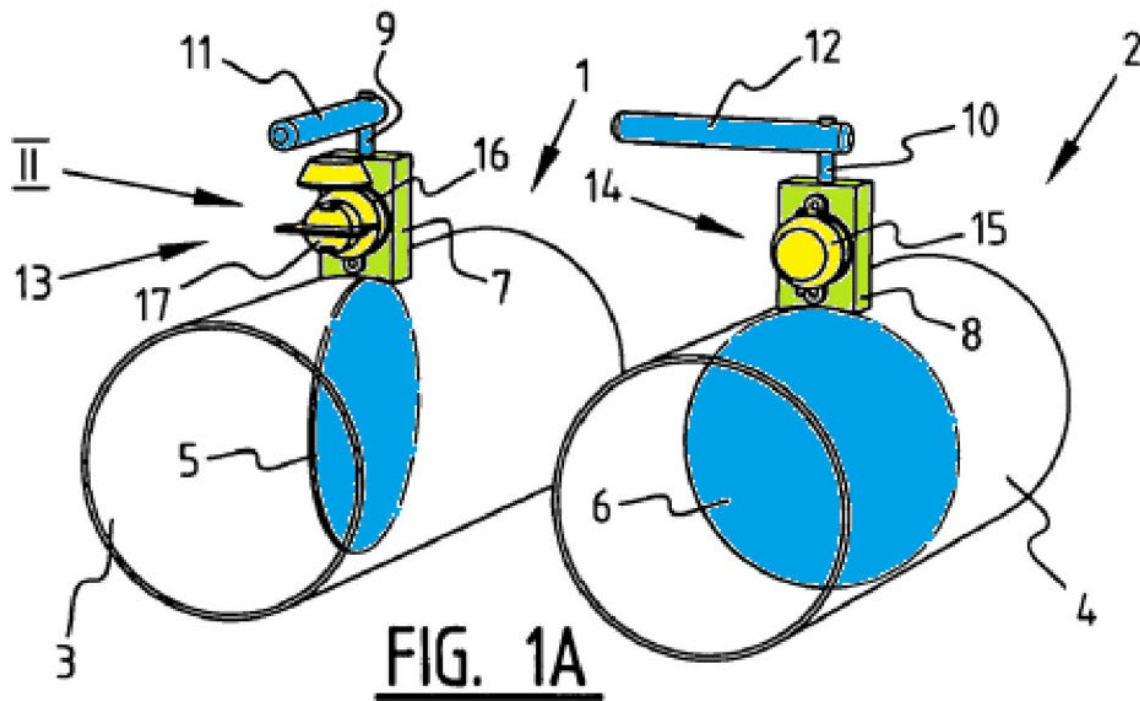
Each reference is discussed in turn, below:

A. DuroMax Dual Fuel Hybrid Elite XP4400EX (“DuroMax”) (EX1006)

DuroMax discloses a dual fuel generator separately operable on liquified petroleum gas (“LPG”) and gasoline. EX1006, 002. The DuroMax generator includes a manual gasoline fuel valve for controlling gasoline fuel flow. *Id.*, 011. However, it *does not* include any component for controlling the flow of LPG. Instead, DuroMax relies solely on the user to turn off the gasoline fuel valve before operating the engine on LPG. *Id.*, 012.

B. U.S. Patent No. 7,481,087 (“De Vries”) (EX1011)

De Vries discloses an interlocked valve system with two distinct butterfly valves, for use in the petrochemical industry. EX1011. “FIGS. 1A-1C show an embodiment of the interlock system which is applied to the specific example of two closing valves in liquid and/or gas pipelines of a petrochemical plant.” EX1011, 5:25-27. “On support 7 there is provided a first safety system 13 with which the valve can be fixed in a determined position. In similar manner the right-hand part 2 consists of a conveyor pipeline 4 in which a valve 6 is arranged rotatably. For this purpose conveyor pipeline 4 is provided with a support 8 on which a second safety system 14 is arranged.” *Id.* 5:33-38. Without conceding their accuracy, Petitioner’s annotations of De Vries’ Fig. 1A are reproduced below:



Pet., 10 (citing EX1011, Fig. 1A) (annotations in original).

In the shown embodiment the left-hand valve 5 is locked in the opened position, while the right-hand valve 6 is locked in the closed position. This means that when no key 17 of safety system 13, 14 is available, valves 5, 6 remain locked in respectively opened and closed position. In this condition the opened valve 5 and closed valve 6 are in their “normal” or operational mode. When the key 17 associated with the left-hand and the right-hand safety systems 13, 14 is however available, valve 5 can be unlocked by operating the left-hand safety system 13, whereafter the valve can be closed by operating handle 11.

