

IN THE 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,
Petitioners

v.

CHAMPION POWER EQUIPMENT, INC.,
Patent Owner.

Patent No. 11,905,896

Issued: February 20, 2024

Title: DUAL FUEL SELECTOR SWITCH

Inter Partes Review No. IPR2025-01228

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

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As authorized by the Board, Petitioners submit this brief “to address the impact of the *Revvo* and *Tesla* decisions on th[is] proceeding[] in view of Petitioners’ claim construction positions.”¹ Specifically, Petitioners address the following issues raised in the Patent Owner Preliminary Response: (1) the Petition presents claim construction positions in the alternative, and (2) Generac disclosed indefiniteness positions in its litigation. Paper 16 at 11. The Board has already considered and rejected Patent Owner’s arguments in the Institution Decision for the grandparent ’101 Patent. IPR2025-00951, Paper 22 at 16–17 [hereinafter ’101 Decision]. The Petition complies with 37 C.F.R. § 42.104 and is consistent with Petitioners’ litigation claim construction positions.

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. Harbor Freight proposed the same constructions in its litigation. EX1084, 10–14. Generac and MWE have not yet taken claim construction positions in their litigations but expect to take the same claim construction positions at the time such disclosures are due.

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

These facts are distinguishable from *Revvo*. In *Revvo*, Petitioner “did not propose its own constructions for claim terms in the Petition but instead accepted [Patent Owner]’s proposed constructions” and “did not explain why it was taking a different position” in the litigation. *Revvo* at 2. Here, Petitioners propose their own constructions (in compliance with 37 C.F.R. § 42.104) consistent with their litigation positions. Petitioners also explain why Patent Owner’s constructions are wrong but present 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 Institution Decision for the ’101 Patent demonstrates that the parties’ claim construction disputes are likely to be immaterial to a decision on the merits. The DuroMax-De Vries grounds are independently sufficient under either construction (or the Harbor Freight Court’s tentative construction (’101 Decision at 14)). Thus, the Board determined that it did not need to construe the disputed claim terms (’101 Decision at 14–15) or analyze the invalidity grounds presented under

the alternative construction (’101 Decision at 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.’”). With similar claim terms, this IPR should yield the same outcome.

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 three claim terms in the ’896 Patent. EX1085. All three positions fit squarely within the *Tesla* exception.

“Selector Switch:” Petitioners contend that “selector switch” is a lexicography term and proposed a lexicography-based construction (thus satisfying

37 C.F.R. § 42.104). *See* Pet., §VII.B. 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., 23–24. 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* EX1085, 23–24.

The *Tesla* exception applies. A POSA would “understand that the asserted art satisfies the claim limitation” under Petitioners’ 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 Litigations.

“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. EX1084, 13; EX1077, 14–16 (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*

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 [30.2] and Ground 3 Element [30.2]; *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).

“Selectively Supply Fuel to the Engine:” Generac argues that “selectively supply” is subject to “*IPXL*-type” indefiniteness by introducing a method step into an apparatus claim. EX1085, 27; *IPXL Holdings, LLC. v. Amazon.com, Inc.*, 430 F.3d 1377, 1384 (Fed. Cir. 2005). *IPXL*-type indefiniteness simply “render[s] the claim indefinite for purposes of determining when infringement occurs” and “does not . . . preclude the Board from addressing the patentability of claims on section 102 and 103 grounds.” *Samsung Elecs. Am., Inc. v. Prisia Eng’g Corp.*, 948 F.3d 1342, 1355 (Fed. Cir. 2020). The prior art discloses this limitation notwithstanding *IPXL*-type indefiniteness (Pet., §§VIII.M, X.J) and thus, the *Tesla* exception applies.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 25, 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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