

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.

IPR2025-01463
Patent 11,840,970

**PATENT OWNER CHAMPION POWER EQUIPMENT, INC.'S
PRELIMINARY RESPONSE**

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GLOSSARY

Abbreviation	Term
2015 Family	U.S. Patent Nos.: 10,393,034; 11,143,120; 10,221,780; 11,492,985; 10,697,398; 11,530,654; 11,840,970; 11,905,895; and 11,143,145 (collectively)
'970 Patent	U.S. Patent No. 11,840,970
Board	Patent Trial and Appeal Board
Challenged Claims	Claims 1-52 of the '970 Patent
Firman	Firman Power Equipment, Inc.
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. 11,840,970 (Paper 4)
Petitioner	HFT, Generac, and MWE, collectively
POSITA	Person of Ordinary Skill in the Art
USPTO	United States Patent & Trademark Office

Pursuant to 37 C.F.R. § 42.107, Patent Owner Champion Power Equipment, Inc. hereby submits its Preliminary Response to the Petition filed by Harbor Freight Tools USA, Inc., and Generac Power Systems, Inc., and MWE Investments, LLC (collectively, “Petitioner”), challenging Claims 1-52 of U.S. Patent No. 11,840,970.

I. INTRODUCTION

Petitioner’s proposed grounds are identified below:

Ground	Claims	Basis	Primary Reference	Secondary Reference(s)
1	1-5, 34-37	103	Chaudhari	Hallberg
2	12-14, 44, 48, 50-51	103	Chaudhari	Hallberg, Jungmann
3	8-11, 16-19, 40-43	103	Chaudhari	Hallberg, Jungmann, Parlato
4	7, 15, 20-27, 29-33, 39, 45-46, 49	103	Chaudhari	Hallberg, Jungmann, Parlato, LP-Gas Handbook, Sturgis, Tri-Fuel Video
5	1-6, 8-14, 16-19, 34-38, 40-44, 47-48, 50-52	103	DuroMax	Parlato, Elsdon
6	7, 15, 20-33, 39, 45-46, 49	103	DuroMax	Parlato, LP-Gas Handbook, Sturgis, Elsdon, Tri-Fuel Video
7	1-2, 12-14, 20-21, 34, 44-45, 48	103	Chaudhari	Monros, Jungmann

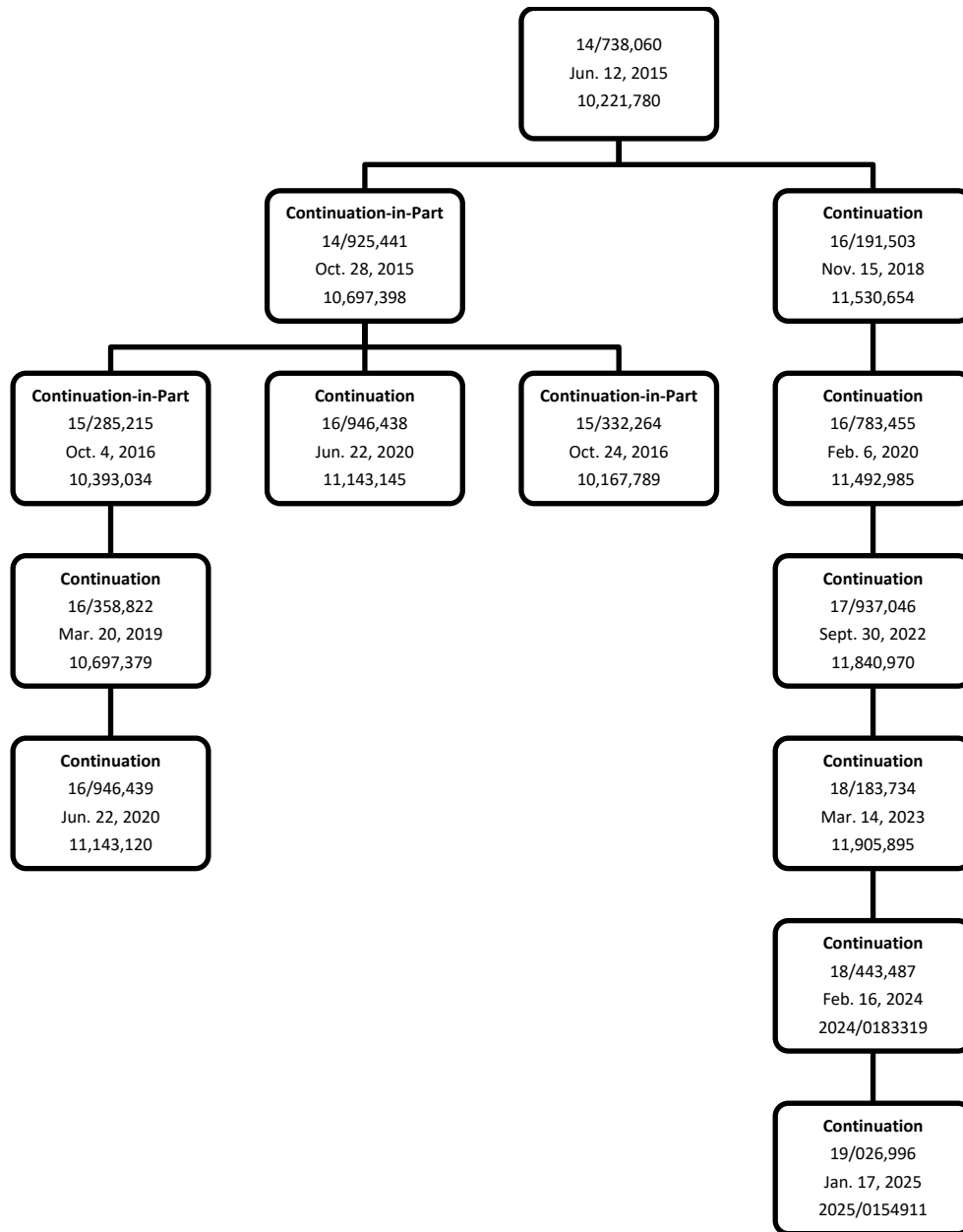
Discretionary denial pursuant to 35 U.S.C. § 314(a), 35 U.S.C. § 325(d), and the *Fintiv* and *Advanced Bionics* factors¹ is warranted for the reasons set forth in Patent Owner’s Brief in Support of its Request for Discretionary Denial of Institution (Paper 9).