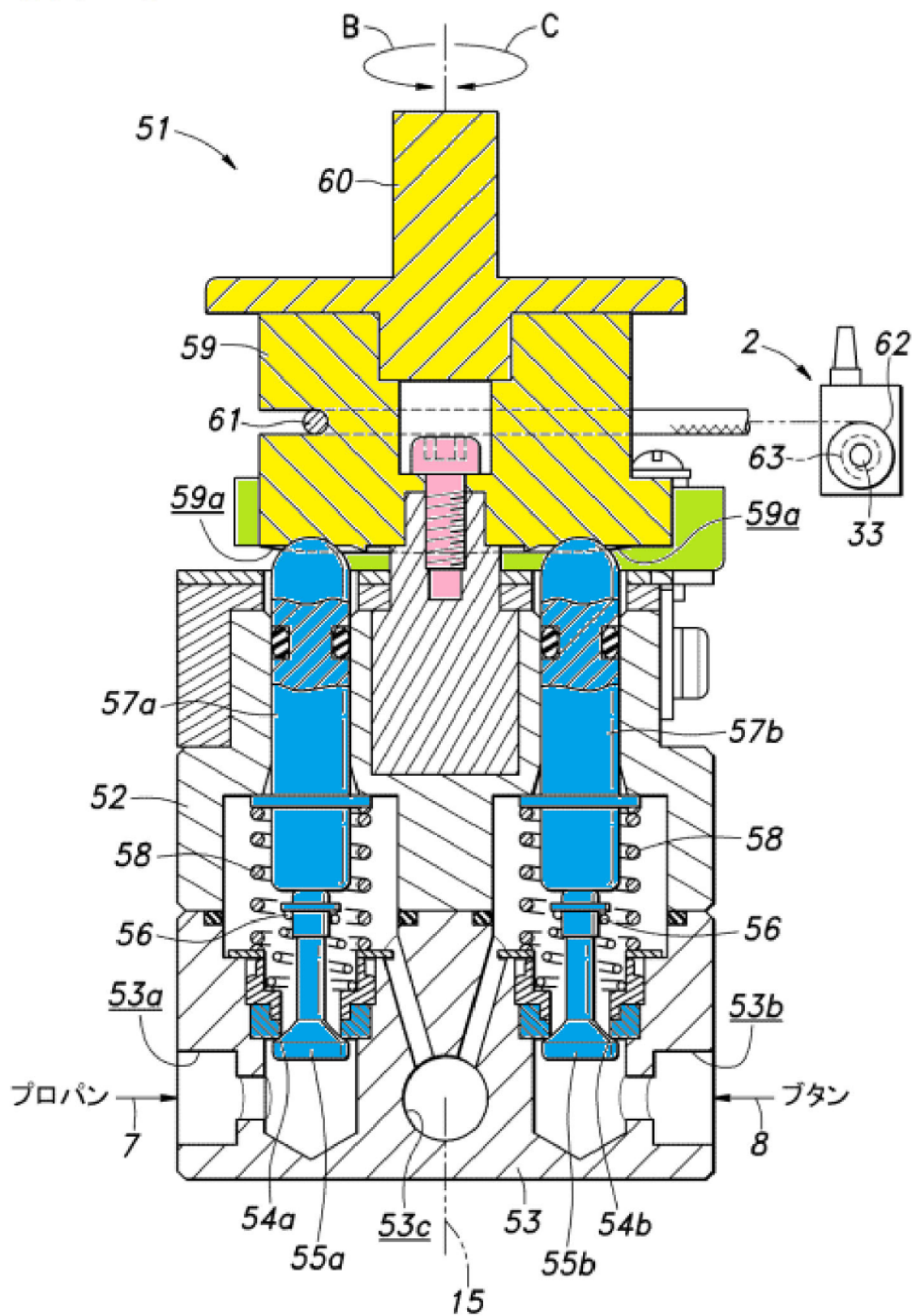
EX1011, 5:43-53. De Vries explains that “[i]n another embodiment it is possible to envisage the safety system 13 being embodied such that key 17 can then only be

removed from the left-hand safety system 13 when the left-hand valve 15 is locked in the closed position.” *Id.*, 5:63-66.

C. JP 2005-330867 (“Fujisawa”) (EX1004; EX1005)

Petitioner contends that Fujisawa “is another example of a prior art dual fuel generator.” Pet., 7. According to Petitioner, “Fujisawa discloses a valve assembly comprising at least valve seats 54a and 54b, valve bodies 55a and 55b, and cam followers 57a and 57b. The cam followers 57a and 57b (blue) are moved up and down by the cam body 59 and rotary knob 60 (yellow) to open and close the valves (blue).” *Id.*, 7. Without conceding their accuracy, Petitioner’s annotations to Fujisawa’s Figure 5 are reproduced below:

【図 5】



Id., 8 (citing EX1004, Fig. 5) (annotations in original). Petitioner explains that Fujisawa discloses a rotary knob 60 and cam body 59 (yellow). Cam surface 59a is constructed to selectively control the position of cam followers 57a and 57b to open and close the valves. *Id.*, 9 (citing EX1005, ¶[0035]).

VI. ARGUMENT

The Petition does not demonstrate a reasonable likelihood that at least one challenged claim is unpatentable.

Claims 1, 10, 17 and 18 of the '101 Patent are independent claims. If Petitioner is unable to show a reasonable likelihood that it will prevail with respect to any of Claims 1, 10, 17, or 18, institution should be denied. *See, e.g., Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1576 n. 36 (Fed. Cir. 1987) (“Because [independent] claim 1 is not invalid, the presence of all its limitations in [dependent] claim 6 preserves the latter’s validity.”). Of relevance to Patent Owner’s Preliminary Response, the Petition alleges the following grounds of invalidity:

- **Ground 1** alleges that Independent Claims 1, 10, and 18 are obvious over DuroMax in view of De Vries. Pet., 3.
 - **Ground 2** alleges that Independent Claims 1, 10, 17, and 18 are obvious over DuroMax in view of De Vries, Nakafushi, and Olmr. Pet., 3.
- Importantly, the Petition merely incorporates its analysis from Ground

1 with respect to Claims 1, 10, and 18, and with respect to the “selector switch” limitations of Claim 17. *Id.*, 51, 53, 57.

- **Ground 3** alleges that Independent Claims 1, 10, and 18 are anticipated by Fujisawa. *Id.*, 3.
- **Ground 4** alleges that Independent Claims 1, 10, and 18 are obvious over Fujisawa in view of DuroMax. Importantly, the Petition merely incorporates its analysis from Ground 3 with respect to Claim 1, 10, and 18. *Id.*, 71-72.
- **Ground 5** alleges that Independent Claims 1, 10, 17, and 18 are obvious over Fujisawa in view of DuroMax, Nakafushi, and Olmr. Importantly, the Petition merely incorporates its analysis from Ground 3 with respect to Claim 1, 10, and 18, and with respect to the “selector switch” and “valve assembly” limitations of Claim 17. *Id.*, 74-76, 81.

