

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.

IPR2025-01099
Patent 11,306,667

**PATENT OWNER CHAMPION POWER EQUIPMENT, INC.'S
BRIEFING ON IMPACT OF *REVVO* AND *TESLA* DECISIONS**

EXHIBIT LIST

Exhibit #	Description
EX2001	Docket for Champion Power Equipment, Inc. v. Firman Power Equipment Inc., Case No. 2:23-cv-02371 (D. Az.) (“Firman Case”)
EX2002	Firman Case, Case Management Order, ECF No. 33
EX2003	Firman Case, First Amended Complaint, ECF No. 24
EX2004	<i>Reserved</i>
EX2005	Firman Case, Firman’s Motion to Amend Invalidity Contentions, ECF No. 115
EX2006	Firman Case, Declaration and Exhibit, ECF No. 116
EX2007	Firman Case, Order Granting Leave to Amend, ECF No. 124
EX2008	<i>Reserved</i>
EX2009	Firman’s Nov. 2024 Subpoena to third-party Generac (Firman Case)
EX2010	<i>Reserved</i>
EX2011	Generac Case, Generac’s First Amended Answer and Counterclaims, ECF No. 30
EX2012	<i>Reserved</i>
EX2013	Defendant Generac’s Feb. 14, 2025 Subpoena to third-party Firman
EX2014	<i>Reserved</i>
EX2015	
EX2016	Docket for Harbor Freight Case (C.D. Cal.)
EX2017	Harbor Freight Case, Complaint for Declaratory Judgment, ECF No. 1
EX2018	Harbor Freight Case, Champion’s Answer and Counterclaims, ECF No. 47
EX2019	Harbor Freight Case, Harbor Freight’s Answer to Counterclaims, ECF No. 55
EX2020	Harbor Freight Case, Joint R26 Report, ECF No. 38
EX2021	<i>Reserved</i>
EX2022	
EX2023	Harbor Freight’s Mar. 10, 2025 Subpoena on third-party Firman
EX2024	<i>Reserved</i>
EX2025	
EX2026	
EX2027	
EX2028	
EX2029	Generac Case, Complaint, ECF No. 1
EX2030	<i>Reserved</i>

Exhibit #	Description
EX2031	<i>Reserved</i>
EX2032	
EX2033	June 23, 2020 Letter from Champion to MWE
EX2034	July 31, 2020 MWE Response Letter
EX2035	Oct. 17, 2020 MWE Responsive Letter
EX2036	July 7, 2020 Letter from Champion to Generac
EX2037	July 31, 2020 Generac Response Letter
EX2038	March 27, 2024 Letter from Champion to Harbor Freight
EX2039	June 28, 2024 Letter from Champion to Harbor Freight
EX2040	<i>Reserved</i>
EX2041	
EX2042	
EX2043	
EX2044	
EX2045	
EX2046	
EX2047	Docket Navigator - Time to Milestones for D. Az. (Trial)
EX2048	Docket Navigator - Time to Milestones for E.D. Wis. (Trial)
EX2049	<i>Reserved</i>
EX2050	Generac Case, Order Following Scheduling Conference, ECF No. 29
EX2051	MWE Case, Complaint, ECF No. 1
EX2052	<i>Reserved</i>
EX2053	
EX2054	Champion's Patent Statement and Licensing Declaration Form, July 1, 2021
EX2055	Firman's August 30, 2024 Invalidity Contentions
EX2056	<i>Reserved</i>
EX2057	
EX2058	August 4, 2025 Stipulation from Generac
EX2059	August 4, 2025 Stipulation from Harbor Freight
EX2060	US Pub No. 2002/0134362 ("Deutsch")
EX2061	US Pub No. 2014/0202430 ("Monros")
EX2062	US5809979 ("Kubota Patent")
EX2063	<i>Reserved</i>
EX2064	Champion September 26, 2014 Internal Email
EX2065	Firman Case, Champion's Motion to Amend Infringement Contentions, ECF No. 198