Moreover, denial is appropriate because of inconsistencies between Petitioner’s claim construction positions before the Board and in multiple district court proceedings. For example, the Petition improperly relies on the plain and ordinary meaning of terms which Petitioner construed in parallel district court litigation, Petitioner’s district court indefiniteness arguments inherently contradict the Petition, and the Petition improperly relies on unsupported “apparent” constructions allegedly (and incorrectly) grounded in Patent Owner’s litigation positions. Moreover, the Petition is deficient on the merits, at least because the Petition does not establish that either Chaudhari or Parlatore disclose (1) the claimed secondary pressure regulator, or (2) “wherein the dual fuel generator is free from any gaseous fuel pressure regulator.” Each argument is discussed in turn, below, and presents an independent basis for denial.

¹ *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (P.T.A.B. Mar. 20, 2020) (precedential); *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 (P.T.A.B. Feb. 13, 2020) (precedential).

II. OVERVIEW OF THE '970 PATENT

The '970 Patent was filed as U.S. Patent Application No. 17/937,046 on September 30, 2022. EX1001, (21), (22). The '970 Patent is one of thirteen members of a patent family directed to multi-fuel engine technology, which are collectively referred to as the “2015 Family.” The 2015 Family is depicted below:



A. The Specification of the '970 Patent

The '970 Patent, titled Dual Fuel Generator with Remote Engine,” is directed to a generator and off-board fuel delivery system. *Id.*, Abstract. The '970 Patent explains that:

A fuel regulator system may be located off board the dual fuel generator that is configured to regulate the gaseous fuel supplied from the pressurized fuel source in a first stage, the gaseous fuel regulated down to a reduced pressure in the first stage; and regulate the reduced pressure gaseous fuel in a second stage, the reduced pressure gaseous fuel from the first stage regulated down to a desired pressure in the second stage for delivery through the gaseous fuel line to operate the dual fuel generator. A mechanical fuel valve may be actuatable between a first position and a second position to selectively control fuel flow to the dual fuel generator from the liquid fuel source through the liquid fuel line and the pressurized fuel source through the gaseous fuel line.

Id., 2:42-55.

B. The Independent Claims of the '970 Patent

Claims 1, 12, 20, 34, and 44 are reproduced below:

1. Claim 1.

1. A dual fuel generator and fuel delivery system comprising:

a dual fuel generator comprising:

an engine configured to operate on a liquid fuel supplied from a liquid fuel source through a liquid fuel line and a gaseous fuel

supplied from a pressurized fuel source through a gaseous fuel line, and

a carburetor attached to an intake of the engine to mix air and fuel and connect the liquid fuel line to the intake;

a fuel regulator system located off board the dual fuel generator, the fuel regulator system comprising:

a primary pressure regulator coupled to a service valve of the pressurized fuel source and configured to regulate the fuel supplied from the pressurized fuel source to a reduced pressure, and

a secondary pressure regulator coupled to the primary pressure regulator and configured to regulate the gaseous fuel supplied from the primary pressure regulator to a desired pressure for delivery through the gaseous fuel line to operate the dual fuel generator; and

a mechanical fuel valve actuatable between a first position and a second position to selectively control fuel flow to the engine from the liquid fuel source through the liquid fuel line and the pressurized fuel source through the gaseous fuel line.

1. Claim 12.

12. A dual fuel generator and fuel delivery system comprising:

a dual fuel generator comprising:

a generator housing,

an alternator mounted within the generator housing, and

an engine driving the alternator and mounted within the generator housing, the engine configured to operate on a

liquid fuel supplied from a liquid fuel source through a liquid fuel line and a gaseous fuel supplied from a pressurized fuel source through a gaseous fuel line;

a fuel regulator system located off board the dual fuel generator, the fuel regulator system configured to:

regulate the gaseous fuel supplied from the pressurized fuel source in a first stage, the gaseous fuel regulated down to a reduced pressure in the first stage; and

regulate the reduced pressure gaseous fuel in a second stage, the reduced pressure gaseous fuel from the first stage regulated down to a desired pressure in the second stage for delivery through the gaseous fuel line to operate the dual fuel generator; and

a mechanical fuel valve actuatable between a first position and a second position to selectively control fuel flow to the dual fuel generator from the liquid fuel source through the liquid fuel line and the pressurized fuel source through the gaseous fuel line;

wherein the dual fuel generator is free of any pressure regulator mounted within the generator housing.

2. Claim 20.

20. A dual fuel generator and fuel delivery system comprising:

a dual fuel generator configured to operate on a liquid fuel supplied from a liquid fuel source through a liquid fuel line and a gaseous fuel supplied from a pressurized fuel source through a gaseous fuel line, the dual fuel generator comprising:

- a gaseous fuel valve coupled to an inlet of the gaseous fuel line and connectable to the pressurized fuel source, and
- a mechanical fuel valve actuatable between a first position and a second position to selectively control fuel flow to the dual fuel generator from the liquid fuel source through the liquid fuel line and the pressurized fuel source through the gaseous fuel line; and
- a fuel regulator system located off board the dual fuel generator, the fuel regulator system comprising:
 - a primary pressure regulator connectable to a service valve of the pressurized fuel source and configured to regulate the fuel supplied from the pressurized fuel source to a reduced pressure, and
 - a secondary pressure regulator coupled to the primary pressure regulator and connectable to the gaseous fuel valve, the secondary pressure regulator configured to regulate the gaseous fuel supplied from the primary pressure regulator to a desired pressure for delivery through the gaseous fuel line to operate the dual fuel generator.

3. Claim 34.

34. A dual fuel generator and fuel delivery system comprising:
- a dual fuel generator configured to operate on a liquid fuel supplied from a liquid fuel source through a liquid fuel line and a gaseous fuel supplied from a pressurized fuel source through a gaseous fuel line;

a fuel regulator system located off board the dual fuel generator, the fuel regulator system comprising:

- a primary pressure regulator coupled to a service valve of the pressurized fuel source and configured to regulate the fuel supplied from the pressurized fuel source to a reduced pressure, and
- a secondary pressure regulator coupled to the primary pressure regulator and configured to regulate the gaseous fuel supplied from the primary pressure regulator to a desired pressure for delivery through the gaseous fuel line to operate the dual fuel generator; and

a mechanical fuel valve actuatable between a first position and a second position to selectively control fuel flow to the dual fuel generator from the liquid fuel source through the liquid fuel line and the pressurized fuel source through the gaseous fuel line;

wherein the mechanical fuel valve outputs gaseous fuel to the dual fuel generator during operation thereof on gaseous fuel at the desired pressure from the secondary pressure regulator.