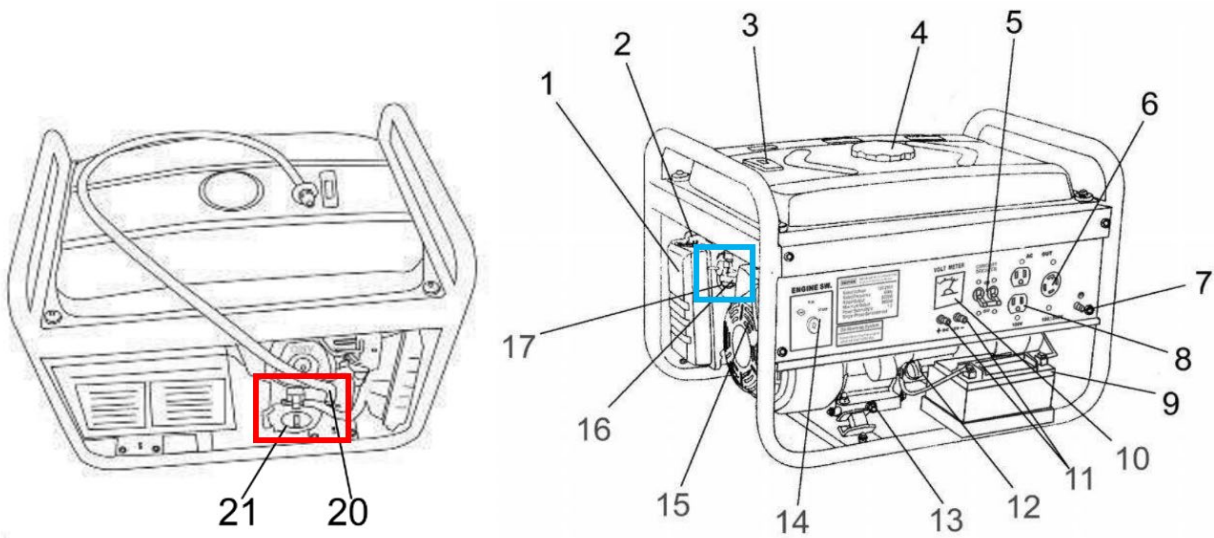
Patent Owner’s Preliminary Response asserts that denial is proper because Petitioner does not demonstrate a reasonable likelihood that any claims are unpatentable. First, the proposed combination of DuroMax in view of De Vries (Grounds 1 and 2) does not disclose or otherwise render obvious the claimed invention. Specifically, the combination of DuroMax and DeVries does not disclose at least the claimed “selector switch” (Cls. 1, 17, 18) or “valve handle” (Cl. 10). §VI.A, *infra*. Second, Petitioner improperly relies on Patent Owner’s “apparent

construction” of “selector switch” and “valve assembly” (Grounds 3-5). §VI.B.1, *infra*. Third, under Petitioner’s proposed construction of “valve assembly,” Fujisawa does not disclose or otherwise render obvious the claimed valve assembly. §VI.B.2, *infra*. Each argument is discussed in turn below.

A. The DuroMax-based grounds (Grounds 1 and 2) do not demonstrate a reasonable likelihood that any claims are unpatentable.

Petitioner alleges that the Challenged Claims are invalid over the combination of DuroMax and De Vries. Pet., 33-57. Specifically, Petitioner alleges a POSITA “would have been motivated to implement the valve assembly with the safety interlock of De Vries into the dual fuel generator of DuroMax to prevent both the LPG and gasoline fuel sources from simultaneously supplying fuel while the generator is operating to make the generator safer.” *Id.*, 37. According to Petitioner, the proposed combination consists of (1) “substituting the gasoline fuel valve shutoff valve of DuroMax with a first valve of De Vries;” and (2) “adding a second fuel valve of De Vries onto the LPG intake of DuroMax.” *Id.*, 37-38, 40.

DuroMax’s gasoline fuel shutoff valve (fuel valve 17, blue) and LPG intake (hose connector 20, red) are depicted in the annotated figures below:



EX1006, 007-008; Pet., 5-6.³ DuroMax describes each component as follows:

- **17. Fuel valve-** Allows fuel to enter engine.
- **20. Hose connector-** Connect liquid propane gas to generator.

Id. Petitioner also alleges that “De Vries teaches a selector switch comprising safety systems 13 and 14 and key 17.” Pet., 40.

As an initial matter, Petitioner’s purported motivation to combine DuroMax and De Vries is deficient. The ’101 Patent is classified as controlling and supplying fuel to combustion engines. De Vries, meanwhile, deals with locks used in industrial

³ The Petition does not appear to explicitly enumerate which components allegedly constitute the alleged “LPG intake” of DuroMax, but points generally to the portion of the generator highlighted in red, above. Pet., 6 (citing EX1006, 12).

applications and discloses a locking mechanism that requires complex key codes defined by the equation $N = N - (Q * R)$, where Q is the number of axial rotation positions of each of the key pins, R is the number of different depth positions of each key pin, and P the number of key pins. See EX1011, Cl. 1, 7:36-39, 9:9-16.⁴ De Vries is centered around a “safety interlock system for securing an industrial appliance operative in a safety mode or an operational mode.” *Id.*, Cl. 1; *see also id.*, Abstract, Field, Background, and Summary. In fact, De Vries never mentions key components of the '101 Patent, including “generator,” “engine,” “carburetor,” “LPG,” “propane,” or “gasoline.”

