

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

CHAMPION POWER EQUIPMENT, INC.,
Patent Owner.

Patent No. 10,598,101

Issued: March 24, 2020

Title: DUAL FUEL SELECTOR SWITCH

Inter Partes Review No. IPR2025-00951

**PETITIONERS' BRIEF REGARDING *REVVO* AND *TESLA* IN VIEW OF
PETITIONERS' CLAIM CONSTRUCTION POSITIONS**

As authorized by the Director, Petitioner submits this brief to address “the impact of the *Revvo* and *Tesla* decisions on th[is] proceeding[] in view of Petitioner’s claim construction positions.”¹ Paper 27 at 2. Specifically, Petitioner addresses the following issues: (1) the Petition presents claim construction positions in the alternative in compliance with 37 C.F.R. § 42.104 and *Revvo*, and (2) Generac’s disclosed indefiniteness positions in its litigation do not contradict the Petition under *Tesla*. The Petition should remain instituted.

I. THE PETITION’S ALTERNATIVE CONSTRUCTIONS SATISFY 37 C.F.R. § 42.104 AND *REVVO*

The Petition complies with 37 C.F.R. § 42.104 because it identifies “[h]ow the challenged claim[s are] to be construed.” *See* Pet., §VII. Generac has not yet taken claim construction positions in its litigation but expects to take positions consistent with the Petition when such disclosures are due. Harbor Freight and MWE settled their litigations and are expected to withdraw from the IPRs.

These facts are distinguishable from *Revvo*. In *Revvo*, Petitioner “did not propose its own constructions for claim terms in the Petition but instead accepted

¹ *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20 (PTAB Nov. 3, 2025) (precedential) [hereinafter *Revvo*]; *Tesla, Inc. v. Intell. Ventures II LLC*, IPR2025-00340, Paper 18 (PTAB Nov. 5, 2025) (informative) [hereinafter *Tesla*].

[Patent Owner]’s proposed constructions” and “did not explain why it was taking a different position” in the litigation. *Revvo* at 2. Here, Petitioner proposes its own constructions (in compliance with 37 C.F.R. § 42.104) and has not taken litigation positions. Petitioner also explains why Patent Owner’s constructions are wrong but presents an alternative ground of invalidity addressing Patent Owner’s constructions. *See* EX1077, 13–16. Nowhere does *Revvo* prohibit addressing a patent owner’s construction in the alternative. Alternative invalidity grounds dependent on later claim construction findings are routine in litigation and are likewise permissible before the Board. *smaXtec Inc. v. ST Reproductive Techs. LLC*, IPR2024-00875, Paper 18 at 21 & n.7 (PTAB Nov. 22, 2024) (stating “[i]t is common for Petitioners to present alternative claim constructions” and holding that arguing invalidity under both constructions satisfies 37 C.F.R. § 42.104).

Furthermore, the Board’s Institution Decision demonstrates that the parties’ claim construction disputes are likely to be immaterial to a decision on the merits. Paper 22. The DuroMax-De Vries grounds are independently sufficient under either construction. *Id.*, 14. Thus, the Board determined that it did not need to construe the disputed claim terms or analyze the invalidity grounds presented under the alternative construction. *Id.*, 14-15. *See Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019) (“The Board is required to construe ‘only those terms ... necessary to resolve the controversy.’”). Petitioners’ discussion of claim

constructions in the alternative is not fatal to the Petition.

Patent Owner argues that if the Petition only contained alternative Grounds 3-5, institution would be improper under *Revvo*, and that the inclusion of Grounds 1-2 cannot rectify this issue. Paper 24 at 9. But Patent Owner ignores that *Revvo* turned on the petitioner's non-compliance with Rule 42.104(b)(3) by failing to include its own proposed proper constructions. Here, Petitioner independently provided the proper construction of the disputed terms and then showed that the claims are unpatentable under those constructions. Pet., § VII-VIII. The Board found Petitioner was reasonably likely to prevail based on the grounds applying Petitioner's proposed construction. Paper 22 at 14–15. Nor is there is any gamesmanship by Petitioner. Petitioner's alternative constructions have only been proposed due to gamesmanship by Patent Owner in reading its claim terms in an improperly broad manner. *Revvo* and related decisions do not require non-institution.

