

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PRAXAIR DISTRIBUTION, INC.,
Petitioner,

v.

INO THERAPEUTICS, LLC,
Patent Owner.

Case IPR2015-00891
Patent 8,573,210 B2

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

DANIELS, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a)

IPR2015-00891
Patent 8,573,210 B2

Praxair Distribution, Inc. (“Praxair”) filed a Petition to institute an *inter partes* review of claims 1–16 of U.S. Patent No. 8,573,210 B2 (Ex. 1001, “the ’210 patent”). Paper 1 (“Pet.”).¹ We instituted trial for claims 1–16 of the ’210 patent on certain grounds of unpatentability asserted in the Petition. Paper 14 (“Decision to Institute” or “Inst. Dec.”). After institution of trial, Patent Owner, INO Therapeutics, LLC, (“Patent Owner” or “INO”), filed a Patent Owner Response. Paper 30 (“PO Resp.”). Praxair timely filed a Reply. Paper 40 (“Reply”).

A consolidated hearing for this proceeding as well as IPR2015-00884, IPR2015-00888, IPR2015-00889, and IPR2015-00893, each involving Praxair and INO but different patents, was held on May 16, 2016. The transcript of the consolidated hearing has been entered into the record. Paper 53. (“Tr.”).

Also before the Board is INO’s Motion to Exclude Evidence (Paper 44), Praxair’s Opposition to the same (Paper 48) and INO’s Reply (Paper 49).

After considering the evidence and arguments of counsel and for the reasons set forth below, we determine that Praxair has not met its burden of showing that claims 1–16 of the ’210 patent are unpatentable.

I. BACKGROUND

A. *The ’210 Patent (Ex. 1001)*

The ’210 patent (Ex. 1001), titled “Nitric Oxide Delivery Device,” relates generally to a gas delivery device used in a gas delivery system, and a method for administering therapy gas, such as nitric oxide (NO), to a

¹ The ’210 Patent is the subject of litigation captioned *INO Therapeutics LLC et al v. Praxair Distribution Inc. et al.*, 1:15-cv-00170-GMS currently pending in the District Court for the District of Delaware.

IPR2015-00891

Patent 8,573,210 B2

medical patient. Ex. 1001, 1:14–27, 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 1:40–46.

The '210 patent describes specifically gas delivery system 10 including a supply cylinder of gas, i.e. gas source 50, and valve assembly 100 for connecting gas source 50 to a gas delivery circuit including ventilator 400. *Id.* at 6:5–15.

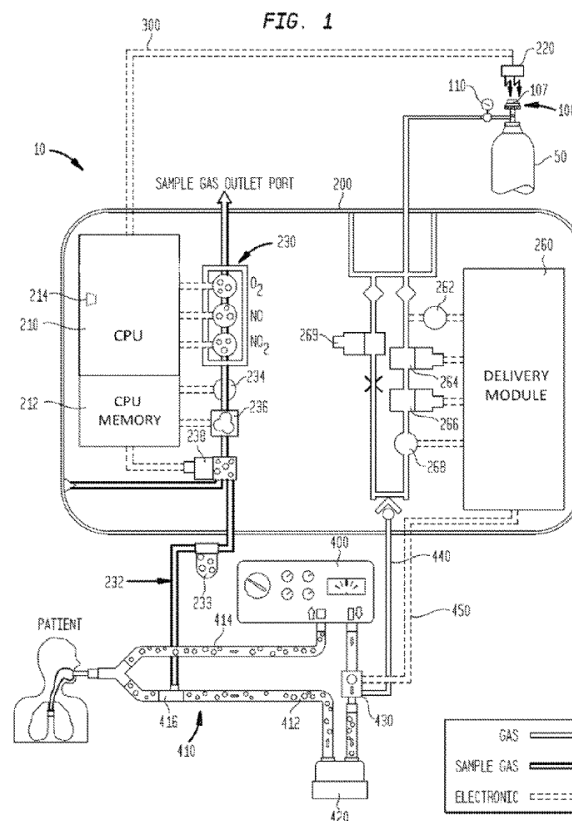


Figure 1 of the '210 patent, above, is a diagrammatic representation of gas delivery system 10 for delivering therapeutic gas to a patient.

The '210 patent is particularly drawn to valve assembly 100 which, by opening and closing, allows gas to flow from gas source 50, generally a cylinder containing NO gas for example, to the gas delivery system. *Id.* at 2:10–20. Figures 2 and 3 are reproduced below depicting valve assembly 100 having manual actuator 114, valve 107 and circuit 150 disposed in the actuator for communicating with a control module to control administration of the therapy gas to a patient. *Id.* at 5:60–6:5.