Further DeVries does not disclose that its two pipelines go to the same destination. For example, while DuroMax discloses LPG and gasoline systems that both fuel the same engine, DeVries has two independent pipelines and lacks any teaching that they supply the same destination, much less that said destination is an

⁴ Simply put, the '101 Patent and De Vries are in completely disparate classifications. The '101 Patent is classified under US Class 137, referring to fluid handling. De Vries, meanwhile, is classified under U.S. Class 70, referring to locks. *See, e.g., In re Ellis*, 476 F.2d 1370, 1372 (C.C.P.A. 1973) (“we find the diverse Patent Office classification of the references to be some evidence of ‘non-analogy.’”).

engine of a generator. There is no reason one skilled in the art of generator design would have been motivated to combine De Vries with DuroMax.

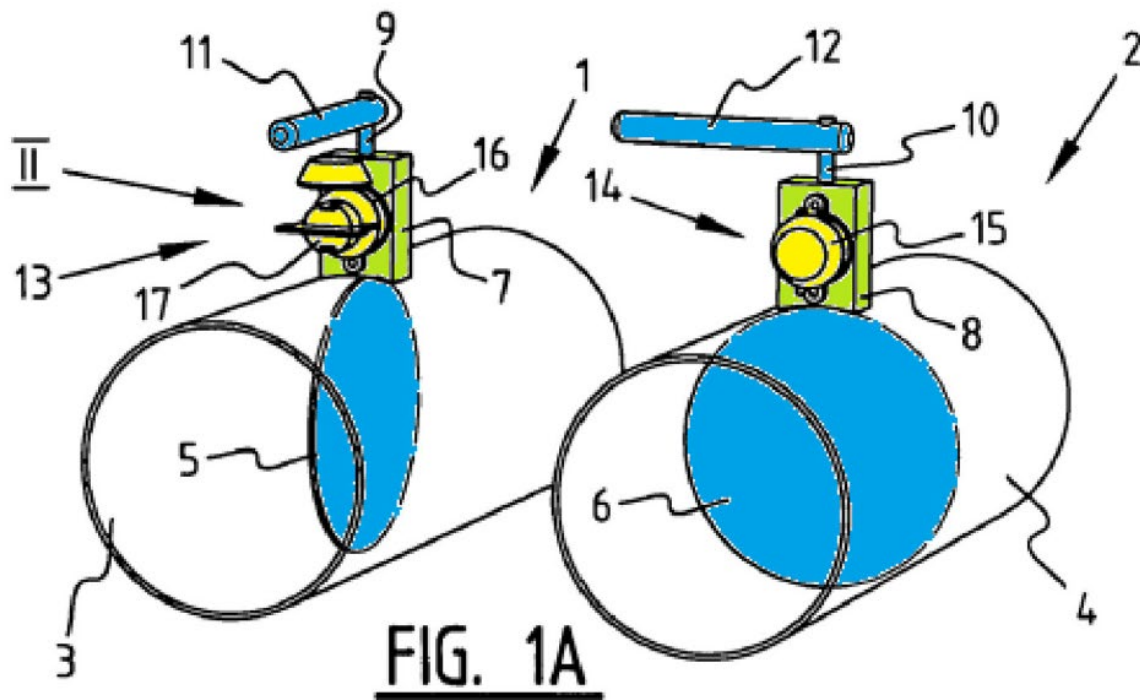
Finally, the purported combination of DuroMax and De Vries would not result in the claimed invention. Since DuroMax only teaches a single fuel valve used to turn gasoline ON and OFF, combining it with De Vries would only add a keyed lock to the disclosed ON/OFF valve. Even if one were to further modify the alleged LPG source of DuroMax, the result would be to merely add a similarly keyed lock to the LPG tank. As explained in additional detail below, the alleged combination does not render the Challenged Claims obvious.

1. DuroMax in view of De Vries does not disclose or otherwise render obvious the claimed “selector switch” (Cls. 1, 17, 18).

Independent Claims 1, 17, and 18 of the '101 Patent recite a “selector switch.” EX1001, Cls. 1, 17, 18. Under Petitioner’s proposed construction of the term, “selector switch” is properly construed as “a movable component whose positioning enables subsequent user selection of only one fuel source.” Pet., 22.⁵

⁵ Patent Owner does not concede Petitioner’s proposed construction is correct and reserves the right to address the substance of Petitioner’s arguments regarding claim construction if this Petition is instituted.

The Petition does not correctly apply its own construction of “selector switch” when alleging that DuroMax in view of De Vries discloses or otherwise renders the claimed “selector switch” obvious. Rather, Petitioner alleges that “De Vries teaches a selector switch comprising safety systems 13 and 14 and key 17.” *Id.*, 40; *see also id.*, 46, 53. Without conceding their accuracy, Petitioner’s annotations of De Vries’ Fig. 1A are reproduced below:



Pet., 10 (citing EX1011, Fig. 1A) (annotations in original).

The Petition is deficient at least because the combination of “safety systems 13 and 14 and key 17” does not form “a selector switch positioned on the valve

assembly to allow a user to manually select one of the first fuel flow and the second fuel flow,” nor does the combination render the claim as a whole obvious.

First, Petitioner’s proposed construction of selector switch (“a movable component”) contemplates that the selector switch is in fact a single component. Petitioner, however, identifies the combination of safety systems 13 and 14 and key 17, which collectively constitute a system of multiple, separate components. Presumably Petitioner identifies both key 17 and safety systems 13 and 14 as the claimed “selector switch” so that it can later assert the combination renders obvious “a selector switch positioned on the valve assembly” (Cls. 1, 18) or “a valve assembly positioned on or adjacent the selector switch” (Cl. 17). However, in making this argument, Petitioner runs afoul of its own construction.

