

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SALVACION USA, INC.
Petitioner

v.

TRUTEK CORP.
Patent Owner

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. IPR-2024-00711

**PATENT OWNER'S RESPONSE IN OPPOSITION TO
PETITIONER'S REQUEST FOR REHEARING**

RESPONSE IN OPPOSITION TO PETITIONER'S REQUEST FOR REHEARING

I. STATEMENT OF FACTS

The PTAB Board instituted a trial proceeding on December 6, 2024 to determine the patentability of claims of US Patent No. 8,163,802 ("the '802 Patent"). On December 2, 2025, the Board rendered its Final Written Decision and Judgment (Paper No. 33). On December 11, 2025, Petitioner submitted its Request For Rehearing. The remedy requested by Petitioner was that the Board declare that claim 3 of the '802 Patent is rendered obvious Under 35 U.S.C. § 103 over US Patent No. 6,844,005 ("Wahi '005") in view of US Patent Application Publication No. 2004/0071757 ("Rolf"). Patent Owner opposes this remedy.

On January 14, 2026, Patent Owner was granted permission by the Board to file a brief in response to Petitioner's request. The length of the brief was not to exceed ten pages.

II. ARGUMENT

Claim 3 states as follows:

3. The formulation of claim 2 wherein the at least one cationic agent is a polymeric quaternary ammonium compound.

Claim 3 depends from claim 2, and thus importing all of the limitations of claim 2 by reference therein. Claim 2 reads as follows:

2. A formulation for electrostatically inhibiting harmful particulate matter from infecting an individual through nasal inhalation wherein the formulation is applied to skin or tissue of nasal passages of the individual in a thin film, said formulation comprising at least one cationic agent and at least one biocidal agent, and wherein said formulation, once applied:
 - a) electrostatically attracts the particulate matter to the thin film;
 - b) holds the particulate matter in place by adjusting the adhesion of the thin film to permit said thin film to stick to the skin or tissue and by adjusting the cohesion of the formulation to provide adequate impermeability to the thin film; and,
 - c) inactivates the particulate matter and renders said particulate matter harmless.

Specifically relevant to the argument herein is Element (b) from claim 2. This element recites and claims the HOLD function, which is critical to the novelty of claims 2 and 3. Nowhere in the proceedings of this IPR was the term, "hold," made the subject of claim construction. Neither Petitioner nor Petitioner's expert, Dr. Park, ever designated this term as being disputed. Instead, Petitioner's expert concentrated on adjustment of adhesion and cohesion of the formulation's thin film. Dr. Park concluded that by electrostatic attraction of oppositely charged particles to the thin film, those particles would necessarily be held in place.

Claims are generally given their broadest reasonable interpretation in light of the specification. *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005). However, an applicant may rebut the plain meaning of the term and may be his own lexicographer and use the term in a manner contrary to or different from their ordinary meaning, as long as the applicant clearly sets forth a special definition of the term in the specification. *In re Morris*, 127 F.3d 1048,1054 (Fed. Cir. 1997).

Wahi '005 was issued to Ashok Wahi on January 18, 2005, and it was assigned to the Patent Owner, Trutek Corp. ("Trutek"). Trutek sold and marketed this product under the brand name, NasalGuard®. Ashok Wahi is also the sole inventor of the products and method described and claimed in the '802 Patent. During prosecution of the '802 Patent's application, Wahi '005 was available to and considered by the examiner. Regarding Wahi '005, the '802 Patent specification stated:

Patents such as U.S. Pat. No. 6,844,005 describe electrostatically charged compositions that may be applied externally in the vicinity of the nostril and attract oppositely charged materials that would otherwise be inhaled. However, those compositions simply create an electrostatic field that helps to filter out oppositely charged materials. While this action may offer Suitable protection against particles that are inhaled passively, they suffer

from the fact that they cannot completely deal with particulates that have their own internal means of overcoming the electrostatic forces, such as microorganisms that are motile within the air stream. Furthermore, actions by the person having those electrostatic compositions in the vicinity of the nostrils can sufficiently displace the offending particles or organisms, especially in Such instances as blowing or wiping the nose, so that particles that were held captive by the former compositions could become dislodged, again set free, and be inhaled. ('802 Patent 2:43-58.)