FIG. 2

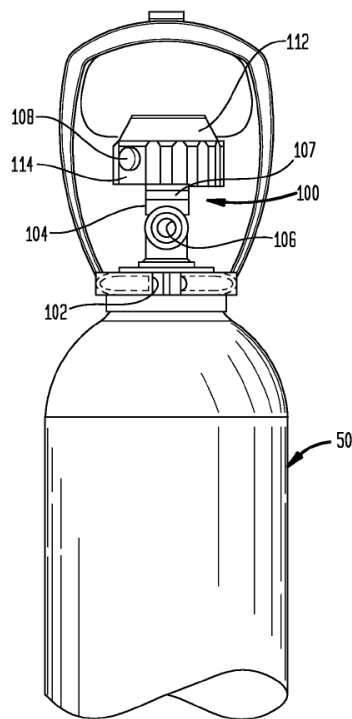


FIG. 3

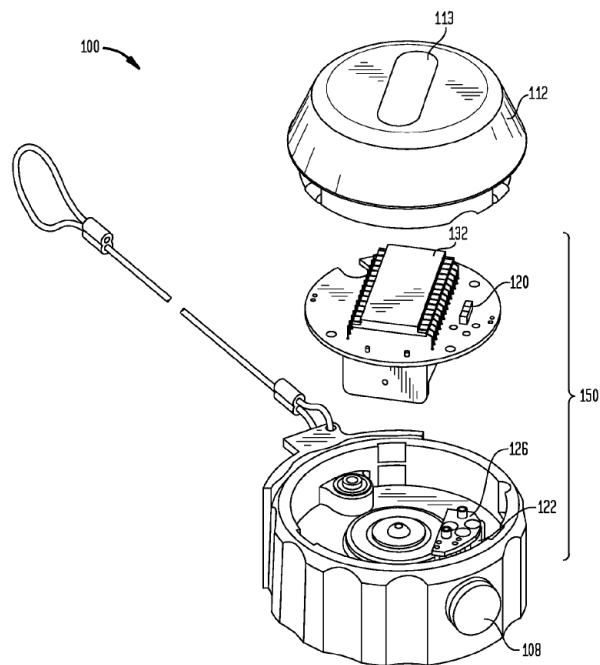


Figure 2, above, depicts valve assembly 100 and actuator 114 of the gas delivery device in communication via valve 107 with gas source 50. Figure 3, above, illustrates an exploded view of actuator 114 and circuit 150.

Administration of therapy gas to the patient is regulated by a control module that controls delivery from gas source 50 (i.e., cylinder or 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.* Circuit 150 of valve assembly 100, shown diagrammatically below, is disposed in actuator 114 and communicates, for example via a wireless link by valve transceiver 120, with the control module. *Id.* at 6:20–25.

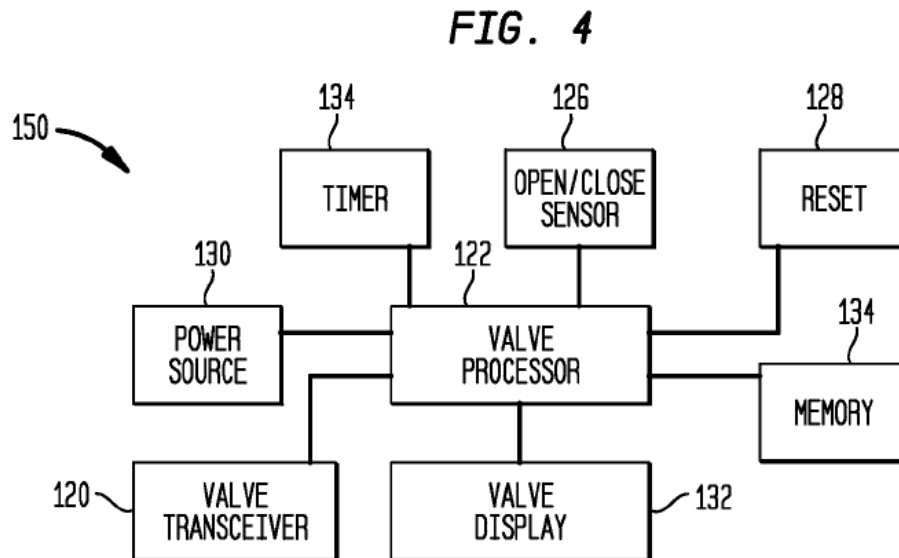


Figure 4 is a block diagram depicting various components of circuit 150.

Figure 4 depicts various components of circuit 150 including, *inter alia*, valve processor 122, memory 134, valve transceiver 120, power source

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