4. Claim 44.

44. A dual fuel generator comprising:

- an alternator;
- a dual fuel engine coupled to drive the alternator, the dual fuel engine configured to operate on a liquid fuel supplied from a liquid fuel source and a gaseous fuel supplied from a pressurized fuel source;

a liquid fuel line coupled to the dual fuel engine to provide the liquid fuel from the liquid fuel source;

a gaseous fuel line coupled to the dual fuel engine to provide the gaseous fuel from the pressurized fuel source; and

a mechanical fuel valve actuatable between a first position and a second position to selectively control fuel flow to the dual fuel engine from the liquid fuel source through the liquid fuel line and the pressurized fuel source through the gaseous fuel line;

wherein the dual fuel generator is free from any gaseous fuel pressure regulator.

III. LEVEL OF ORDINARY SKILL IN THE ART

A POSITA pertinent to the Challenged Claims would have a four-year degree in mechanical engineering or a closely related field and at least one year of experience designing, developing, servicing, or operating fuel-powered machinery. Additional education could substitute for professional experience and significant work experience—such as working with, servicing, or operating such machinery in the field—could substitute for formal education.

Petitioner alleged that a POSITA:

[W]ould have a degree in mechanical engineering, physics, materials science, or related fields, and three years of work experience in combustion engines. Additional higher graduate education could substitute for work experience, and additional work experience/training could substitute for formal education.

Pet., 10-11 (citing EX. 1003, ¶34). Petitioner’s proposed definition is deficient. Specifically, Petitioner has failed to support its contention that an undergraduate physics degree is pertinent to the Challenged Claims, or that three years of work experience in combustion engines is necessary. Regardless, the arguments advanced herein are not impacted based on which definition is applied.

IV. CLAIM CONSTRUCTION

Claim terms are to be construed in accordance with the standard set forth in *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (*en banc*). But “[o]nly terms which are in controversy need to be construed, and then only to the extent necessary to resolve the controversy and material to the decision.” *Facebook, Inc. v. Sound View Innovations, LLC*, IPR2017-01005, Paper 13 at 6 (P.T.A.B. Sept. 1, 2017) (citing *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)). Unless otherwise noted, for purposes of the arguments set forth in this Preliminary Response, Patent Owner applies the plain and ordinary meaning of each claim limitation which is addressed.

Petitioner, meanwhile, spends several pages arguing for specific constructions of the terms “fuel lockout apparatus,” “prevent ... coupling” and “permit ... to couple.” Pet., 11-17. Petitioner’s proposed constructions of these terms appear to be applied for Petitioner’s Grounds 3, 5-7, and portions of Grounds 1-2 and 4, although Petitioner does not explain precisely which portions with particularity. *Id.* Patent

Owner reserves the right to address the substance of Petitioner's arguments regarding claim construction if this Petition is instituted. After spending vast swathes of its Petition detailing what Petitioner deems the correct construction of "fuel lockout apparatus," "prevent ... coupling," and "permit ... to couple," Petitioner spends a single paragraph purportedly identifying alternative "apparent" constructions that allegedly control portions (but not all) of Grounds 1-2 and 4. *Id.*, 17-18.

With the exception of the terms, "fuel lockout apparatus," "prevent ... coupling" and "permit ... to couple," Petitioner states that it "has not identified any other claim terms that need construction." Pet., 11. As such, Petitioner alleges that it applies the "plain and ordinary meaning as understood by a person of ordinary skill in the art and the prosecution history." *Id.* However, despite asserting that the plain and ordinary meaning applies here, Harbor Freight proposed and argued for narrow constructions of two additional terms in co-pending district court litigation. Specifically, Harbor Freight argued that (1) the term "a mechanical fuel valve" should be construed as "a single mechanical fuel valve" (EX2110, 15-16), and (2) the term "pressure regulator" should be construed as "a device that reduces and controls the pressure of gaseous fuel." EX2110, 24-25.

Generac, meanwhile, argued that the terms (1) "A mechanical fuel valve actuatable between a first position and a second position to selectively control fuel

flow to the dual fuel engine from a first fuel source through a first fuel line and a second fuel source through a second fuel line,” (2) “A mechanical fuel valve actuatable between a first position and a second position to selectively control fuel flow to the dual fuel generator from the liquid fuel source through the liquid fuel line and the pressurized fuel source through the gaseous fuel line,” (3) “A gaseous fuel valve coupled to an inlet of the gaseous fuel line and connectable to the pressurized fuel source,” and (4) “Desired pressure,” were indefinite in co-pending district court litigation. EX2113, 52-54.

Although Harbor Freight and MWE have since requested permission to withdraw from the instant proceeding, Petitioner repeatedly stated 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.

In related proceedings, Petitioner argues that “Harbor Freight’s withdrawal from the IPRs and settlement of its litigation will obviate any alleged inconsistency identified by Patent Owner.” IPR2025-00805, Paper 33 at 2-3. But, Petitioner’s argument is directly counter to the policy espoused by *Revvo Techs.* and *Tesla*.

According to Petitioner, inconsistent positions are allowed so long as the entity taking those positions is able to successfully leverage a settlement prior to institution. Petitioner's argument is rife with the very gamesmanship *Revvo Techs.* and *Tesla* were designed to combat. As explained in additional detail, below, institution should be denied.

V. ARGUMENT

The USPTO's institution process considers both "the merits, [and] other non-discretionary considerations" and is designed "[t]o improve efficiency, consistency, and adherence to the statutory requirements for institution." *See, e.g.*, October 17, 2025 Memorandum from J. Squires at 1-2. Here, not only does the Petition engage in rampant gamesmanship, but it is also deficient on the merits.

First, the Petition improperly relies on the plain and ordinary meaning of terms which Petitioner construed in parallel district court litigation. Second, the Petition is inherently at odds with Petitioner's district court indefiniteness arguments. Third, the Petition improperly relies on unsupported "apparent" constructions allegedly (and incorrectly) grounded in Patent Owner's litigation positions. Fourth, the Petition is deficient on the merits, at least because the Petition does not establish that either Chaudhari (Grounds 1-4, 7) or Parlatore (Grounds 5-6) discloses (1) the claimed secondary pressure regulator (or second stage pressure regulatr) (Independent Claims 1, 12, 20, 34), or (2) "wherein the dual fuel generator is free

from any gaseous fuel pressure regulator” (Independent Claim 44). Each deficiency independently supports denial and is addressed below.²

A. Petitioner’s inconsistent claim constructions in co-pending parallel litigation support denial.

Despite arguing for constructions of “a mechanical fuel valve” and “pressure regulator” in the Harbor Freight district court proceeding, Petitioner applies the plain and ordinary meaning of each term here. Notably, Petitioner does not provide *any basis* for its inconsistent positions.