Second, “safety systems 13 and 14 and key 17” are not a “switch.” De Vries teaches that “[o]n support 7 there is provided a first safety system 13 with which the valve can be fixed in a determined position” and “a support 8 on which a second safety system 14 is arranged.” EX1011 5:33-38. Key 17 is required to operate safety systems 13 and 14. EX1011, 5:43-53. De Vries teaches two separate key/lock mechanisms: (1) the combination of safety system 13 and key 17, and (2) the combination of safety system 14 and key 17. Under Petitioner’s theory that a

key/lock mechanism constitutes a switch,⁶ De Vries discloses two separate switches, which separately enable subsequent user actuation of valve 5 and valve 6. Simply put, two separate key/lock mechanisms are not a “selector switch.” Institution should be denied.

2. DuroMax in view of De Vries does not disclose or otherwise render obvious the claimed “valve handle ... mechanically coupled to the first fuel valve and the second fuel valve” (Cl. 10).

Independent Claim 10 of the '101 Patent recites:

[10.2]: at least one valve handle positioned on and operably connected to the valve assembly to actuate the valve assembly to enable one of the first fuel flow and the second fuel flow to the engine;

...

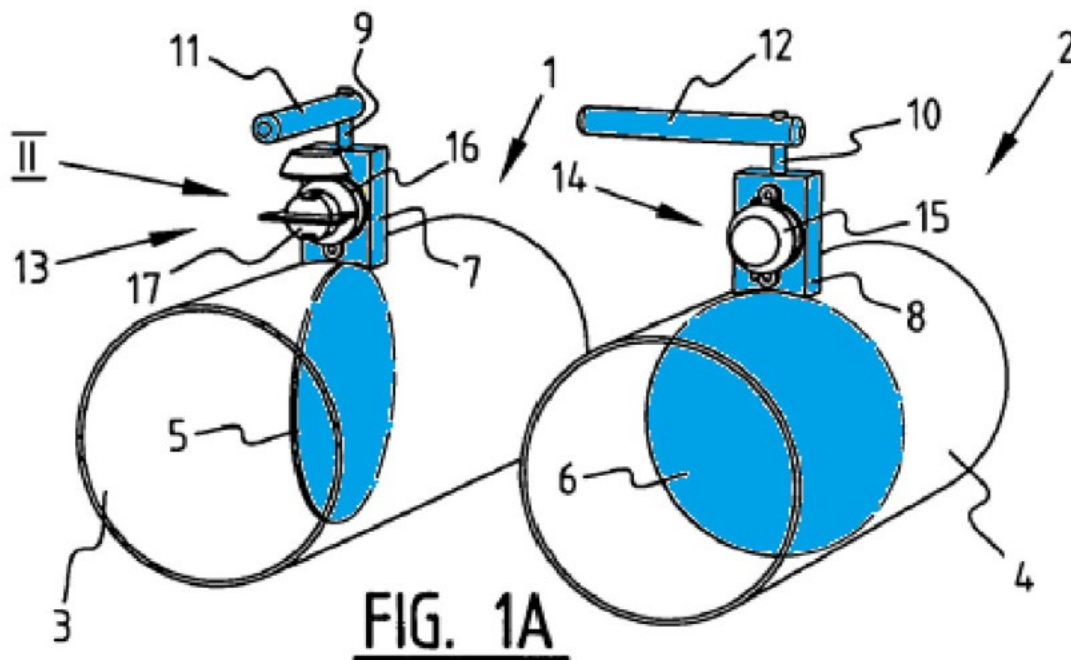
[10.4]: wherein the at least one valve handle is mechanically coupled to the first fuel valve and the second fuel valve to selectively open and close the first fuel valve and the second fuel valve responsive to actuation thereof.

EX1001, Cl. 10.⁷

⁶ To be clear, Patent Owner does not concede that a key/lock mechanism constitutes a “switch” under the plain and ordinary meaning of the term and reserves the right to address this issue further if the Petition is instituted.

⁷ Petitioner’s identification of elements 10.2 and 10.4 is included for convenience.

Element 10.2 recites one (or more) valve handles operably connected to enable one of the first fuel flow and the second fuel flow. With respect to Element 10.2, the Petition identifies both valve handle 11 and valve handle 12. Pet., 45 (citing EX1011, 5:25-39). Petitioner does not explain, however, whether valve handles 11 and 12 allegedly enable “one of the first fuel flow” or “the second fuel flow.” Ostensibly, the Petition appears to allege that valve handle 11 enables the first fuel flow, and valve handle 12 enables the second fuel flow. Without conceding their accuracy, Petitioner’s annotations to De Vries Figure 1A are reproduced below.



Pet., 42 (citing EX1011, Fig. 1A) (annotations in original).

Element 10.4 further calls for *the* at least one valve handle to be “mechanically coupled to the first fuel valve and the second fuel valve to selectively open and close

the first fuel valve and the second fuel valve responsive to actuation thereof.” EX1001, Cl. 10. Petitioner appears to concede Element 10.4 is not disclosed by De Vries. Pet., 45 (“De Vries discloses that each valve handle 11, 12 is mechanically coupled to the valve through a valve shaft to selectively open and close *each of the respective valves.*”) (emphasis added). Under Petitioner’s own theory, neither valve handle 11 nor valve handle 12 is “mechanically coupled” to *both* “the first fuel valve and the second fuel valve.” *Id.*; *see also* EX1001, Cl. 10.

This deficiency is not resolved when DuroMax is combined with De Vries. *See* §VI.A, *supra*. There is no evidence that either reference discloses the claimed subject matter. Institution should be denied.

