

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
Petitioner,

v.

CHAMPION POWER EQUIPMENT, INC.,
Patent Owner.

IPR2025-01272
Patent 11,492,985

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

A document filing notice for Petitioner’s “Brief Regarding *Revvo* and *Tesla*” was issued at 5:46 PM (eastern) on January 14, 2026, after the “close of business” as required by the Board. Paper 19 (“Br.”); EX3002. Petitioner’s Brief should be disregarded as untimely. MPEP § 510.

Moreover, Petitioner accuses Patent Owner of “misquote[ing] Generac” and now argues that Generac does not intend to “wholesale adopt[] Harbor Freight’s claim constructions” but rather “intends to argue consistent constructions with its IPR positions in litigation.” Br., 3. But, Patent Owner did not misquote anything, and Petitioner’s argument leads to one of two possible outcomes. Either Generac does intend to adopt Harbor Freight’s proposed constructions (as previously represented), which supports denial for the reasons set forth in Patent Owner’s Preliminary Response, or Petitioner concedes that Harbor Freight’s proposed constructions are not consistent with the IPR Petition. Either outcome speaks to rampant and continuing gamesmanship. Notably, Petitioner could have cleared up this confusion at any point, by committing to only presenting its IPR positions (plain and ordinary meaning, except for “fuel lockout apparatus,” “prevent ... coupling,” and “permit ... to couple”) in the Generac proceeding, rather than making vague statements that Generac’s constructions will be “consistent ... with its IPR positions.” That it has not done so is telling.

Patent Owner’s Preliminary Response set forth two distinct arguments that

denial is proper in light of *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20 (P.T.A.B. Nov. 3, 2025), and *Tesla, Inc. v. Intell. Ventures II LLC*, IPR2025-00340, Paper 18 (P.T.A.B. Nov. 5, 2025). First, despite construing “a mechanical fuel valve” and “communicate” / “communication” in the Harbor Freight proceeding, Petitioner applies the plain and ordinary meaning of each term here. Paper 12 (“POPR”), 10-14. Second, Petitioner improperly relies on unsupported and contradictory “apparent” constructions for Ground 8 that are allegedly based on Patent Owner’s litigation positions. *Id.*, 14-20. In each instance, Petitioner’s failure to justify its contradictory positions merits denial.

I. HARBOR FREIGHT’S INCONSISTENT CONSTRUCTIONS

Harbor Freight proposed narrow constructions of the terms “a mechanical fuel valve” and “communicate” / “communication” in co-pending district court litigation. POPR, 10 (citing EX2095, 36-37; EX2110, 15-16, 20-21). However, Petitioner argued the ordinary and customary meaning applies here. *Id.* In prior attempts to avoid discretionary denial, Petitioner repeatedly argued that “Generac ... expect[s] to take the same claim construction positions [as Harbor Freight] at the time such disclosures are due.” IPR2025-01185, Paper 20 at 1; *see also* IPR2025-01099, Paper 20 at 1; IPR2025-01228, Paper 23 at 1. As such, for purposes of determining institution, Harbor Freight’s claim construction positions in parallel litigation should be held to apply to Petitioner regardless of Harbor Freight’s requested withdrawal.

Moreover, Petitioner's new position (disclaiming Harbor Freight's contradictory constructions) is directly counter to the policy espoused by *Revvo Techs.* and *Tesla*. According to Petitioner, inconsistent positions should be allowed so long as the entity taking those positions is able to successfully leverage a settlement prior to institution. Petitioner's argument exhibits the very gamesmanship *Revvo Techs.* and *Tesla* were designed to combat. Institution is properly determined based on the positions taken by Petitioner in co-pending litigation, not on the outcome of said litigation. In this case, institution is properly denied.

II. PETITIONER'S IMPROPER "APPARENT" CONSTRUCTIONS

In attempting to rationalize its reliance on "apparent" constructions, Petitioner now states that "Generac ... expects to take positions consistent with the Petition when such disclosures are due." Br., 1. But, Petitioner does not (and cannot) explain how Generac intends to take positions that are consistent with the Petition, when the Petition itself relies on two different constructions of "fuel lockout apparatus," "prevent ... coupling" and "permit ... to couple." Pet., 10-18; POPR, 7-9.

Petitioner's gamesmanship is clear. Petitioner advanced narrow constructions in parallel litigation to manufacture non-infringement positions. POPR, 14-20. In stark contrast, Petitioner now attempts to rely on broad and amorphous "apparent" constructions of those same terms in Ground 8—without actually defining or supporting the constructions—in the hopes of convincing the Board to institute.

Petitioner put forth two competing theories and suggested the Board choose which was more persuasive—the very strategy *Revvo* and *Tesla* were designed to prevent.

Now, Petitioner attempts to salvage its deficient Petition by arguing that “The Board does not need to ... analyze the invalidity grounds presented under the alternative construction.” Br., 2. But, a petition cannot be instituted on fewer than all grounds. If instituted, Patent Owner will be forced to defend against invalidity challenges that (1) were not clearly articulated in the Petition, (2) Petitioner explicitly asserts are “wrong,” and (3) Petitioner now suggests should be disregarded entirely. Pet., 18; Br., 2. There can be no reasonable explanation (other than rampant gamesmanship) for Petitioner’s reliance on alternative “apparent” constructions. Thus, like in *Revvo*, Petitioner’s reliance on inconsistent claim constructions “[sh]ould mean a denial of institution.” *Revvo*, Paper 20 at 5.¹

III. GENERAC’S INCONSISTENT INDEFINITENESS ARGUMENTS

Petitioner’s Brief also addresses the alleged indefiniteness of the terms “A mechanical fuel valve actuatable ... to selectively control fuel flow,” and “desired pressure.” Petitioner’s arguments regarding indefiniteness are unexpected, given that this issue was not raised in Patent Owner’s Preliminary Response, and neither

¹ Institution was previously denied in related IPR2025-01099 and -01228 due to Petitioner’s reliance on “apparent” constructions. The same outcome applies here.

term was cited in Generac's invalidity contentions (with respect to the '985 Patent).

Petitioner argues that no inconsistency exists because the disputed terms are only indefinite for purposes of an infringement analysis, *not* an invalidity analysis. Br., 3-4. But, in each instance Petitioner's argument depends on construction of the disputed terms, and no construction was proffered in the Petition. *See e.g.*, Br., 4 (arguing that "any construction" of the term "a mechanical fuel valve actuatable ... to selectively control fuel flow" should encompass the alleged prior art); *id.*, 5 (implicitly construing the term "desired pressure" to "include[] the pressure used to operate the engine of the dual fuel generator.").

Petitioner's late-stage implicit constructions were absent from the Petition, and therefore cannot justify Petitioner's contradictory indefiniteness positions, particularly where Petitioner's Brief lacks any evidentiary support for the conclusory attorney argument therein. *Tesla* is clear: "Allowing 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*, Paper 18 at 4 (citing *Revvo*, IPR2025-00632, Paper 20 at 4-5). Here, Petitioner attempts to justify its inconsistent indefiniteness positions by improperly offering constructions of the disputed terms for the first time on the eve of institution. Institution should be denied.

Dated: January 20, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This paper complies with the page limits set forth in the Board's January 9, 2026 email authorization for this brief.

Dated: January 20, 2026

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CERTIFICATE OF SERVICE

In accordance with 37 C.F.R. § 42.6(e), the undersigned certifies that on January 20, 2026, a complete and entire copy of the foregoing document was served on counsel of record for Petitioner, as follows:

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