On November 3, 2025, the Director’s Order in *Revvo Techs., Inc., v. Cerebrum Sensor Techs., Inc.*, was designated precedential. IPR2025-00632, Paper 20 (P.T.A.B. November 3, 2025) (precedential). There, the Director explicitly stated that “[t]he Board’s claim construction rules are designed to ensure that the Board correctly construes claim terms and to minimize inconsistency in claim construction between forums. To that end, the rules *discourage petitioners from seeking broader constructions at the Board to support a patentability challenge while seeking*

² Notably, Patent Owner’s arguments regarding (1) Petitioner’s inconsistent indefiniteness positions, (2) Petitioner’s reliance on “apparent” constructions, and (3) the merits do not reference the Harbor Freight or MWE district court proceedings *at all*, and thus are not impacted by any developments in those proceedings.

narrower constructions in litigation to avoid infringement liability.” Id. at 4 (citing Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board, 83 Fed. Reg. 51,340 at 51,349-51,350 (Oct. 11, 2018)) (emphasis added). Nevertheless, that is precisely Petitioner’s approach here.

As explained in *Revvo Techs.*, “[a]llowing petitioners to continue this practice [i.e., proposing different claim constructions in the two forums] does not further the Office’s goal of ‘providing greater predictability and certainty in the patent system.” *Id.* at 4. Here, Petitioner provided no explanation whatsoever for its inconsistent positions, which alone merits denial. *Id.* at 5 (“Ordinarily, that would mean a denial of institution.”).

Moreover, Petitioner’s gamesmanship here is particularly egregious in light of the constructions in question. In related district court proceedings, Harbor Freight argued the term “pressure regulator” should be construed as “a device that reduces and controls the pressure of gaseous fuel.” EX2110, 24-25. Importantly, Champion’s proposed construction in district court was the plain and ordinary meaning, which it explained was “a device that controls pressure.” *Id.* Harbor Freight, however, repeatedly emphasized it believes *reducing* pressure is a key component of the claimed “pressure regulator.” *Id.*; *see also* EX2111, 23-24. According to Harbor Freight, the broader construction proposed by Champion—which did not contain the

requirement of “reducing” pressure—was nothing more than Patent Owner’s alleged attempt to “manufacture infringement by disregarding the specification’s plain teachings.” EX2111, 23-24.

Conversely, the Petition relies on alleged secondary regulators that *do not disclose* “reducing” pressure. For example, the Chaudhari reference’s *only disclosure* of its alleged secondary regulator is a single sentence: “The second stage regulator (5) meters exact quantity of gas as per engine load and speed.” EX1008, 7. Chaudhari’s claim 1 similarly calls for “a second stage metering regulator.” *Id.*, 11. However, neither Chaudhari itself—nor Petitioner’s discussion of Chaudhari—contain any evidentiary support that said regulator “reduces” pressure. Instead, both the Petition and corresponding expert declaration merely repeat the claim language in conclusory fashion without explanation. *See, e.g.,* Pet., 40 (“Chaudhari discloses second stage regulator 5 that regulates LPG from primary regulator 3 down to a desired pressure”); *see also Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 at 15 (P.T.A.B. August 24, 2022) (precedential) (expert testimony that “merely repeats, *verbatim*, the conclusory assertion for which it is offered to support ... is conclusory and unsupported, adds little to the conclusory assertion for which it is offered to support, and is entitled to little weight.”).

Similar issues impact Petitioner’s treatment of the Parlato reference. For example, while Parlato explicitly discloses that its “primary regulator 106 may be

such that it reduces pressure of the propane,” it merely states that “secondary regulator 110 can act as a vacuum-controlled flow rate regulator” without any disclosure of “reducing” pressure. EX1010, [0016]. Petitioner relies on the fact that Parlatores discloses that “the secondary regulator 110 can meter propane gas to an engine,” Pet., 90 (citing EX1010, [0005]-[0006], [0016]-[0021]). But, Petitioner has failed to show that the “metering” disclosed by Parlatores inherently reduces pressure, and the mere fact that the output of the alleged secondary regulator is “low pressure” does not mean that the regulator actually *reduces* pressure. Again, Petitioner’s corresponding expert declaration “merely repeats, *verbatim*, the conclusory assertion for which it is offered to support ... is conclusory and unsupported, adds little to the conclusory assertion for which it is offered to support, and is entitled to little weight.” *Xerox Corp.*, Paper 9 at 15. Simply put, the Petition ostensibly relies on the plain and ordinary meaning of the term “pressure regulator” to hand-wave over additional requirements it proposed in district court; namely, that the claimed regulator “reduces” and “controls” the pressure of gaseous fuel. Petitioner’s gamesmanship attempts to mask substantial deficiencies in the prior art.

Finally, Petitioner’s proposed district court construction is inherently contradictory with its position in related IPR proceedings. For example, in IPR2025-01121 (involving the related U.S. Patent No. 11,143,120), Petitioner argued that “[t]he art expressly recognizes that vaporizers can simultaneously function as

regulators.” IPR2025-01121, Paper 19 at 3. Petitioner’s district court construction, however, limited the term “regulator” to structures which “reduce[] and control[] the pressure of *gaseous* fuel.” EX2110, 24-25 (emphasis added); EX2111, 23-24. This necessarily *excludes* vaporizers, which transform liquid fuel to gaseous fuel. Not only does Petitioner rely on inconsistent constructions between the instant proceeding and co-pending district court litigation—it also makes inconsistent arguments based on the same construction(s) among and between the various IPRs. Petitioner’s gamesmanship is clear and warrants denial.

B. Petitioner’s inconsistent indefiniteness arguments in co-pending parallel litigation support denial.

Despite arguing that the terms (1) “A mechanical fuel valve actuatable between a first position and a second position to selectively control fuel flow to the dual fuel engine from a first fuel source through a first fuel line and a second fuel source through a second fuel line,” (2) “A mechanical fuel valve actuatable between a first position and a second position to selectively control fuel flow to the dual fuel generator from the liquid fuel source through the liquid fuel line and the pressurized fuel source through the gaseous fuel line,” (3) “A gaseous fuel valve coupled to an inlet of the gaseous fuel line and connectable to the pressurized fuel source,” and (4) “Desired pressure,” were indefinite in the Generac district court litigation, Petitioner

applies the plain and ordinary meaning of each term here. Notably, Petitioner does not provide *any basis* for its inconsistent positions.