Here, the inventor in both patents established the sole difference between Wahi '005 and the '802 Patent. This difference was acknowledged by Judge Franklin (Paper 7, Page 3). The '802 Patent specification continued:

It is therefore an object of the invention to provide a composition that can be readily applied to the exterior region around the nostril and/or slightly inside the edge of the nostril or near the vicinity of the source of release with method and compositions capable of capturing particulates and microorganisms. ('802 Patent, 2:62-67.)

It is another object of the invention to have the capability to hold it for a duration from being dislodged into the air stream again. (Id., 3:1-3.)

In this last paragraph, Ashok Wahi defined what is meant by the term, "hold." By referencing Wahi '005 as he did in the '802 Patent specification, he clearly meant the '802 Patent as an improvement over Wahi '005. It is clear that "holding the particulates and microorganisms in place" was intended that they be prevented "from

being dislodged into the air stream again." The "hold" element represents the sole difference between the two patents. Yet, this explicit definition of the "hold" element was ignored by Petitioner's expert and in every paper filed by Petitioner. However, throughout the entire prosecution of this IPR, the Patent Owner repeatedly argued that the HOLD function did not exist in the cited prior art, either explicitly or inherently.

"The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) objective evidence of nonobviousness." *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970). "If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious." *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

Claim 2 cannot be anticipated by or be obvious over Wahi '005 alone because the HOLD function of Element (b) as defined in the '802 Patent specification is not present in Wahi '005. The "hold" term

in Element (b) of claim 2 must be considered, and it is evident that Ashok Wahi intended this term to supersede the plain and ordinary meaning of the word "hold." The problem of particulates and microorganisms first being electrostatically attracted to the formulation's thin film and then being dislodged therefrom was disclosed for the first time in the '802 Patent. A person having ordinary skill in the art would not be motivated to solve this problem, and would not be motivated to develop this solution because he or she would be unaware of the problem. To use the '802 specification's disclosure to supply this motivation would represent impermissible hindsight. This motivation appears nowhere in the cited prior art. It is neither explicitly nor inherently taught in Wahi '005. If claim 2 of the '802 Patent is not obvious over Wahi '005, then dependent claim 3 cannot be obvious.

Rolf does not fill the gap by supplying the HOLD function as taught in the '802 Patent specification (3:1-3). Rolf places an adhesive patch impregnated with essential oils on the user's upper lip. While an adhesive surface is necessary for the patch to stick to the user's skin, Rolf does not teach that his patch has adhesive applied on both sides. Having an adhesive on the opposite surface of

the patch would serve no useful purpose. The impregnated essential oils evaporate into the air, and they serve as biocidal agents. However, there is no teaching or suggestion that Rolf's patch would prevent harmful particulate matter from being dislodged into the air stream once having been electrostatically attracted to the thin film of Wahi '005.

The HOLD function of claim 2, Element (b) requires construction of the term "hold" as defined by the Applicant in the '802 Patent's specification. Element (b) further tells the reader how to accomplish this HOLD function. The patent's specification provides working examples of formulations that would meet this requirement. The HOLD function, (where "hold" is defined in the specification (3:1-3)), is an essential term in claim 2, and that function is incorporated by reference into claim 3. Because the HOLD function, as construed, is not present in either Wahi '005 or Rolf, either explicitly or inherently, claim 3 cannot be considered obvious under 35 U.S.C. §103 over Wahi '005 in view of Rolf.

III. CONCLUSION

In light of the above stated arguments, the Patent Owner respectfully requests that the Board not implement the remedy requested by Petitioner in its Request for Rehearing.

CERTIFICATE OF COMPLIANCE

Pursuant to 37 CFR § 42.24(d), I hereby certify that the foregoing document entitled, "Patent Owner's Response In Opposition To Petitioner's Request For Rehearing," contains eight (8) pages, excluding the parts of the document exempted by 37 CFR § 42.24(a)(1).

/s/ Stanley H. Kremen
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CERTIFICATION OF SERVICE

The undersigned hereby certifies that the above-captioned "Patent Owner's Response In Opposition To Petitioner's Request For Rehearing," regarding IPR2024-00711 was served on January 28, 2026 upon the following via email:

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