B. The Fujisawa-based grounds (Grounds 3-5) do not demonstrate a reasonable likelihood that any claims are unpatentable.

The Fujisawa-based grounds (Grounds 3-5) rely on “Patent Owner’s apparent construction of ‘selector switch.’”⁸ However, these grounds present two alternative invalidity theories. Pet., 57. First, Petitioner argues the Challenged Claims are

⁸ Petitioner concedes that “[u]nder the proper construction of ‘selector switch’ ... Fujisawa lacks a ‘selector switch.’” Pet., 57. Independent Claims 1, 17, and 18 recite a “selector switch” and are therefore not invalid under Petitioner’s proposed construction of selector switch.

invalid under *Petitioner's* proposed construction of “valve assembly.” *Id.* Second, *Petitioner* argues the Challenged Claims are invalid under *Patent Owner's* “apparent” construction of “valve assembly.” *Id.* Confusingly, *Petitioner* does not set out these separate grounds (or sub-grounds), but instead weaves in arguments regarding both sets of construction throughout. *See, e.g., id.*, 60, 65-66 (applying two different constructions of “valve assembly”).

Petitioner's Fujisawa-based grounds are deficient in two respects. First, *Petitioner's* reliance on “apparent” constructions is legally improper and should be rejected outright. Second, the Challenged Claims are not anticipated or otherwise rendered obvious even under *Petitioner's* proposed construction of valve assembly.

Each deficiency is discussed in additional detail, below.

1. *Petitioner's* reliance on “apparent” constructions is legally improper and should be rejected outright.

“Inter partes review shall not be instituted unless the Board decides that the information presented in the petition demonstrates that there is a reasonable likelihood that at least one of the claims challenged in the petition is unpatentable.” 37 C.F.R. § 42.108. Specifically, the petition must “[p]rovide a statement of the precise relief requested for each claim challenged. The statement must identify the following:

- 1) The claim;

- 2) The specific statutory grounds under 35 U.S.C. 102 or 103 on which the challenge to the claim is based and the patents or printed publications relied upon for each ground; [and]
- 3) How the challenged claim is to be construed. . . .”

37 C.F.R. § 42.104(b).

Importantly, the petition must identify “in writing and with particularity, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim.” 35 U.S.C. § 312(a)(3).

The Board’s Decision Denying Institution of *Inter Partes* Review in *Vicor Corp. v. Delta Elecs., Inc.* is instructive. IPR2024-00704, Paper 11 (P.T.A.B. October 2, 2024). There, the patent at issue “describe[d] a DC-DC conversion system that include[d] a buck converter and a resonant converter.” *Id.*, 3. Petitioner’s Ground 1 did “not purport to correctly construe the ‘over-current’ limitations” but rather applied what Petitioner deemed “Patent Owner’s Apparent Construction” or “Patent Owner’s Assumed Construction.” *Id.*, 7. The “apparent” constructions were purportedly based on the “specific arrangement” of certain accused products in parallel district court litigation. *Id.*, 7 n.6.

However, “Petitioner [did] not establish that such interpretations [were] appropriate” which the Board found “[f]atal to Petitioner’s Ground 1.” *Id.*, 8. Fundamental to the Board’s finding was that “Petitioner acknowledges that its

Ground 1 does not apply a ‘proper’ claim construction.” *Id.* The Board found “Petitioner has not supported the claim interpretations on which its Ground 1 relies, and Petitioner therefore has not shown a reasonable likelihood that it would prevail in its challenge asserted as Ground 1.” *Id.*, 9; *see also Microchip Tech. Inc. v. Aptive Technologies AG*, IPR2024-00494, Paper 12 at 10 (P.T.A.B. October 7, 2024) (denying institution where “the proposed construction on which the Petition is based is contingent upon adopting a claim construction that Petitioner opposes in the district court litigation and that Petitioner believes is incorrect”); *Cambridge Mobile Telematics, Inc. v. Sfara, Inc.*, IPR2024-00952, Paper 12 (P.T.A.B. Dec. 13, 2024) (informative).

a. The Petition does not support the Petitioner’s “apparent” constructions.

After spending vast swathes of its Petition detailing and debating the purported “correct construction” of “valve assembly” and “selector switch” (Pet., 21-31), Petitioner spends a mere two paragraphs purportedly identifying alternative “apparent” constructions (*id.*, 32-33) which allegedly control Grounds 3-5. *Id.*, 57. The purported “apparent constructions” are allegedly based on positions taken by Patent Owner in parallel litigation. *Id.*, 2-3. However, Petitioner does not (1) clearly articulate which terms are being (apparently) construed, or (2) state what the “apparent construction” of each term is. Rather, Petitioner states that:

Patent Owner appears to adopt a claim construction wherein (1) the “selector switch” can be a dial or knob that directly actuates the valve assembly; (2) the valve assembly does not contain a valve handle; and/or (3) the selector switch is a part of the valve assembly.

Id., 32-33. Indeed, Petitioner merely supplies various alternative examples of devices which might be covered by the “apparent” construction (i.e., the “selector switch *can be* a dial or knob), but does not actually construe the terms. Importantly, Petitioner does not explain:

- the basis for each of the enumerated characteristics;
- the characteristics applicable to the “apparent construction” of selector switch vs. those applicable to the “apparent construction” of valve assembly; or
- how a listing of three factors—including an “and/or” term which makes it unclear whether a sub-combination of the factors may or may not be applied—constitutes identifying “in writing and with particularity” “how the challenged claim is to be construed.”