The Director’s informative Order in *Tesla, Inc. v. Intellectual Ventures II LLC* held that “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.” IPR2025-00340, Paper 18 at 3 (P.T.A.B., November 5, 2025) (citing *Cambridge Mobile*, IPR2024-00942, Paper 12 at 8-9; *Revvo Techs.*, IPR2025-00632, Paper 20 at 3-5) (emphasis in original). In *Tesla*, the petitioner had “argued indefiniteness in the district court and then adopted Patent Owner’s plain and ordinary meaning construction from the district court litigation in its Petition.” *Id.* at 4. Specifically, the Director explained 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.’” *Id.* (citing *Revvo Techs.*, IPR2025-00632, Paper 20 at 3–5).

However, Petitioner did not address its inconsistent indefiniteness arguments in the Petition. Pet., 20-30. Specifically, Petitioner failed to explain how the disputed terms are both (1) sufficiently definite so as to inform Petitioner’s invalidity challenges raised in the Petition, and (2) “fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention.” *Nautilus, Inc. v. Biosig*

Instruments, Inc., 572 U.S. 898, 901 (2014). The Petition should be denied on this basis alone.

Petitioner’s failure to justify its inconsistent positions is particularly egregious here, where Petitioner repeatedly hand-waves over the “desired pressure” requirement of the Challenged Claims. For example, neither Parlatore nor Chaudhari disclose secondary pressure regulators (or second stage pressure regulators) that reduce pressure to a “desired pressure.” *See e.g.*, Pet., 40-41, 90; *see also* §§V.D.1.a, V.D.2.a, *infra*. In each instance, the *only* reference to a “desired pressure” consists of (1) a conclusory recitation of the claim language, coupled with (2) expert testimony which directly mirrors the conclusory statements in the Petition. *Id.*; *see also Xerox Corp.*, Paper 9 at 15. The Petition treats the “desired pressure” limitation as inherently present in the Parlatore and Chaudhari disclosures, or at least assumes it is so obviously apparent that it does not require discussion. This interpretation is necessarily at odds with Generac’s indefiniteness challenge, which states the same limitation “fails to inform a person of ordinary skill in the art of the scope of the invention with reasonable certainty.” EX2113, 54. Institution should be denied.

C. Petitioner’s reliance on “apparent” constructions that it contends are “wrong” supports denial.

The Director’s precedential order in *Revvo Technologies, Inc. v. Cerebrum Sensor Technologies, Inc.* held that “when a petitioner takes alternative positions

before the Board and a district court, that petitioner should, at a minimum, explain why alternative positions are warranted.” *Revvo Techs.*, IPR2025-00632, Paper 20 at 3-4 (citing *Cambridge Mobile Telematics, Inc. v. Sfara, Inc.*, IPR2024-00952, Paper 12 at 8-9 (P.T.A.B. Dec. 13, 2024)).

In *Revvo Techs.*, the petitioner did not propose “its own constructions for claim terms in the Petition, but instead” merely accepted the patent owner’s “proposed constructions from the parties’ district court litigation.” *Id.* 2. Importantly, the Director explained that while the petitioner “proposed different constructions for the claim terms in the district court litigation, [it] did not explain why it was taking a different position” before the Board. *Id.*

Here, Petitioner improperly relies on *Patent Owner’s* “apparent” constructions of “fuel lockout apparatus,” “prevent ... coupling” and “permit ... to couple.” Pet., 17-18. An IPR petition must “[p]rovide a statement of the precise relief requested for each claim challenged. The statement must identify the following:

- 1) The claim;
- 2) The specific statutory grounds under 35 U.S.C. 102 or 103 on which the challenge to the claim is based and the patents or printed publications relied upon for each ground; [and]
- 3) How the challenged claim is to be construed. . . .”

37 C.F.R. § 42.104(b). Importantly, the petition must identify “in writing and with particularity, each claim challenged, the grounds on which the challenge to each

claim is based, and the evidence that supports the grounds for the challenge to each claim.” 35 U.S.C. § 312(a)(3).

The Board’s Decision Denying Institution of *Inter Partes* Review in *Vicor Corp. v. Delta Elecs., Inc.* is instructive. IPR2024-00704, Paper 11 (P.T.A.B. October 2, 2024). There, the patent at issue “describe[d] a DC-DC conversion system that include[d] a buck converter and a resonant converter.” *Id.*, 3. Petitioner’s Ground 1 did “not purport to correctly construe the ‘over-current’ limitations” but rather applied what Petitioner deemed “Patent Owner’s Apparent Construction” or “Patent Owner’s Assumed Construction.” *Id.*, 7. The “apparent” constructions were purportedly based on the “specific arrangement” of certain accused products in parallel district court litigation. *Id.*, 7 n.6.

However, “Petitioner [did] not establish that such interpretations [were] appropriate,” which the Board found “[f]atal to Petitioner’s Ground 1.” *Id.*, 8. Fundamental to the Board’s finding was that “Petitioner acknowledges that its Ground 1 does not apply a ‘proper’ claim construction.” *Id.* The Board found “Petitioner has not supported the claim interpretations on which its Ground 1 relies, and Petitioner therefore has not shown a reasonable likelihood that it would prevail in its challenge asserted as Ground 1.” *Id.*, 9; *see also Microchip Tech. Inc. v. Aptive Technologies AG*, IPR2024-00494, Paper 12 at 10 (P.T.A.B. October 7, 2024) (denying institution where “the proposed construction on which the Petition is based

is contingent upon adopting a claim construction that Petitioner opposes in the district court litigation and that Petitioner believes is incorrect”); *Cambridge Mobile Telematics, Inc. v. Sfara, Inc.*, IPR2024-00952, Paper 12 (P.T.A.B. Dec. 13, 2024) (informative); *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20 at 3-5 (P.T.A.B. November 3, 2025) (“[W]hen a petitioner takes alternative positions before the Board and a district court, that petitioner should, at a minimum, explain why alternative positions are warranted... Simply noting that the petitioner is adopting a patent owner’s claim construction proposals from district court, however, is not a sufficient reason for advancing different positions in the two forums.”) (precedential).

1. The Petition does not support the Petitioner’s “apparent” constructions.

Petitioner’s “apparent” constructions of “fuel lockout apparatus,” “prevent ... coupling” and “permit ... to couple” are allegedly based on positions taken by Patent Owner in parallel litigation. Pet., 17-18. However, Petitioner does not identify—much less with particularity—the “apparent construction” of each term. Rather, Petitioner’s *entire analysis* consists of a single sentence:

Patent Owner appears to adopt a claim construction wherein (1) the “fuel lockout apparatus” can be any apparatus that prevents selection of more than one fuel source; (2) “prevent ... coupling” can be any means to prevent fuel flow without necessarily preventing physical attachment

of a fuel source to a fuel line; and (3) “permit ... to couple” can be any means to permit fuel flow without necessarily permitting physical attachment of a fuel source to a fuel line.”

