

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

GENERAC POWER SYSTEMS, INC.,
Petitioner,

v.

CHAMPION POWER EQUIPMENT, INC.,
Patent Owner.

IPR2025-00805 (Patent 10,393,034 B2)
IPR2025-00951 (Patent 10,598,101 B2)¹

Before JOHN A. SQUIRES, *Under Secretary of Commerce for Intellectual
Property and Director of the United States Patent and Trademark Office.*

ORDER

Vacating the Decisions Granting Institution
and Denying Institution of *Inter Partes* Review

¹ This order applies to each of the above-listed proceedings. Unless otherwise noted, all citations are to IPR2025-00805. The parties filed similar papers in IPR2025-00951. Harbor Freight Tools USA Inc. (“Harbor Freight”) and MWE Investments, LLC (“MWE”) were also named petitioners in these proceedings but have since settled their dispute with Champion Power Equipment, Inc. (“Patent Owner”) and the proceedings have been terminated as to Harbor Freight and MWE. *See, e.g.*, IPR2025-00805, Paper 38. Generac Power Systems, Inc. (“Generac” or “Petitioner”) remains as a petitioner.

IPR2025-00805 (Patent 10,393,034 B2)

IPR2025-00951 (Patent 10,598,101 B2)

I initiated *sua sponte* Director Review (Paper 30) of the Board’s Decisions granting institution (Paper 24; IPR2025-00951, Paper 22, “Decisions”) of *inter partes* review (“IPR”) in the above-captioned cases to address the claim construction issues raised in view of the precedential decision in *Revvo Technologies, Inc. v. Cerebrum Sensor Technologies, Inc.*, IPR2025-00632, Paper 20 (Director Nov. 3, 2025) (“*Revvo*”), and the informative decision in *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00340, Paper 18 (Director Nov. 5, 2025) (“*Tesla*”). Paper 30. I also authorized additional briefing on the impact of *Revvo* and *Tesla* to these proceedings. Paper 31, 1; Paper 32 (“PO Brief”); Paper 33 (“Pet. Brief”). For the reasons given below, the Decisions are vacated and the Petitions are denied.²

The Decisions did not address whether denial of institution was warranted under *Revvo* and *Tesla* based on the alleged different claim construction positions Petitioner advanced before the Board and in district court. Instead, the Board discussed *Cambridge Mobile Telematics, Inc. v. Sfara, Inc.*, IPR2024-00952, Paper 12 (PTAB Dec. 13, 2024) (informative) (“*Cambridge*”), which the Board found was limited in its holding to alleged inconsistencies in the construction of means-plus-function terms and inapplicable to these proceedings where means-plus-function terms are not at issue. *See* Paper 24, 13–15. The Board erred in limiting its discussion to

² The Board also denied Patent Owner’s Request for Rehearing of the institution decision in IPR2025-00805. That rehearing denial is part of this Director Review and is vacated for the same reasons explained herein. Patent Owner’s Request for Rehearing (Paper 24) of the institution decision in IPR2025-00951 is moot in view of this Order.

Cambridge and not further considering whether *Revvo* and *Tesla* support denial.

As set forth in *Revvo*, the “Board’s claim construction rules are designed to ensure that the Board correctly construes claim terms to minimize inconsistency in claim construction between forums.” *Revvo*, Paper 20 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, 51,349–50 (Oct. 11, 2018) (“Claim Construction Standard”)). Accordingly, as I explained in *Revvo*, the rules encourage petitioners to “choose a single claim construction that best captures the true meaning of the patent claim.” *Id.* at 4. I further clarified that the constraints on presenting different constructions are not limited to means-plus-function claim language and, even if petitioners are “not necessarily precluded from arguing different claim construction positions,” petitioners “should explain sufficiently why the different positions are warranted.” *Id.* at 4–5.

