

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
REQUEST FOR REHEARING PURSUANT TO 37 C.F.R. § 42.71(d)**

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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

The recently designated *Revvo Techs.* and *Tesla* opinions make clear that an IPR petitioner must justify its decision to construe terms differently in district court and 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 contradictory constructions and indefiniteness arguments in district court (and within the Petition itself), which were properly challenged by Patent Owner in its Preliminary Response. Under the new, controlling standard articulated in *Revvo Techs.* and *Tesla*, institution should have been denied because Petitioner has not (and cannot) provide any reasonable explanation for its inconsistent positions. Moreover, changed circumstances support discretionary denial. Patent Owner respectfully requests the Board reverse its institution decision.

I. BACKGROUND

Petitioner filed for IPR of the ’101 Patent on May 16, 2025. Paper 4 (“Petition”). Grounds 1 and 2 apply constructions of “selector switch” and “valve assembly” that mirror those proposed in the Harbor Freight action. Pet., 21-31;

EX2110, 10-14. Grounds 3-5, however, rely on “apparent” constructions of the same terms, which are allegedly based on Patent Owner’s infringement contentions. Pet., 32-33. As such, taking the term “selector switch” as an example, Petitioner has proposed three different constructions of the same term in three different actions:

- **Generac Action:** Indefinite. EX2113, 51-52.
- **Harbor Freight / IPR Grounds 1-2:** “a movable component whose positioning enables subsequent user selection of only one fuel source.” EX2110, 10-13.
- **IPR Grounds 3-5:** “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.” Pet., 32-33.

Specifically, with respect to the “apparent” constructions applied in Grounds 3-5, Petitioner does not explain the basis for each enumerated characteristic or actually construe the terms, but instead merely supplies various alternative examples of devices that 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. *Id.*

Patent Owner timely filed its POPR on September 16, 2025. Paper 13 (“POPR”). There, relying on *Cambridge Mobile Telematics, Inc. v. Sfara, Inc.*, Patent Owner argued against institution because (1) Petitioner argued “for specific constructions ... of the term[] ‘selector switch,’” (2) “Generac previously argued

that the term [selector switch] was indefinite in the co-pending parallel litigation,” and (3) “Petitioner did not address this discrepancy in the Petition.” POPR, 11-13 (citing IPR2024-00952, Paper 12 (P.T.A.B. Dec. 13, 2024) (informative)).

Patent Owner also challenged the Petition on the basis that Grounds 3-5 improperly relied on “purported ‘apparent constructions,’” which were “allegedly based on positions taken by Patent Owner in parallel litigation.” *Id.*, 29-36. Specifically, Petitioner did “not (1) clearly articulate which terms [were] being (apparently) construed, or (2) state what the ‘apparent construction’ of each term is.” *Id.* Patent Owner also explained Petitioner’s proposed “apparent constructions” failed to identify “in writing and with particularity” “how the challenged claim is to be construed.” POPR, 29-31; 35 U.S.C. § 312(a)(3); 37 C.F.R. § 42.104(b).

The Board explicitly rejected Patent Owner’s indefiniteness-based argument, stating “the decision in *Cambridge Mobile* does not support denial even assuming as true the facts alleged by Patent Owner” because (1) “an informative decision (such as *Cambridge Mobile*) is not binding authority” and (2) “neither party has raised the issue of means-plus-function limitations.” Paper 22 (“Institution Decision”), 16-17. However, the Board did not address Patent Owner’s challenge regarding inconsistent claim constructions within the Petition. Institution Decision, 15 (“we do not address Petitioner’s grounds allegedly applying Patent Owner’s constructions from the related litigations”); *see also id.*, 38. 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 (shortly before institution), 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.*

Revvo Techs. 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, 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 vacated the Board’s decision and remanded the case “to determine whether Petitioner has provided a sufficient reason why different claim construction positions are warranted.” *Id.* at 5.

Two days later, 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 POPR, reasonable minds could differ on the scope of the burden to explain contradictory claim construction positions created by *Cambridge Mobile*. Patent Owner argued *Cambridge Mobile* required petitioners to explain *all* contradictory indefiniteness positions. POPR, 12-14. In contrast, the Board adopted the same approach advanced by the petitioner in *Tesla*, namely, that *Cambridge Mobile* was limited to cases alleging the indefiniteness of means-plus-function terms. Institution Decision at 16-17 (“In the [*Cambridge Mobile*] analysis, the panel noted the *express* requirement in Rule 104(b)(3) to construe means-plus-function limitations and highlighted how the petitioner ... failed to even address the issue at the Board.”). This approach has now been *expressly rejected* by the Director.

