

IPR2025-01271

U.S. Patent No. 10,697,398

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GENERAC POWER SYSTEMS, INC.,

Petitioner

v.

CHAMPION POWER EQUIPMENT, INC.,

Patent Owner.

Patent No. 10,697,398

Issued: Jun. 30, 2020

Title: BATTERYLESS DUAL FUEL ENGINE WITH LIQUID FUEL CUT-OFF

Inter Partes Review No. IPR2025-01271

**PETITIONERS' OBJECTIONS TO EVIDENCE
UNDER 37 C.F.R. § 42.64**

Petitioner Generac Power Systems, Inc. (“Generac”) objects under 37 C.F.R. § 42.64(b)(1) and the Federal Rules of Evidence (“FRE”) to the admissibility of the following exhibits submitted by Patent Owner Champion Power Equipment, Inc. (“Champion”) in its Patent Owner Response, filed on May 26, 2026 (Paper No. 30):

- EX2081
- EX2133 (to the extent it relies upon EX2081).

Champion filed its Patent Owner Response on May 26, 2026. Generac’s objections are timely under 37 C.F.R. § 42.64(b)(1). Generac serves Champion with these Objections to provide notice that Generac will move to exclude the above-identified exhibits as improper evidence.

I. Generac objects to Champion’s EX2081 as inadmissible under Fed. R. Evid. FRE 901(a), 901(b)(1), 901(b)(9), 902, 802, and 403.

EX2081 purports to be webpages from “Propane 101” from Archive.org. Champion cited to this exhibit in an attempt to and argue the validity of its claims, including, for example, that propane liquid and gas are not usable interchangeably, that commercial equipment typically use liquid propane, and differences between various propane cylinders, among other arguments. *See, e.g.*, Paper 30 at 13-19. Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner hereby objects to Patent Owner's Exhibit 2081 in its entirety. Petitioner hereby objects to the Declaration of William E. Singhose, EX2133, to the extent it relies upon EX2081, including but not limited to paragraphs 50–53, 62–63, and 69–70.

II. Objection Based on Lack of Authentication (Fed. R. Evid. 901)

Petitioner objects to EX2081 (and EX2133's reliance upon EX2081) under Federal Rule of Evidence 901 because Patent Owner has failed to authenticate the exhibit as required by the Federal Rules of Evidence and the Board's rules governing admissibility of evidence.

EX2081 appears to consist of webpages purportedly obtained from the Internet Archive's "Wayback Machine" (archive.org). Patent Owner offers EX2081 to establish the existence, content, and/or public availability of internet materials as of particular historical dates. (*See, e.g.*, EX2133, ¶ 50 "I have reviewed archives of the 'Propane 101' website which pre-date the '398 Patent.") However, Patent Owner has not submitted a declaration from the Internet Archive, a custodian of records, or any other witness with personal knowledge sufficient to authenticate the exhibit.

Rule 901(a) requires the proponent of evidence to produce evidence sufficient to support a finding that the item is what the proponent claims it is. Patent Owner has not established:

1. that the webpages contained in EX2081 are true and accurate copies of webpages existing on the asserted dates;
2. that the webpages were actually captured by the Internet Archive on the dates displayed;

3. that the archived pages accurately reflect the content of the underlying webpages on the asserted dates;
4. that the archived materials have not been altered, modified, or otherwise affected during capture, storage, or retrieval; or
5. that the methods and systems used by the Internet Archive reliably produce accurate historical reproductions of webpages.

Patent Owner has not provided testimony satisfying Rule 901(b)(1) from a witness with knowledge, nor has Patent Owner provided evidence satisfying Rule 901(b)(9) describing the Internet Archive's process or system and demonstrating that it produces accurate results.

Absent competent authentication, EX2081 lacks foundation and should be excluded or accorded no weight.

III. Objection Based on Lack of Foundation

Petitioner further objects to EX2081 for lack of foundation.

Patent Owner has failed to establish who retrieved the archived webpages, when they were retrieved, what search parameters were used, whether the retrieved pages constitute complete or partial captures, whether embedded content was successfully archived, or whether the exhibit accurately reflects the webpages allegedly available on the relevant dates.

Without competent foundational testimony, there is insufficient basis for the Board to conclude that Exhibit 2081 reliably establishes the historical facts for which it is offered.

IV. Objection Under Federal Rule of Evidence 802 (Hearsay)

To the extent Patent Owner offers EX2081 for the truth of any statements contained therein, for example as used in EX2133, Petitioner objects on hearsay grounds under Federal Rules of Evidence 801 and 802.

Patent Owner has not identified any applicable hearsay exception for the archived webpages or for the Internet Archive records purportedly reflecting historical webpage content and dates.

V. Objection Under Federal Rule of Evidence 403

Petitioner further objects under Federal Rule of Evidence 403.

Because EX2081 lacks authentication and adequate foundation, any probative value is substantially outweighed by the danger of misleading the Board, confusing the evidentiary record, and inviting speculation regarding the authenticity, accuracy, completeness, and date of the purported archived webpages.

VI. Applicable Authority

Numerous courts and PTAB panels have recognized that Internet Archive evidence generally requires competent authentication before it may be relied upon to establish the content or existence of webpages on particular dates. Authentication

typically is provided through a declaration from an Internet Archive employee or other competent witness explaining the operation of the Wayback Machine and attesting that the submitted materials are true and accurate copies of archived webpages.

The Federal Circuit likewise has recognized the importance of proper authentication for Internet Archive evidence. *See, e.g., Tableau Software LLC v. iCharts LLC*, IPR2024-01387, Paper 36 at 94–95 (PTAB May 7, 2026) (“[T]he declarations from Mr. Nathaniel Frank-White are sufficient to authenticate these exhibits. The Board routinely allows archived webpages from the Wayback Machine as admissible evidence *when similarly authenticated*.” (emphasis added)); *Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-01039, Paper 29 at 13 (PTAB Dec. 20, 2019) (Precedential) (holding that the proponent must establish a reasonable likelihood that the evidence was publicly accessible at the date claimed by the proponent to establish relevance).

Here, Patent Owner has provided no comparable authenticating evidence.

VII. Reservation of Rights

Petitioner reserves the right to seek exclusion of EX2081 and EX2133 and to raise these and any additional evidentiary objections in any motion to exclude, motion to strike, observations on cross-examination, reply briefing, oral argument, or other authorized filing.

Accordingly, Petitioner objects to EX2081 in its entirety on the grounds of lack of authentication (Fed. R. Evid. 901), lack of foundation, hearsay (Fed. R. Evid. 801–802), and undue prejudice and unreliability (Fed. R. Evid. 403). Petitioner objects to EX2133 to the extent it relies upon EX2081.

Date: June 2, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 2, 2026, a true and correct copy of the foregoing **PETITIONERS' OBJECTIONS TO PATENT OWNER'S EVIDENCE** was filed through the P-TACTS system along with service to the email addresses listed below:

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