Tesla extends *Revvo*’s reasoning to situations where a petitioner argues in a parallel litigation that a claim term is indefinite but argues before the Board that the claim term is clear and amenable to construction. *Tesla*, Paper 18, at 3–4. As I explained in *Tesla*, “[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.* at 4 (citing *Revvo*, Paper 20, at 4–5 (quoting Claim Construction Standard at 51,342–43)).

Patent Owner argues the Petitions should be denied under *Revvo* and *Tesla* because Petitioner asserted in district court that certain claim terms are indefinite but asserted before the Board that the same terms have a plain and ordinary meaning. PO Brief 4.

Petitioner argues that the different claim construction positions Patent Owner raises are litigation positions Harbor Freight had taken, which “are no longer relevant” because Harbor Freight has settled, ending its litigation and role as a petitioner in these proceedings. Pet. Brief 2. Moreover, Petitioner argues that one of the challenged patents—the ’034 patent—is not asserted against it in litigation and, therefore, it has not taken inconsistent claim construction positions as to the claims of that patent. *Id.* at 2–3.

I conclude that the Decisions should be vacated and institution denied under *Revvo* and *Tesla* based on Generac’s own inconsistent claim construction positions. For example, Generac argues in its related litigation that the term “desired pressure” is indefinite. Pet. Brief 4–5; Ex. 2113, 54. That term appears not only in claims of the ’034 patent but also in claims of several related patents that *are* asserted against Generac in its related litigation and that Generac has challenged in related IPR proceedings. Pet. Brief 4 (citing, for example, claim 12 of the ’120 patent, which is challenged in IPR2025-01121); Paper 24, 3–4 (table of related litigations). Generac also argues in district court that claim terms of the other challenged patent—the ’101 patent—are indefinite. *See* IPR2025-00951, Paper 28, 1–2 (citing Ex. 2113, 51–52 (arguing the term “selector switch” is indefinite)). Yet Generac argues to the Board that they are defined and amenable to construction. IPR2025-00951, Paper 4, 22–25 (arguing the specification reveals a “special definition” for the “selector switch”). And the ’101 patent

IPR2025-00805 (Patent 10,393,034 B2)

IPR2025-00951 (Patent 10,598,101 B2)

is asserted against Generac in related litigation. The settlement and termination of the proceedings as to some petitioners here, therefore, does not negate the different claim construction positions Generac has taken or eliminate the potential that the Board and the district court arrive at inconsistent claim constructions.

Nor do I find persuasive Petitioner's attempt to explain why the alleged indefiniteness of the claim terms fit within any exception under *Tesla*. Pet. Brief 3–4. Petitioner argues that a person of ordinary skill in the art would understand the term “desired pressure” with adequate precision to map the prior art to the claims. *Id.* But, in its related litigation, Petitioner argues that “[t]he claims, specification, and prosecution histories of the patents fail to inform a [person of ordinary skill in the art] with reasonable certainty about the scope of the subjective term ‘desired pressure.’”

Ex. 2113, 54. Petitioner's explanation for the term “selector switch” fares no better. Petitioner alternatively and inconsistently argues lexicography, non-enablement, and indefiniteness of that term depending on various hypothetical claim constructions between the two forums. IPR2025-00951, Paper 29, 4–5; Ex. 2113, 51–52.

Based on the record before me, I conclude that Petitioner is seeking, without adequate explanation, different claim constructions in related litigation and before the Board. The Office will not institute trial under these circumstances.

Accordingly, based on the foregoing, it is

ORDERED that the Decisions granting institution of *inter partes* review (IPR2025-00805, Paper 24; IPR2025-00951, Paper 22) are vacated; and

IPR2025-00805 (Patent 10,393,034 B2)

IPR2025-00951 (Patent 10,598,101 B2)

FURTHER ORDERED that the Petitions (IPR2025-00805, Paper 4; IPR2025-00951, Paper 4) are denied, and no trials are instituted.

IPR2025-00805 (Patent 10,393,034 B2)

IPR2025-00951 (Patent 10,598,101 B2)

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