

IPR2025-01272

U.S. Patent No. 11,492,985

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. 11,492,985

Issued: November 8, 2022

Title: OFF-BOARD FUEL REGULATOR FOR GENERATOR ENGINE

Inter Partes Review No. IPR2025-01272

PETITIONER’S BRIEF REGARDING *REVVO* AND *TESLA*

Petitioner submits this brief to address “the impact of the *Revvo* and *Tesla* decisions on IPR2025-01272.”¹ 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*, (2) the Petition adopts plain and ordinary meaning constructions for terms addressed in *Markman* briefing in Harbor Freight’s *now-settled litigation*, and (3) Generac’s indefiniteness positions disclosed in its litigation do not contradict the Petition under *Tesla*. The Director should institute *inter partes* review of the ’985 Patent.

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., §V. 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

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*].

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, 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 (Ground 8) addressing Patent Owner’s constructions. *See* EX2110, 16–20. 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 DuroMax-Elsdon grounds are independently sufficient under either construction. The Board does not need to construe the disputed claim terms or analyze the invalidity grounds presented under the alternative construction. *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.’”). Petitioner’s discussion of claim constructions in the alternative is not fatal to the Petition.

II. HARBOR FREIGHT’S CLAIM CONSTRUCTION POSITIONS SHOULD NOT BE HELD AGAINST THE REMAINING PETITIONER

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., §V. Harbor Freight proposed constructions of “a mechanical fuel valve” and “communicate” in its litigation. EX2110, 15, 20. However, Harbor Freight’s litigation positions are no longer relevant, as that litigation has settled, and Harbor Freight filed its motion to withdraw from the IPRs. *See* Paper 15. The Harbor Freight court will not issue a final claim construction order, foreclosing any potential “inconsistency in claim construction between [the Central District of California and PTAB] forums.” *Revvo* at 4.

Champion misquotes Generac, accusing it of wholesale adopting Harbor Freight’s claim constructions (IPR2025-01384, Paper 16 at 1-2), but this is wrong. Generac always represented that it intends to argue consistent constructions *with its IPR positions* in litigation. Thus, any claim construction positions taken by Harbor Freight should not be held against Generac in this proceeding.

III. 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 ’985 Patent. Both positions fit squarely within the *Tesla* exception.

“A Mechanical Fuel Valve Actuable ... to Selectively Control Fuel Flow:” Generac contends that this claim term in dependent claims 5 and 15 is indefinite, because in many circumstances a POSA would not be able to ascertain ***for purposes of infringement*** whether a particular type of effect on a fuel line constitutes “control [of] fuel flow” via actuation of a mechanical fuel valve.

The *Tesla* exception applies. The DuroMax-Elsdon combination is structurally identical to the only disclosed embodiment in the ’985 Patent, such that any construction that is supported by the specification should encompass the DuroMax-Elsdon combination. See *Johns Hopkins Univ. v. CellPro, Inc.*, 152 F.3d 1342, 1355 (Fed. Cir. 1998). Therefore, the ambiguity in the scope of the outer bounds of the claim language is irrelevant to assessing validity over the structurally

“Desired Pressure:” Petitioner contends that “desired pressure” is indefinite, because in many circumstances a POSA would not be able to ascertain *for purposes of infringement* whether the gaseous fuel is regulated to a “desired pressure” by the secondary pressure regulator. The *Tesla* exception applies. While a “desired pressure” includes the pressure used to operate the engine of the dual fuel generator, it is not clear whether the term “desired pressure” covers pressures other than the pressure used to operate the engine.

The difference here matters because all the asserted prior art combinations include a secondary pressure regulator that regulates the pressure of the gaseous fuel down to a pressure that is used to operate the engine. In contrast, Generac’s accused products are provided with an LPG hose having a dual-stage off-board pressure regulator (including first and second pressure regulators); and another pressure regulator (a tertiary pressure regulator). The second stage of Generac’s off-board pressure regulator—i.e., the off board secondary pressure regulator—regulates the gaseous fuel to an intermediate pressure. The tertiary regulator further reduces the LPG fuel pressure to a pressure level that is used to operate the engine. Accordingly, for the purposes of infringement, it is unclear whether the secondary pressure regulator is configured to regulate the gaseous fuel supplied from the primary pressure regulator to a desired pressure.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 5, 2026, a true and correct copy of the foregoing **PETITIONERS' BRIEF REGARDING *REVVO* AND *TESLA* IN VIEW OF PETITIONER'S CLAIM CONSTRUCTION POSITIONS** was filed through the P-TACTS system along with service to the email addresses listed below:

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