

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PRAXAIR DISTRIBUTION, INC.,
Petitioner,

v.

INO THERAPEUTICS, LLC,
Patent Owner.

Case IPR2015-00889
Patent 8,573,209 B2

Before KEN B. BARRETT, MICHAEL J. FITZPATRICK, and
SCOTT A. DANIELS, *Administrative Patent Judges*.

DANIELS, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

A. Background

Praxair Distribution, Inc. (“Petitioner”) filed a Petition to institute an *inter partes* review of claims 1–7 of U.S. Patent No. 8,573,209 B2 (Ex. 1001, “the ’209 patent”). Paper 1 (“Pet.”). INO Therapeutics LLC, (“Patent Owner”) filed a Preliminary Response. Paper 9 (“Prelim. Resp.”).

We have authority to determine whether to institute an *inter partes* review under 35 U.S.C. § 314 and 37 C.F.R. § 42.4(a). Upon consideration of the Petition and the Preliminary Response, we determine that Petitioner has established a reasonable likelihood of prevailing on certain claims challenged in the Petition. For the reasons expressed below, we institute an *inter partes* review of claims 1–7 of the ’209 patent.

B. Additional Proceedings

In addition to this proceeding, Petitioner has filed petitions challenging the patentability of claims 1–16 of U.S. Patent No. 8,573,210 B2,¹ claims 1–16 of U.S. Patent No. 8,291,904, claims 1–20 of U.S. Patent No. 8,776,794, and claims 1–20 of U.S. Patent No. 8,776,795. *See* IPR2015-00891; IPR2015-00884; IPR2015-00888; IPR2015-00893. Petitioner states that Patent Owner has filed a complaint in the District Court for the District of Delaware, case no. 15-cv-00170, alleging infringement by Petitioner of ten U.S. Patents, including the ’209 patent. Pet. 8.

C. The ’209 Patent

The ’209 patent (Ex. 1001), titled “Gas Delivery Device and System,” relates generally to a gas delivery device used in a gas delivery system, and a

¹ The ’210 patent is a continuation-in-part of Appln. No. 13/509,873, that issued as the ’209 patent.

method for administering therapy gas, such as nitric oxide (NO), to a medical patient. Ex. 1001, 1:5–17, Fig. 1. In the Background section, it states that “[t]here is a need for a gas delivery device that integrates a computerized system to ensure that patient information contained within the computerized system matches the gas that is to be delivered by the gas delivery device” to the patient, and “also a need for such an integrated device that does not rely on repeated manual set-ups or connections and which can also track individual patient usage accurately and simply.” *Id.* at 1:29–35.

The ’209 patent describes a gas delivery device comprised of valve assembly 100 having actuator 114, valve 107 and circuit 150 communicating with a control module to control administration of the therapy gas to a patient. *Id.* at 5:53–63. Administration of therapy gas to the patient is regulated by a control module that delivers gas via valve 107 from gas source 50 (i.e., a tank to which the valve assembly is mounted) to a medical device for introducing gas to a patient (e.g., a ventilator, nasal cannula, endotracheal tube, face mask, etc.). *Id.*

Figures 2 and 3 are reproduced below.