Id. Notably, Petitioner does not include *any analysis* explaining how it arrived at its proposed “apparent constructions” or any evidence asserting that these constructions are in fact correct. Moreover, Petitioner does not provide any authority that (1) listing proposed “apparent constructions” and (2) citing Patent Owner’s district court claim construction brief (which merely advocated for the plain and ordinary meaning of each term), constitutes identifying “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).

Based on these disparate statements, Petitioner “include[s] an alternative position in Grounds 1-2 and 4” (but not all of Grounds 1-2 and 4) which allegedly shows invalidity under “Patent Owner’s apparent constructions.” Pet., 18. Petitioner emphatically concludes that it does “not admit or concede that Patent Owner’s apparent constructions are correct.” *Id.* In fact, Petitioner explicitly asserts that “Patent Owner’s proposed constructions are wrong.” *Id.* Yet, Petitioner expressly includes arguments based on claim construction positions it explicitly disputes as additional “alternative” invalidity challenges.

2. Petitioner’s allegation that the Challenged Claims are invalid based on Petitioner’s reliance on Patent Owner’s “apparent”

construction of “fuel lockout apparatus,” “prevent ... coupling” and “permit ... to couple” is improper.

Petitioner relies on Patent Owner’s “apparent” constructions in portions of Grounds 1-2 and 4. Pet., 34 (applying Patent Owner’s “apparent” constructions to Claims 3-5 and 35-37 of Ground 1); Pet., 57 (applying Patent Owner’s “apparent” constructions to Claims 50-51 of Ground 2); Pet., 71-72 (applying Patent Owner’s “apparent” constructions to Claims 25-27 of Ground 4). However, Petitioner explicitly acknowledges that (in its view) “Patent Owner’s apparent constructions are wrong.” *Id.*, 18. Moreover, Petitioner does not define or support the purported “apparent” constructions that it is relying on as the basis of its alternative challenges. §V.C.1, *supra*.

Like in *Vicor Corporation*, institution is improper because Petitioner “does not purport to correctly construe the [disputed] limitations” but rather applied what Petitioner deemed Patent Owner’s “apparent” construction. *Vicor Corp.*, Paper 11 at 7. And, like in *Vicor Corporation*, “Petitioner [did] not establish that such interpretations [were] appropriate,” which is “fatal.” *Id.* at 8; *see also* §V.C.1, *supra*. “Petitioner acknowledges that its [Grounds 1-2, 4] do[] not apply a ‘proper’ claim construction.” *Id.* at 8. As such, like the Board concluded in *Vicor Corporation*, “Petitioner has not supported the claim interpretations on which its [Ground 1-2, 4

rely], and Petitioner therefore has not shown a reasonable likelihood that it would prevail in its challenge.” *Id.* at 9.

Petitioner’s gamesmanship is clear. Petitioner advanced narrow constructions of “fuel lockout apparatus,” “prevent ... coupling” and “permit ... to couple” in parallel district court litigation to manufacture non-infringement positions. EX2110, 16-20. Further, in related proceedings, Petitioner has indicated its intent to move to stay the district court litigation if institution is granted. IPR2025-00805, Paper 14 at 7-10. In stark contrast, Petitioner now attempts to rely on broad and amorphous “apparent” constructions of those same terms—without actually defining or supporting the constructions—in the hopes of convincing the Board to institute. Petitioner has advanced broad constructions before the Board, while at the same time maintaining narrower district court constructions (and corresponding non-infringement positions) if its IPR challenge proves unsuccessful.

Allowing the instant Petition to proceed highlights the very policy issues *Revvo Techs.* and *Tesla* were designed to prevent. Petitioner put forth two competing theories and allowed the Board to choose which was more persuasive. If instituted, Patent Owner will be forced to defend against invalidity challenges (the portions of Petitioner’s Grounds 1-2 and 4 applying “apparent” constructions) that were not clearly articulated in the Petition, and which Petitioner explicitly asserts are “wrong.” Pet., 18. There can be no reasonable explanation (other than rampant

gamesmanship) for Petitioner’s reliance on alternative “apparent” constructions. 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.

D. The Petition does not establish that there is a reasonable likelihood that the Petitioner would prevail with respect to any Challenged Claims.

The Petition does not demonstrate a reasonable likelihood that at least one Challenged Claim is unpatentable.

Claims 1, 12, 20, 34, and 44 of the ’970 Patent are independent claims. If Petitioner is unable to show a reasonable likelihood that it will prevail with respect to any of the independent claims, institution should be denied. *See, e.g., Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1576 n. 36 (Fed. Cir. 1987) (“Because [independent] claim 1 is not invalid, the presence of all its limitations in [dependent] claim 6 preserves the latter’s validity.”). Of relevance to Patent Owner’s Preliminary Response, the Petition alleges the following grounds of invalidity:

- **Grounds 1-4** allege that each Independent Claim is obvious over combinations of prior art based on the Chaudhari reference. Pet., 1.
- **Ground 7** also alleges that each Independent Claim is obvious over combinations of prior art based on the Chaudhari reference. *Id.*, 2. For purposes of the arguments advanced herein, Petitioner’s Ground 7 merely incorporates arguments put forth in Grounds 1-4 by reference.

- **Grounds 5-6** allege that each Independent Claim 1 is obvious over combinations of prior art based on the DuroMax and Parlatore references. *Id.*

Patent Owner's Preliminary Response asserts that denial is proper because Petitioner does not demonstrate a reasonable likelihood that any claims are unpatentable. First, the Chaudhari-based Grounds are deficient at least because the Petition does not establish that Chaudhari discloses (1) the claimed secondary pressure regulator (Independent Claims 1, 12, 20, 34), or (2) "wherein the dual fuel generator is free from any gaseous fuel pressure regulator" (Independent Claim 44). Second, the DuroMax-based Grounds are deficient at least because the Petition does not establish that Parlatore discloses (1) the claimed secondary pressure regulator (Independent Claims 1, 12, 20, 34), or (2) "wherein the dual fuel generator is free from any gaseous fuel pressure regulator" (Independent Claim 44). Each argument is discussed in turn, below.

