

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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SALVACION USA, INC.,  
Petitioner,

v.

TRUTEK CORP.,  
Patent Owner

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U.S. Patent No. 8,163,802  
Issued: April 24, 2012

Title: ELECTROSTATICALLY CHARGED MULTI-ACTING NASAL  
APPLICATION, PRODUCT, AND METHOD

*Inter Partes* Review No. IPR2024-00711

**REPLY IN SUPPORT OF  
PETITIONERS' MOTION TO EXCLUDE  
EVIDENCE SUBMITTED WITH  
PATENT OWNER'S SUR-REPLY**

Pursuant to 37 C.F.R. § 42.64(c) and the Federal Rules of Evidence, Petitioner, Salvacion USA, Inc., hereby provides the following reply in support of its Motion to Exclude Exhibits 2003-2007 filed by Patent Owner, Trutek Corp., accompanying Patent Owner's Sur-Reply to Petitioner's Reply.

First, Patent Owner's response demonstrates a misunderstanding of the Federal Rules of Evidence regarding hearsay testimony. In several instances (*see* Patent Owner's Opposition (Paper 23) at 4, 10, 12) Patent Owner cites Rule 801(d)(2) for the proposition that the Declaration of Mr. Wahi (Ex. 2003), the use instructions (Ex. 2005) and the safety and efficacy report (Ex. 2006) are not hearsay because they are offered by the "adversary party." The rule, however, provides that a statement is not hearsay if it is offered against an opposing party and was made by that party. Here, Patent Owner seeks to use its own statements on its own behalf. The exclusion of Rule 801(d)(2) simply does not apply.

Further regarding the hearsay argument, Patent Owner also states that it offered Mr. Wahi for deposition, though this offer was not made until it filed its response to Petitioner's Objections on July 21, 2025 (Paper 17 at 2-3.) But this argument is a red herring. Because Mr. Wahi's declaration was filed out of time (for the reasons set forth in Petitioner's Motion to Strike (Paper 15)) and after Petitioner's briefing schedule was over, there was no open period for cross-examination to take place under the terms of the Scheduling Order in this matter (*see* Paper 8 at 4).

Had Patent Owner filed the Wahi declaration with its Response (Paper 9), or pursuant to a successful motion for late submission of supplemental information under 37 C.F.R. § 42.123(b)<sup>1</sup>, Petitioner would have sought to take Mr. Wahi's deposition. However, Patent Owner did not follow either procedure here, and it is not incumbent on Petitioner to devise a solution to a problem that is entirely of Patent Owner's making. Because Mr. Wahi's declaration was produced at a stage of the proceeding when routine discovery was not open, and Patent Owner did not take steps to account for its failure to file the declaration earlier, Petitioner was effectively denied the opportunity to depose Mr. Wahi despite Patent Owner's "offer," and Exhibit 2003 constitutes hearsay.

Patent Owner's response regarding Exhibit 2004 misapprehends Petitioner's arguments. The issue is not that Mr. Wahi's declaration did not refer to that exhibit by its number. Rather, Mr. Wahi never directly refers to the product pictures as those products that he claims are covered by the '802 Patent. Although the packaging of several of these products is marked with the '802 Patent, not all are, and Mr. Wahi's equivocal statements do not establish that all products sold under the NasalGuard label are necessarily covered by the patent.

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<sup>1</sup> Such a motion could not have succeeded in view of Patent Owner's admission that the information could have been presented earlier. (*See* Paper 20 at 4.)

As for Exhibit 2005, Patent Owner states that it is “clearly a screen captured from Patent Owner’s website.” Paper 23 at 7. But this screen capture is never referenced, even obliquely, by Mr. Wahi’s declaration and there is thus nothing to authenticate it.

Finally, with respect to Exhibit 2007, Patent Owner misinterprets F.R.E. 1007 in a similar manner as its error with respect Rule 801(d)(2). The listed websites are being proffered by Patent Owner for its own benefit, and Patent Owner is not relying on any testimony or statement by Petitioner for this purpose. Moreover, Patent Owner is not even proffering the contents of the websites, but is only providing a list of links without any knowledge as to whether the content at those websites could have changed. As such, these links are without evidentiary value.

For the foregoing reasons, and as set forth in Petitioner’s Motion, the Board should exclude Patent Owner’s Exhibits 2003-2007 in Patent Owner’s Sur-Reply from the record.

Respectfully submitted,

VORYS, SATER, SEYMOUR AND PEASE LLP

Dated: September 2, 2025

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## **CERTIFICATION OF SERVICE**

The undersigned hereby certifies that the above-captioned “Reply in Support of Petitioner’s Motion to Exclude Evidence Submitted with Patent Owner’s Sur-Reply” was served on September 2, 2025, upon the following via email:

[uspto@patentsgroup.com](mailto:uspto@patentsgroup.com)  
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As well as a courtesy copy to the Patent Owner’s litigation counsel, by email:

[keithaltman@kaltmanlaw.com](mailto:keithaltman@kaltmanlaw.com)  
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**VORYS, SATER, SEYMOUR AND PEASE LLP**

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