FIG. 2

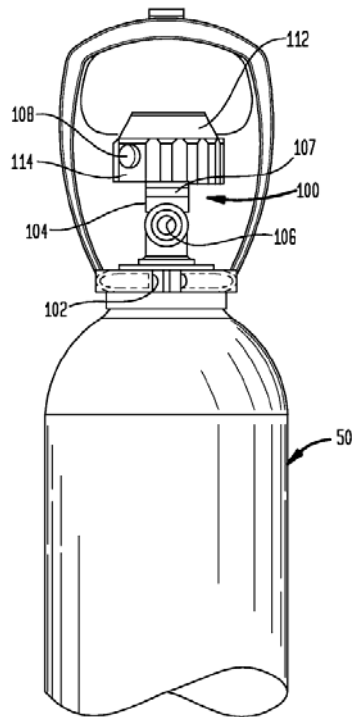


FIG. 3

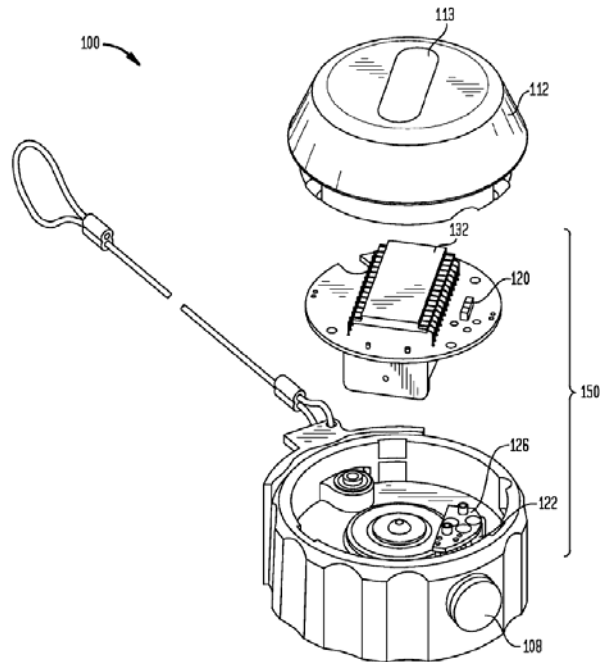


Figure 2 depicts valve assembly 100 and actuator 114 of the gas delivery device in communication via valve 107 with gas source 50. Figure 3 illustrates an exploded view of actuator 114 and valve assembly 100.

Circuit 150 of valve assembly 100, shown diagrammatically below, is disposed in actuator 114 and communicates, for example via a wired, or wireless link, by valve transceiver 120, with the control module. *Id.* at 5:64–6:6.

FIG. 4

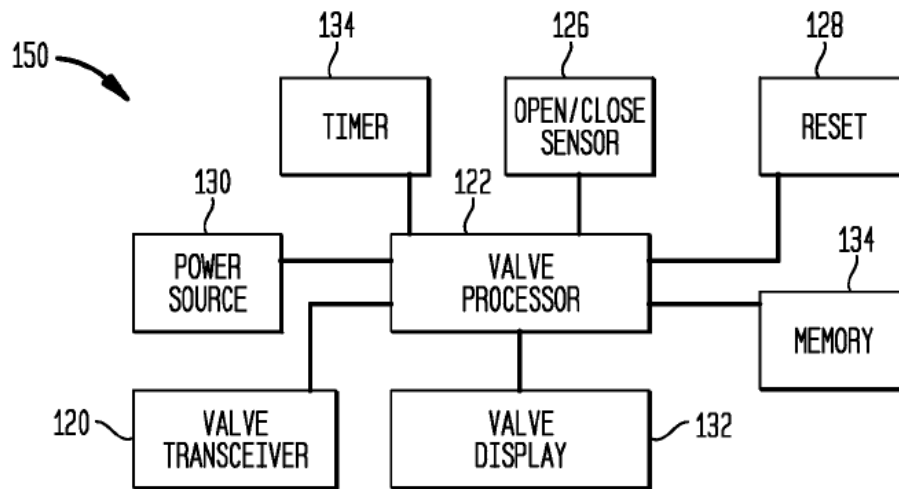


Figure 4 is a block diagram depicting various components of circuit 150.

Circuit 150 includes *inter alia* valve processor 122, memory 134, valve transceiver 120, power source 130, and valve display.² Memory 134 stores the gas data for the particular gas source to which the valve assembly is attached. Gas data, such as gas composition and concentrations, can be input to memory 134 in various ways such as programmed by the gas supplier or scanned from a bar code on the gas source itself. *Id.* at 6:53–61. Valve display 132 allows a user, via window 113 on actuator 114, to view information regarding valve operation such as open or close, as monitored by open/close sensor 126, and the time duration which the valve was open for an event. *Id.* at 7:11–19. Valve transceiver 120 communicates with the control module that is physically separate, but in relatively close proximity to the valve assembly, via an optical wireless line-of-sight signal “during a

² Timer component is apparently mislabeled as 134, and recited in the Specification as reference number 124.

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