- 1. The Chaudhari-based Grounds (Grounds 1-4, 7) are deficient.**
 - a. The Petition does not establish that Chaudhari discloses the claimed secondary pressure regulator (Independent Claims 1, 12, 20, 34).**

Each of Independent Claims 1, 12, 20, and 34 recite "a secondary pressure regulator" or a "second stage" pressure regulator configured to regulate the gaseous fuel supplied from the primary pressure regulator "*to a desired pressure.*" EX1001,

Cls. 1, 12, 20, 34. The Petition's entire analysis of this element is found in Section VII.A.1.f, and consists of (1) two sentences, reproduced below in their entirety, and (2) an annotated copy of Chaudhari's Figure 1 depicting second stage regulator 5, the alleged gaseous fuel line, and primary regulator 3:

Chaudhari discloses second stage regulator 5 that regulates LPG from primary regulator 3 down to a desired pressure in a second stage for supply through the gaseous fuel line (the line connecting the second stage regulator to the engine) to operate the generator. Second stage regulator 5 is coupled to primary regulator 3 by way of the gaseous fuel line and LPG solenoid valve 4.

Pet., 40-41 (citing EX1008, 7, Fig. 1; EX1003, ¶113); *see also* Pet., 55, 59, 77-78, 116, 119, 120, 121 (incorporating §VII.A.1.f by reference).

Chaudhari, however, does not include any disclosure that second stage regulator 5 regulates gaseous fuel "to a desired pressure." Rather, Chaudhari actually states: "The second stage regulator (5) meters exact quantity of gas as per engine load and speed." EX1008, 7. Chaudhari does not disclose the output pressure of the alleged second stage regulator *at all*. More importantly, it does not include any disclosure directed to a second stage regulator that regulates gaseous fuel to a "desired pressure."

Petitioner's expert declaration, meanwhile, "merely repeats, *verbatim*, the conclusory assertion for which it is offered to support ... is conclusory and

unsupported, adds little to the conclusory assertion for which it is offered to support, and is entitled to little weight.”). *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 at 15 (P.T.A.B. August 24, 2022) (precedential). Institution should be denied.

b. The Petition does not establish that Chaudhari discloses “wherein the dual fuel generator is free from any gaseous fuel pressure regulator” (Independent Claim 44).

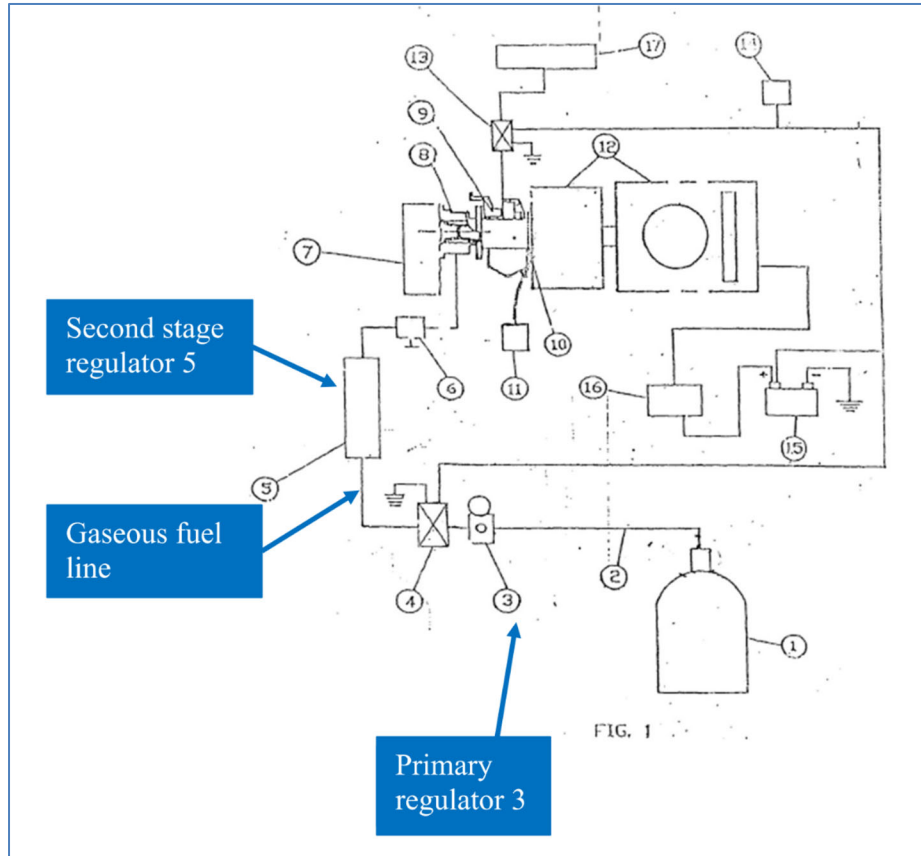
Independent Claim 44 recites: “wherein the dual fuel generator is free from any gaseous fuel pressure regulator.” EX1001, Cl. 1. Claim 44 (and the corresponding dependent claims) do not contain any limitations directed to pressure regulators. *Id.* Moreover, Claim 44 teaches that the “dual fuel generator” in question comprises:

- An alternator;
- A dual fuel engine;
- A liquid fuel line;
- A gaseous fuel line; and
- A mechanical fuel valve.

Id. Notably, the claimed “dual fuel generator” isn’t limited to *only* the dual fuel engine, but also includes additional components, including various fuel lines and valves.

Petitioner's analysis of Element 44.6 ("wherein the dual fuel generator is free from any gaseous fuel pressure regulator") incorporates by reference Petitioner's prior analysis of "§VII.A.1.d," which refers to Element 1.3. Pet., 62; *see also id.*, 39, 122. Element 1.3 recites "a fuel regulator system located off board the dual fuel generator." However, there is a fundamental distinction between (1) a dual fuel generator that is free from *any* gaseous fuel pressure regulator, and (2) a dual fuel generator where the fuel regulator system is merely located "off board" the generator. The Petition does not even attempt to establish that these elements are identical in scope.

Moreover, the evidence and argument cited throughout the Petition make clear that Chaudhari discloses a dual fuel generator that is not *free from* any gaseous fuel pressure regulator. For example, Petitioner alleges that (in Chaudhari) "LPG is supplied through a gaseous fuel line, including high pressure tube 2." Pet., 36. But, Chaudhari's first and second stage regulators are located on "high pressure tube 2." *See e.g.*, Pet., 40 ("Second stage regulator 5 is coupled to primary regulator 3 by way of the gaseous fuel line and LPG solenoid valve 4"). Petitioner's annotations depicting the same are reproduced below:



Id. Because Claim 44 establishes that the “gaseous fuel line” is part of the “dual fuel generator,” and Chaudhari’s alleged primary and secondary regulators are located *on the gaseous fuel line as identified by Petitioner*, Chaudhari’s dual fuel generator is not “free from *any gaseous fuel pressure regulator*.” Institution should be denied.