Exhibit #	Description
EX2066	<i>Reserved</i>
EX2067	
EX2068	
EX2069	August 15, 2025 Stipulation from MWE
EX2070	Generac Case, Exhibit 3 – webpage, ECF No. 30-03
EX2071	Wayback Machine, http://pgmaonline.com/members.asp , dated July 29, 2013
EX2072	<i>Reserved</i>
EX2073	Firman Case, Order, ECF No. 141
EX2074	Generac’s April 23, 2025 Responses to Plaintiff’s First Set of Interrogatories
EX2075	Screenshots from Honda EU20i LPG video, https://www.youtube.com/watch?v=yBpq33aJmR0
EX2076	YouTube Video, <i>HONDA EU20i LPG</i> , https://www.youtube.com/watch?v=yBpq33aJmR0
EX2077	US3384059 (“Kopa”)
EX2078	<i>Reserved</i>
EX2079	
EX2080	
EX2081	
EX2082	
EX2083	August 29, 2025 Stipulation from MWE
EX2084	August 29, 2025 Stipulation from Harbor Freight
EX2085	September 2, 2025 Stipulation from Generac
EX2086	US10221780 (“the ’780 Patent”)
EX2087	Declaration of Scott P. Amy in Support of Patent Owner's Notice of Intent to Designate a Provisionally Recognized PTAB Attorney as Backup Counsel
EX2088	<i>Reserved</i>
EX2089	
EX2090	
EX2091	
EX2092	
EX2093	
EX2094	
EX2095	Harbor Freight Case, Preliminary Proposed Claim Constructions
EX2096	<i>Reserved</i>

Exhibit #	Description
EX2097	<i>Reserved</i>
EX2098	
EX2099	
EX2100	
EX2101	
EX2102	
EX2103	
EX2104	
EX2105	
EX2106	
EX2107	
EX2108	
EX2109	
EX2110	Harbor Freight Case, HFT's Opening Claim Construction Brief
EX2111	<i>Reserved</i>
EX2112	
EX2113	Generac Case, Generac's Supplemental Preliminary Invalidity Contentions, dated 2025-09-25 (redacted)

GLOSSARY

Abbreviation	Term
'667 Patent	U.S. Patent No. 11,306,667
Board	Patent Trial and Appeal Board
Challenged Claims	Claims 1-18 of the '667 Patent
Generac	Generac Power Systems, Inc.
Harbor Freight or HFT	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. 11,306,667 (Paper 1)
Petitioner	Harbor Freight, Generac, and MWE, collectively
POPR	Patent Owner's Preliminary Response (Paper 15)
POSITA	Person of Ordinary Skill in the Art
USPTO	United States Patent & Trademark Office

Under the new, controlling standard articulated by the Director in *Revvo Techs.* and *Tesla*, institution should be denied because Petitioner has not (and cannot) articulate any explanation for its inconsistent claim construction positions and indefiniteness arguments in co-pending district court litigation. Specifically, HFT argued for construction of the terms “selector switch” and “valve assembly” in district court. EX2110, 10-14. Generac, meanwhile, alleged that several terms were indefinite, including “selector switch.” EX2113, 51-52, 55.

Petitioner’s Grounds 1 and 2 apply constructions of “selector switch” and “valve assembly” that mirror those proposed in the HFT action. Pet., 24, 28. 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. 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., 35-36.

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. Pet., 36. 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, 27-30.

I. INSTITUTION SHOULD BE DENIED BASED ON THE DIRECTOR’S PRECEDENTIAL NOVEMBER 3, 2025 ORDER IN *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 based on how “Patent Owner has construed selector switch and/or valve assembly ... in related litigations.” Pet., 34. 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, 8-9. 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., 35. 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.,

36. 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 THE DIRECTOR’S NOVEMBER 5, 2025 INFORMATIVE ORDER IN *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, 10-11.

Specifically, Generac alleged that three terms (“selector switch,” “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 “Wherein the two fuel outputs selectively supply fuel to the engine from only one of the first fuel source or the second fuel source”) are indefinite. EX2113, 51-52, 55. 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

Petitioner’s reliance on conflicting invalidity positions among and between the HFT, Generac, and IPR proceedings is clear-cut gamesmanship. Petitioner cannot reasonably justify asserting the term “selector switch” is indefinite, which Generac contends means that it “fails to provide a person of ordinary skill in the art reasonable certainty as to the scope of the claim language” (EX2113, 50), while simultaneously relying on two different constructions of the same term before the Board. Petitioner is successful in each forum if *any* of its contradictory theories are adopted by *any* forum. These inconsistencies are exactly what *Revvo Techs.* and *Tesla* specifically authored to protect against. Institution should be denied.

Patent No. 11,306,667

Dated: November 25, 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 page limits set forth in the Board's November 20, 2025 email authorization for this brief.

Dated: November 25, 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: November 25, 2025

Respectfully submitted,

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