Revvo Techs. and *Tesla* make clear that *Cambridge Mobile* is not limited to indefinite means-plus-function claims (or even indefiniteness positions generally), but rather: a petitioner must explain *all alternative claim construction positions*. Under the new, controlling standard articulated by the Director, Petitioner’s reliance

on inconsistent and contradictory “apparent” constructions without sufficient justification requires denial. Moreover, 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 arguments in district court.¹ *See* § III.A, *infra*.

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

The Petition improperly relies on both (1) “apparent” constructions that are inconsistent with Petitioner’s district court position, and (2) constructions of terms that Petitioner asserted were indefinite in district court litigation. In light of the change in law afforded by *Revvo Techs.* and *Tesla*, and given that Petitioner’s

¹ In light of *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”).

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 ... in a request for rehearing.”) (accessible via <https://www.uspto.gov/patents/ptab/interim-director-discretionary-process>).

In related proceedings, the Board acknowledged the recent decisions in *Revvo Techs.* and *Tesla* “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 to Patent Owner’s instant request for reconsideration.

1. Petitioner’s reliance on contradictory “apparent” claim constructions without justification supports denial under *Revvo Techs. and Tesla*.

The Petition argued for two distinct interpretations of the terms “selector switch” and “valve assembly” that were allegedly based on both Petitioner’s and Patent Owner’s district court positions. Pet., 32-33. According to Petitioner, “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.* To be clear, Patent Owner actually consistently applied the plain and

ordinary meaning of each term, with examples drawn from the specification, both in district court and before the Board. EX2110, 10; POPR, 11. Between the Harbor Freight, Generac, and IPR proceedings, Petitioner has proposed three different constructions of “selector switch,” none of which are Patent Owner’s actual position.

But, even if a court or the Board determines Patent Owner implicitly construed “selector switch” or “valve assembly” in related litigation as Petitioner alleges, denial is *still* appropriate under *Revvo Techs.* because Petitioner did not “explain sufficiently why the different [claim construction] positions are warranted.” *Revvo Techs., Inc., v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20 at 5 (P.T.A.B. Nov. 3, 2025) (precedential). In fact, Petitioner’s *only explanation* for its inconsistent positions was to state they were “[b]ased on Patent Owner’s infringement allegations in the Related Litigations.” Pet., 35-36 (noting Petitioner’s belief that the “apparent constructions are wrong,” and that “[i]n arguing the alternative, Petitioner[] do[es] not admit or concede that Patent Owner’s apparent constructions are correct.”). If the Petition *only* contained Grounds 3-5, institution would indisputably be improper under the standard set by *Revvo Techs.* IPR2025-00632, Paper 20 at 5 (“[s]imply noting that the petitioner is adopting a patent owner’s claim construction proposals from district court”—which Petitioner has done here—“is not a sufficient reason for advancing different positions in the [three] forums.”).

In related proceedings, Petitioner attempted to justify its alternative

constructions because it *also* included Grounds 1-2 applying its district court constructions. IPR2025-01099, Paper 20 at 2 (purporting to distinguish *Revvo Techs.* because “Petitioners propose[d] their own constructions ... consistent with their litigation positions”). But, Petitioner cannot salvage an otherwise deficient Petition simply by *also* including additional Grounds applying its litigation constructions.

Of note, although the Institution Decision *did not address* Petitioner’s reliance on alternative “apparent” constructions, the IPR was nevertheless instituted on all claims and all grounds. Allowing the instant Petition to proceed highlights the very policy issues *Revvo Techs.* and *Tesla* were designed to prevent. Petitioner put forth two competing theories and allowed the Board to choose which was more persuasive. Now, Patent Owner is forced to defend against invalidity challenges (Petitioner’s Grounds 3-5) that were not considered by the Board in deciding institution, and were not clearly articulated in the Petition. POPR, 28-36. There can be no reasonable explanation (other than rampant gamesmanship) for Petitioner’s reliance on alternative “apparent” constructions, as emphasized by the fact that Petitioner argues these positions are “wrong.” Pet., 32-33. 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.

2. Petitioner’s indefiniteness positions support denial 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, Generac alleged the terms “selector switch” 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” are indefinite. EX2113, 47-52. Here, conversely, Petitioner argued that the Challenged Claims were invalid by applying two different constructions of the term “selector switch,” one of which Petitioner asserts is “wrong.”² Despite asserting indefiniteness in parallel district court

² Petitioner did not separately construe “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” and therefore appears to be relying on the “ordinary and customary” meaning of the term. *Compare* EX2113, 48-49 *with* Pet., 21. Once again, Petitioner did not provide any explanation or justification for its contradictory positions.

proceedings, Petitioner's expert was able to identify the alleged "selector switch" within the prior art under both the "apparent" and allegedly "proper" constructions of the term. Pet., 40-41, 60-62. Simply put, under the controlling standard articulated in *Revvo Techs.* and *Tesla*, Petitioner should not be allowed to advance inconsistent indefiniteness positions. Denial is appropriate.