II. GENERAC'S INDEFINITENESS CONTENTIONS DO NOT CONTRADICT THE PETITION UNDER *TESLA*

Tesla explains that one adequate explanation for an alternative indefiniteness position is when “notwithstanding the alleged indefiniteness of the claim term, an ordinarily skilled artisan would understand that the asserted art satisfies the claim limitation.” *Tesla* at 3–4. This is consistent with Federal Circuit precedent. *See, e.g., Intel Corp. v. Qualcomm Inc.*, 21 F.4th 801, 813 (Fed. Cir. 2021) (“The indefiniteness of a limitation . . . precludes a patentability determination only when indefiniteness

renders it ***logically impossible*** for the Board to reach such a decision.” (emphasis added)); *Cochlear Bone Anchored Sols. AB v. Oticon Med. AB*, 958 F.3d 1348, 1360 (Fed. Cir. 2020) (“[E]ven if claim 10 is indefinite, such a conclusion would not imply that it is incapable of being compared to prior art to determine if one of its alternatives is anticipated or would have been obvious on the grounds asserted.”).

Generac disclosed indefiniteness contentions regarding two claim terms in the ’101 Patent. Both positions fit squarely within the *Tesla* exception.

“Selector Switch:” Petitioner contends that “selector switch” is a lexicography term and proposed a lexicography-based construction (thus satisfying 37 C.F.R. § 42.104). *See* Pet., §VII.A. However, if the Generac Court disagrees that “selector switch” is a lexicography term, Generac argues in the alternative that the plain and ordinary meaning of “switch” is “a device for making, breaking, or changing the connections in an electrical circuit” such that the claim is invalid for written description or non-enablement. *See* Pet., 22. Otherwise, the claim is indefinite because a POSA would not be able to determine with reasonable certainty what the plain and ordinary meaning of the claim term is in view of the specification. *See* EX2113, 39-40, 48-49.

The *Tesla* exception applies. A POSA would “understand that the asserted art satisfies the claim limitation” under Petitioner’s proposed construction. Generac’s argument in the alternative that another construction may raise §112 issues is not

taking an inconsistent position as between the Petition and the Related Litigation.

“Selector Switch Positioned on the Valve Assembly:” The parties’ constructions of “valve assembly” impose an inner bound on the minimal structure that a valve assembly must comprise, but the outer bound regarding where the valve assembly ends is indeterminable. Pet., §VII; EX1077, 14–17 (Petitioners: at least one fuel valve and corresponding valve handle; Patent Owner: one or more valves arranged together). Thus, Generac contends that this claim term is indefinite because in many circumstances a POSA would not be able to ascertain for purposes of infringement whether the selector switch is “positioned on” the valve assembly. *See* EX2113, 52.

The *Tesla* exception applies. Although the outer bound of this term is indefinite, a POSA would nevertheless “understand that the asserted art satisfies the claim limitation” because the selector switches of De Vries and Fujisawa are positioned on the valves and/or valve handles, which are indisputably part of the valve assembly. *See* Pet., Ground 1 Element [1.2] and Ground 3 Element [1.2]; *Hilti Aktiengesellschaft v. Specified Techs. Inc.*, IPR2024-00192, Paper 16 at (May 14, 2024) (instituting IPR where prior art clearly disclosed limitation by disclosing “any size,” despite indefiniteness regarding precise boundaries of size limitation).

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 22, 2025, a true and correct copy of the foregoing **PETITIONERS' BRIEF REGARDING *REVVO* AND *TESLA* IN VIEW OF PETITIONERS' CLAIM CONSTRUCTION POSITIONS** was filed through the P-TACTS system along with service to the email addresses listed below:

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