

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
BRIEFING ON IMPACT OF *REVVO* AND *TESLA* DECISIONS**

TABLE OF CONTENTS

I.	INSTITUTION SHOULD BE DENIED BASED ON <i>REVVO TECHS., INC. V. CEREBRUM SENSOR TECHS., INC.</i>	2
II.	INSTITUTION SHOULD BE DENIED BASED ON <i>TESLA, INC., V. INTELL. VENTURES II LLC</i>.....	4
III.	CONCLUSION	5

TABLE OF AUTHORITIES

Cases

<i>Revvo Techs., Inc., v. Cerebrum Sensor Techs., Inc.,</i> IPR2025-00632, Paper 20 (P.T.A.B. Nov. 3, 2025).....	3, 4, 5
<i>Tesla, Inc., v. Intell. Ventures II, LLC,</i> IPR2025-00340, Paper 18 at 4 (P.T.A.B. Nov. 5, 2025).....	4, 5

Statutes

35 U.S.C. § 312(a)	2
--------------------------	---

Regulations

37 C.F.R. § 42.104(b).....	2
----------------------------	---

Under the new, controlling standard articulated in *Revvo Techs.* and *Tesla*, institution should be denied because Petitioner has not (and cannot) explain its inconsistent claim construction positions and indefiniteness arguments in co-pending district court litigation. Specifically, Harbor Freight Tools USA, Inc. (“HFT”) argued for construction of the terms “selector switch” and “valve assembly” in district court. EX2110, 10-14. In related proceedings (where the Director previously found discretionary denial appropriate over nearly identical arguments) Petitioner represented that Generac Power Systems, Inc. (“Generac”) and MWE Investments, LLC (“MWE”) “expect to take the same claim construction positions at the time such disclosures are due.” IPR2025-01099, Paper 20 at 1; IPR2025-01228, Paper 23 at 1. Generac, meanwhile, alleged multiple terms were indefinite in its parallel case, including “selector switch.” EX2113, 51-52.

Petitioner’s Grounds 1 and 2 apply constructions of “selector switch” and “valve assembly” that mirror those proposed in the HFT action. Pet., 22, 26. Petitioner’s Grounds 3-5, however, rely on amorphous, undefined “apparent” constructions of the same terms, which are allegedly based on Patent Owner’s infringement contentions. *Id.*, 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.

- **HFT Action and 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 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 term. *Id.* Moreover, Petitioner does not explain the basis for each of the enumerated characteristics, and includes “and/or” terms that inject further confusion regarding whether a sub-combination of the described characteristics constitute the claimed “selector switch.” Petitioner’s proposed “apparent constructions” fail to identify “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); *see also* POPR, 29-34.

I. INSTITUTION SHOULD BE DENIED BASED ON *REVVO TECHS., INC. V. CEREBRUM SENSOR TECHS., INC.*

As explained above, the Petition relies on two different constructions, in the alternative, of the terms “selector switch” and “valve assembly.” The “apparent”

constructions Petitioner applies in Grounds 3-5 are purportedly “[b]ased on Patent Owner’s infringement allegations in the Related Litigation.” Pet., 32. However, in practice Patent Owner actually applied the plain and ordinary meaning of each term, with examples drawn from the specification, both in the district court cases and before the Board. EX2110, 10; *see also* POPR, 11. Between the HFT, 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 the Director’s reasoning in *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). There, the Director explicitly found that “[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.” *Id.*

Petitioner *did not explain* its inconsistent positions, other than to state they were “[b]ased on Patent Owner’s infringement allegations in the Related Litigations.” Pet., 32. In fact, Petitioner explicitly noted its 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.” Pet., 33. There can be no reasonable explanation (other than rampant gamesmanship) for Petitioner to apply constructions it has affirmatively represented are incorrect. 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.

II. INSTITUTION SHOULD BE DENIED BASED ON *TESLA, INC., V. INTELL. VENTURES II LLC*

Tesla explicitly held 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.’” *Tesla, Inc., v. Intell. Ventures II LLC*, IPR2025-00340, Paper 18 at 4 (P.T.A.B. Nov. 5, 2025) (informative) (citing *Revvo Techs.*, Paper 20 at 3–5). And yet, as explained above and articulated in Patent Owner’s Preliminary Response, Petitioner has expressly advanced contradictory indefiniteness positions that support denial. POPR, 12-13.

Specifically, Generac alleged that two 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, 51-52. Not only does the Petition fail to acknowledge Generac’s district court position, it

actually relies on two different constructions of “selector switch.” Petitioner’s inconsistent indefiniteness arguments alone merit denial.

Moreover, “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*, Paper 18 at 3 (citing *Revvo Techs.*, IPR2025-00632, Paper 20 at 3–5. Here, Petitioner did not articulate any basis for its contradictory positions, and that also supports denial.

III. CONCLUSION

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—while simultaneously preserving both non-infringement positions and indefiniteness arguments at district court—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.

Patent No. 10,598,101

Dated: December 22, 2025

Respectfully submitted,

By: /Joseph W. Staley/

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

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

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

PERILLA KNOX & HILDEBRANDT LLP

5871 Glenridge Dr.

Suite 350

Atlanta, Georgia 30328

Tel: (770) 927-7802

Fax: (877) 389-6779

Email:

j.staley@pkhip.com

s.amy@pkhip.com

t.finch@pkhip.com

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

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

ZIOLKOWSKI PATENT SOLUTIONS

GROUP, SC

136 South Wisconsin Street

Port Washington, WI 53074

(262) 268-8100 Tel

(262) 268-8185 Fax

Email:

tjz@zpatents.com

jmf@zpatents.com

Counsel for Patent Owner

CERTIFICATE OF COMPLIANCE

This paper complies with the requirements set forth in the Board's December 15, 2025 Order Authorizing Additional Briefing. Paper 27.

Dated: December 22, 2025

Respectfully submitted,

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

Certificate of Service

The undersigned hereby certifies that a copy of the foregoing was served via email on the following:

Thomas J. Leach, Reg. No. 53,188
Taylor R. Stemler, Reg. No. 79,777
MERCHANT & GOULD P.C.
150 South Fifth Street, Suite 2200
Minneapolis, MN 55402
Tel: 612-336-4665
Tel: 612-371-5215
Fax: 612-332-9081
tleach@merchantgould.com
tstemler@merchantgould.com

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

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

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

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

Dated: December 22, 2025

Respectfully submitted,

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