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

Regardless of the revised legal standards provided by the *Revvo Techs.* and *Tesla* decisions, the POPR correctly argued that institution should be denied because Petitioner did not address its inconsistent indefiniteness positions in the Petition. POPR, 11-13 (citing *Cambridge Mobile*, IPR2024-00952, Paper 12 (P.T.A.B. Dec. 13, 2024) (informative)). The Board, however, 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." Paper 22, 16-17. As explained above, the Board's approach is defunct in light of *Revvo Techs.* and *Tesla*. Moreover, the 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 22 at 16 (citing Standard Operating Procedure 2 (Revision 11)) (emphasis in original). Here, *Revvo Techs.* is *precedential*, which obviates the Board's concern. Moreover, there is no

reasonable justification for Petitioner’s contradictory indefiniteness positions.

Finally, in addition to mis-applying the law, the Institution Decision condones Petitioner’s inconsistent indefiniteness positions because Patent Owner allegedly did not “provide any citations to Petitioner’s alleged indefiniteness arguments.” Institution Decision, 16. The Board is incorrect. Generac first served preliminary invalidity contentions on August 22, 2025, which were designated “highly confidential – attorneys’ eyes only.” Based on the information available at the time, and given the lack of a non-confidential “exhibit” depicting Generac’s indefiniteness positions, Patent Owner accurately represented Generac’s indefiniteness positions in its POPR. POPR, 11-13.³ Patent Owner’s sworn attorney argument accurately conveying Petitioner’s district court positions was the best evidence available at Patent Owner’s POPR deadline.

Notably, Petitioner did not amend its district court positions to withdraw its indefiniteness challenge. Moreover, despite filing a Reply (Paper 19), Petitioner did not dispute Patent Owner’s representations regarding its indefiniteness challenges.

³ 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).

In fact, *after* Patent Owner’s POPR, Generac served supplemental invalidity contentions, which reaffirmed its indefiniteness challenges. EX2113, 47-49.⁴ And, in related proceedings, Petitioner recently reaffirmed the very indefiniteness arguments that are at-issue here. IPR2025-01099, Paper 20 at 3-5 (alleging “selector switch” and “selector switch positioned on the valve assembly” are indefinite).

In light of Patent Owner’s sworn certification accurately representing Generac’s indefiniteness positions, the Board’s decision to wholly disregard Patent Owner’s indefiniteness-based challenge is improper. Institution Decision, 16. Under controlling standard articulated by the Director in *Revvo Techs.* and *Tesla*, the POPR correctly challenged Petitioner’s inconsistent indefiniteness positions, and institution should have been denied.

C. Changed circumstances also support discretionary denial.

On December 1, 2025, the Director *denied* institution in related IPR2025-01121. In light of this denial, *four* different district court around the country must now resolve Petitioner’s invalidity challenges based on patents and printed publications, at least with respect to U.S. Patent No. 11,143,120. Of particular note,

⁴ Generac’s supplemental contentions were also designated attorneys’ eyes only. At Patent Owner’s request, Generac eventually agreed a redacted version could be filed here. EX2113.

the Nakafushi and Olmr references that Petitioner relies on here were *also* at issue in IPR2025-01121, meaning that those references will likely be considered by district courts regardless of whether or not the Board institutes here.

One of the Board’s primary rationales *against* discretionary denial was that “resolving the dispute between the parties at the Office would be more efficient” because “Petitioner indicates that it has challenged all thirteen patents at the office.” Paper 20 at 2 (incorporating analysis from IPR2025-00805, Paper 20 at 2). In light of the denial in IPR2025-01121, the efficiencies the Board relied on no longer exist, and IPR no longer serves as a true alternative to district court invalidity challenges. To the extent that additional related IPRs are denied in the coming days, these inefficiencies will be exacerbated. In light of changed circumstances, discretionary denial is appropriate.

IV. CONCLUSION

Patent Owner respectfully asserts that the Board’s Institution Decision should be reversed and institution should be denied because (1) Petitioner’s contradictory indefiniteness and claim construction positions are prohibited in light of the Director’s recently-designated *Revvo Techs.* and *Tesla* cases, and (2) changed circumstances support discretionary denial.

Dated: December 4, 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 December 4, 2025, a complete and entire copy of the foregoing document was served on counsel of record for Petitioner, as follows:

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