2. The DuroMax-based Grounds (Grounds 5-6) are deficient.

a. The Petition does not establish that Parlatore discloses the claimed secondary pressure regulator (Independent Claims 1, 12, 20, 34).

Each of Independent Claims 1, 12, 20, and 34 recite “a secondary pressure regulator” or a “second stage” pressure regulator configured to regulate the gaseous fuel supplied from the primary pressure regulator “*to a desired pressure.*” EX1001,

Cls. 1, 12, 20, 34. The Petition's entire analysis of this element is found in Section VII.E.1.f, and consists of two sentences, reproduced below in their entirety:

Parlatore discloses regulating the reduced pressure gaseous fuel that has exited the primary regulator) [sic] in the second stage down to a desired pressure in the second stage (i.e., through the secondary regulator) for delivery through the gaseous fuel line (e.g., hose 112) to operate the generator. Parlatore discloses the LPG regulated down to the second stage is used to operate the generator because it flows from the secondary regulator to the carburetor through a hose (such as hose 112).

Pet., 90 (citing EX1010, ¶¶[0005]-[0006], [0016]-[0021], Figs. 103); EX1003, ¶384); *see also* Pet., 101, 104, 111-112 (incorporating §VII.E.1.f by reference).

Parlatore, however, does not include any disclosure that the alleged secondary regulator regulates gaseous fuel “to a desired pressure.” Rather, despite explaining that the “primary regulator 106 may be such that it reduces the pressure of the propane from a high pressure state ... which may be approximately 180-250 psi, to a sub-atmospheric pressure, approximately 10 psi,” Parlatore merely states that “the secondary regulator 110 can act as a vacuum-controlled flow rate regulator.” EX1010, [0016]. Notably, Parlatore does not disclose the output pressure of the alleged secondary regulator *at all*. More importantly, it does not include any disclosure directed to a second stage regulator that regulates gaseous fuel to a “desired pressure.”

Parlatore's subsequent references to the alleged secondary regulator do not rectify this deficiency. For example, Parlatore discloses that "secondary regulator 110 can meter propane gas to an engine 116, for example, through a negative pressure signal." *Id.* But, Parlatore's disclosure of metering propane gas through a negative pressure signal does not disclose regulating gaseous fuel "to a desired pressure." *See also id.*, [0017]. Likewise, although Parlatore discloses that "a low pressure output of the secondary regulator 308 may be attached to a propane carburetor," it *does not* disclose that said output is at "a desired pressure." In fact, Parlatore contains no disclosure that the "low pressure" output of the secondary regulator is lower than its input pressure, calling into doubt whether the secondary regulator is even a "pressure regulator" at all under Petitioner's district court construction. *See §V.A, supra.*

Petitioner's expert declaration, meanwhile, "merely repeats, *verbatim*, the conclusory assertion for which it is offered to support ... is conclusory and unsupported, adds little to the conclusory assertion for which it is offered to support, and is entitled to little weight."). *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 at 15 (P.T.A.B. August 24, 2022) (precedential). Institution should be denied.

- b. The Petition does not establish that Parlatore discloses "wherein the dual fuel generator is free from any**

gaseous fuel pressure regulator” (Independent Claim 44).

Independent Claim 44 recites: “wherein the dual fuel generator is free from any gaseous fuel pressure regulator.” EX1001, Cl. 1. Claim 44 (and the corresponding dependent claims) do not contain any limitations directed to pressure regulators. *Id.* Moreover, Claim 44 teaches that the “dual fuel generator” in question comprises:

- An alternator;
- A dual fuel engine;
- A liquid fuel line;
- A gaseous fuel line; and
- A mechanical fuel valve.

Id. Notably, the claimed “dual fuel generator” isn’t limited to *only* the dual fuel engine, but also includes additional components, including various fuel lines and valves.

Petitioner’s analysis of Element 44.6 (“wherein the dual fuel generator is free from any gaseous fuel pressure regulator”) incorporates by reference Petitioner’s prior analysis of “§VII.E.1.d” which refers to Element 1.3. Pet., 107; *see also id.*, 85-88. Element 1.3 recites “a fuel regulator system located off board the dual fuel generator.” However, there is a fundamental distinction between (1) a dual fuel

generator that is free from *any* gaseous fuel pressure regulator, and (2) a dual fuel generator where the fuel regulator system is merely located “off board” the generator. The Petition does not even attempt to establish that these elements are identical in scope.

Moreover, the evidence and argument cited throughout the Petition make clear that Petitioner’s proposed DuroMax/Parlatore combination discloses a dual fuel generator that is not *free from* any gaseous fuel pressure regulator. For example, Petitioner alleges that the service valve on the LPG tank (located upstream of the alleged secondary pressure regulator) is “coupled to an inlet of the gaseous fuel line.” Pet., 110. Because Claim 44 establishes that the “gaseous fuel line” is part of the “dual fuel generator,” and Parlatore’s alleged secondary regulator is located *on the gaseous fuel line as identified by Petitioner*, DuroMax’s dual fuel generator is not “free from *any gaseous fuel pressure regulator*.” Institution should be denied.

VI. CONCLUSION

For at least the reasons discussed above, the Petition fails to establish that the Challenged Claims are invalid.

Dated: January 2, 2026

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 SERVICE

In accordance with 37 C.F.R. § 42.6(e), the undersigned certifies that on January 2, 2025, a complete and entire copy of the foregoing Patent Owner's Preliminary Response, including the exhibits relied upon, was served on counsel of record for Petitioner, as follows:

Kimberly K. Dodd, Reg. No. 54,646
Jeffrey S. Gundersen, Reg. No. 47,619
FOLEY & LARDNER LLP
777 E Wisconsin Ave
Milwaukee, WI 53202-5306
Tel: 414-271-2400
kdodd@foley.com
jgundersen@foley.com
HarborFreight-Champion-
IPRs@foley.com

Michael Houston, Reg. No. 58,486
FOLEY & LARDNER LLP
321 N. Clark St., Suite 3000
Chicago, Illinois 60654
Tel: 312-832-4500
mhouston@foley.com

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
TLeach@merchantgould.com
TStemler@MerchantGould.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

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Dated: January 2, 2026

Respectfully submitted,

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

CERTIFICATE OF WORD COUNT

Pursuant to 37 C.F.R. § 42.24(d), the undersigned certifies that the foregoing Patent Owner's Preliminary Response, excluding the portions exempted under 37 C.F.R. § 42.24(b), contains 7,423 words according to Microsoft Word's word count feature.

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