35 U.S.C. § 312(a)(3); 37 C.F.R. § 42.104(b).

Instead, Petitioner makes three disparate statements, which allegedly support one or more of the purported “apparent” constructions. *First*, according to Petitioner, “Patent Owner alleged that Generac’s dual fuel generator model DF3500E infringes the ’101 Patent.” Pet., 32 (citing EX1023). While correct, Petitioner conspicuously omits that Petitioner only accused the DF3500E of infringing Claims 1, 2, 8, 9, 18,

and 19 of the '101 Patent. EX1023, 10-12. Of note, those Claims *do not* recite a valve handle. *Id.*

Second, Petitioner points to an image from a sales webpage for the Generac DF3500E. Pet., 32 (citing EX1024, with Petitioner's annotations). Relying solely on this image, Petitioner alleges—without support or explanation—that “the only structure on the accused generators that changes the fuel source is a single dial.” *Id.*, 32. Petitioner states that Patent Owner identified that same dial as the claimed “selector switch” in its infringement contentions, but does not explain (1) the structure of the dial, (2) Patent Owner's statements regarding the dial, or (3) how those factors support the “apparent constructions” Petitioner is relying on. *Id.*, 33 (citing EX1038, 5).

Third, Petitioner states that Patent Owner identified the same dial as the claimed “valve handle” with respect to Claim 15 the '896 Patent. *Id.*, 33 (citing EX1051, 10). Notably, the Petition is silent with respect to the fact that (1) Claim 15 of the '896 Patent *does not* recite a selector switch, and (2) Claim 16 of the '896 Patent (also asserted) ascribes the claimed “valve handle” with characteristics which are similar to the selector switch that is at-issue here, notably that “the at least one valve handle *enables only one of the first and second fuel flows to the engine at a given time.*” EX1051, 10-11.

Based on these three disparate statements, Petitioner “include[s] invalidity Grounds 3-5” which allegedly show invalidity “under Patent Owner’s apparent construction.” Pet., 33. Importantly, Petitioner emphatically concludes that “Petitioners do not admit or concede that Patent Owner’s apparent constructions are correct.” *Id.*

b. Petitioner’s allegation that Claims 1-19 are invalid is deficient because Petitioner’s reliance on Patent Owner’s “apparent” construction of “valve assembly” is improper.

The term “valve assembly” is present in each of the Challenged Claims. Petitioner relies on Patent Owner’s “apparent” construction of valve assembly in Grounds 3-5. Pet., 57.⁹ However, Petitioner explicitly concedes that “Patent Owner’s apparent constructions are wrong.” *Id.*, 33. Moreover, Petitioner does not define the purported “apparent” construction of “valve assembly” that it is relying on as the basis of Grounds 3-5. §VI.B.1.a, *supra*.

Like in *Vicor Corporation*, institution is improper because Petitioner’s Grounds 3-5 “do[] not purport to correctly construe the [disputed] limitations” but rather applied what Petitioner deemed Patent Owner’s “apparent” construction.

⁹ Confusingly, Petitioner also relies on Patent Owner’s proposed construction of “valve assembly” in Grounds 3-5. Those challenges are addressed in §VI.B.2, *infra*.

Vicor Corp. v. Delta Elecs., Inc., IPR2024-00704, Paper 11 at 7 (P.T.A.B. October 2, 2024). And, like in *Vicor Corporation*, “Petitioner [did] not establish that such interpretations [were] appropriate” which is “fatal” to Grounds 3-5. *Id.* at 8; *see also* §VI.B.1.a, *supra*. “Petitioner acknowledges that its [Grounds 3-5 do] not apply a ‘proper’ claim construction.” *Id.* at 8. As such, like the Board concluded in *Vicor Corporation*, “Petitioner has not supported the claim interpretations on which its [Grounds 3-5 rely], and Petitioner therefore has not shown a reasonable likelihood that it would prevail in its challenge.” *Id.* at 9.

Petitioner’s gamesmanship is clear. Petitioner advanced narrow constructions of “valve assembly” and “selector switch”—which it now refers to as the “proper” constructions—in parallel district court litigation to manufacture non-infringement positions. EX2095, 4. Further, in related proceedings, Petitioner has indicated its intent to move to stay the district court litigation if institution is granted. IPR2025-00805, Paper 14 at 7-10. In stark contrast, Petitioner now attempts to rely on broad and amorphous “apparent” constructions of those same terms—without actually defining the constructions—in the hopes of convincing the Board to institute. Petitioner has advanced broad constructions before the Board, while maintaining

narrower constructions—and corresponding non-infringement positions—if its challenge proves unsuccessful. Institution should be denied.¹⁰

2. Grounds 3-5 are not anticipated or otherwise rendered obvious under Petitioner’s proposed construction of valve assembly.

Claims 1, 10, 17, and 18 recite, *inter alia*, a “valve assembly.” Petitioner’s proposed construction of valve assembly requires that the assembly includes (1) a fuel valve, (2) a corresponding valve handle, and (3) a separate selector switch. Pet., 25.¹¹ Fujisawa, however, does not disclose a “valve handle.”

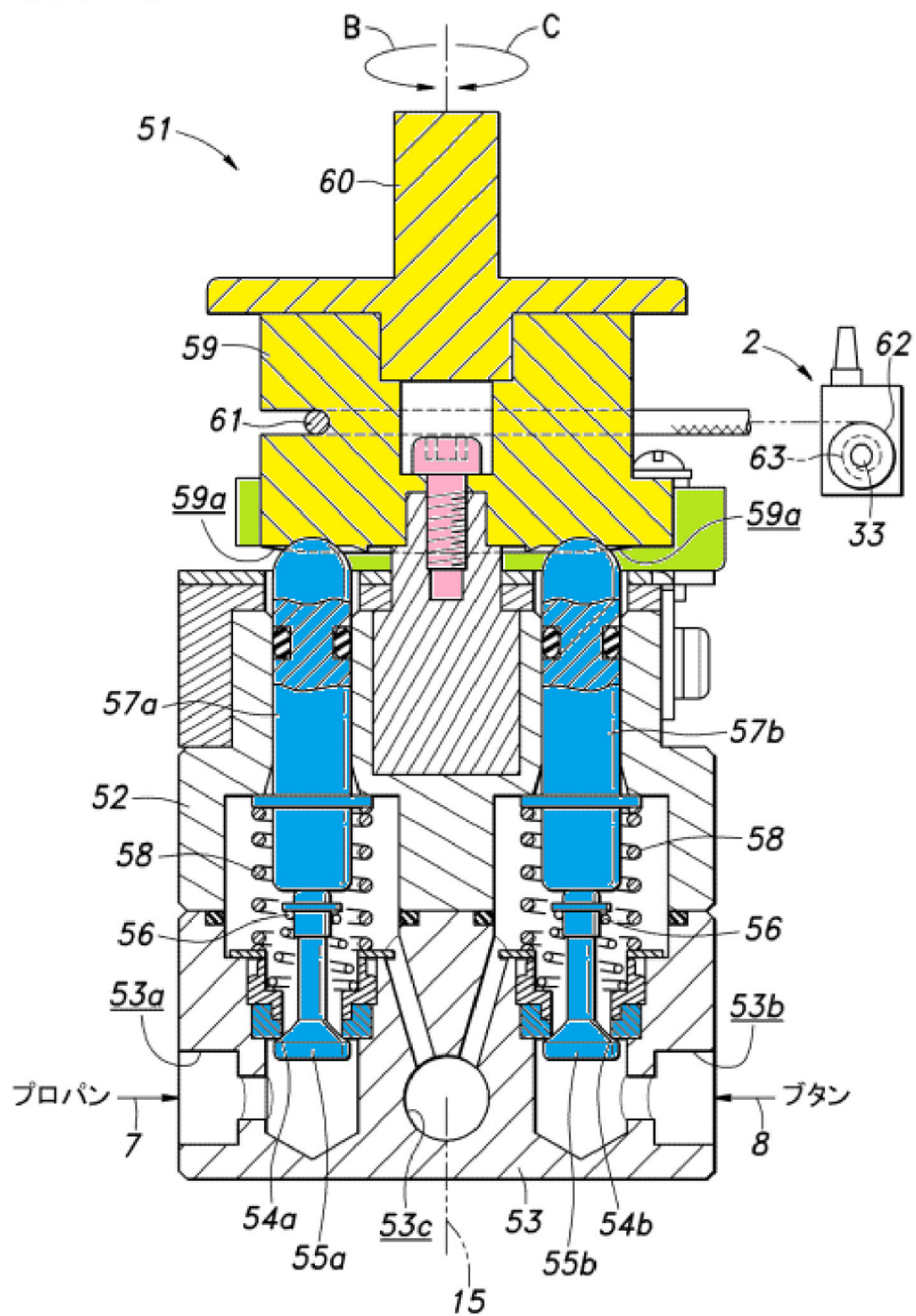
¹⁰ This argument applies with equal force to Petitioner’s reliance on Patent Owner’s “apparent” construction of “selector switch,” which applies to Claims 1-9, 13-15, and 17-19 of the ’101 Patent. Pet., 57. As with Patent Owner’s “apparent” construction of “valve assembly”—and like the Board’s opinion in *Vicor Corporation*—Petitioner has not supported (or even defined) the claim interpretations on which its Grounds 3-5 rely, and has therefore not shown a reasonable likelihood that it would prevail in its challenge. §VI.B.1.b, *supra*; see also *Vicor Corp. v. Delta Elecs., Inc.*, IPR2024-00704, Paper 11 at 7-9 (October 2, 2024).

¹¹ It is unclear how Petitioner’s proposed construction of valve assembly applies to

Petitioner asserts that “[u]nder the proper construction of ‘valve assembly,’ cam followers 57a and 57b are valve handles that control the opening and closing of the valves.” *Id.*, 60; *see also id.*, 65 (“[u]nder the proper construction, which requires the components of the ‘valve assembly’ to be separate and distinct from the ‘selector switch,’ Fujisawa describes valve handles 57a and 57b.”). Petitioner’s annotations of Fujisawa’s Figure 5 are reproduced below, without conceding their accuracy.

Claim 10-12 and 16, which *do* recite a valve assembly, but *do not* recite a selector switch. Presumably, under Petitioner’s proposed construction, a finding of invalidity must also include a finding that the prior art discloses a separate selector switch, despite this requirement being nowhere in the claims. Petitioner does not explain this discrepancy, which casts doubt on the accuracy of Petitioner’s proposed construction.

【図 5】



Pet., 59 (citing EX1004, Fig. 5) (annotations in original).

Cam follower rods 57a and 57b are components of a fuel switching cock 51 positioned within a casing body having upper and lower casings 52, 53. EX1005, ¶[0031], Fig. 5. Simply put, cam followers 57a and 57b *are not valve handles*. Petitioner concedes that “[t]he cam followers 57a and 57b [Petitioner’s alleged valve handles under Petitioner’s proposed construction] are moved up and down by an undulating lower cam surface 59a of cam body 59 (yellow) which is rotated over the cam followers 57a and 57b by rotary knob 60.” Pet., 58. In effect, the alleged “valve handles” are *pressed* by lower cam surface 59a of cam body 59. Institution should be denied.

VII. CONCLUSION

For at least the reasons discussed above, the Petition fails to establish that the Challenged Claims are invalid.

Dated: September 16, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with 37 C.F.R. § 42.6(e), the undersigned certifies that on September 16, 2025, a complete and entire copy of the foregoing Patent Owner's Preliminary Response, including the exhibits relied upon, was served on counsel of record for Petitioner, as follows:

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CERTIFICATE OF WORD COUNT

Pursuant to 37 C.F.R. § 42.24(d), the undersigned certifies that the foregoing Patent Owner's Preliminary Response, excluding the portions exempted under 37 C.F.R. § 42.24(b), contains 7,246 words according to Microsoft Word's word count feature.

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