

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*.

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 1–16 of U.S. Patent No. 8,573,210 B2 (Ex. 1001, “the ’210 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 1–16 of the ’210 patent.

### B. Additional Proceedings

In addition to this proceeding, Petitioner has filed petitions challenging the patentability of claims 1–7 of U.S. Patent No. 8,573,209 B2, 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* IPR2015-00889; 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. 1:15-cv-00170 (GMS) (D. Del.), alleging infringement by Petitioner of ten U.S. Patents, including the ’210 patent. Pet. 7.

### C. The ’210 Patent

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 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

IPR2015-00891

Patent 8,573,210 B2

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 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 5:60–6:5. 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

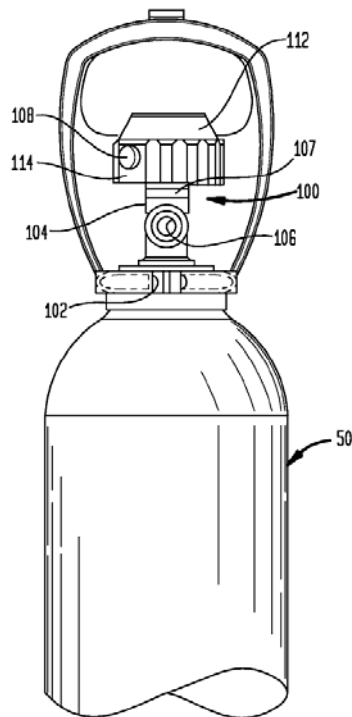


FIG. 3

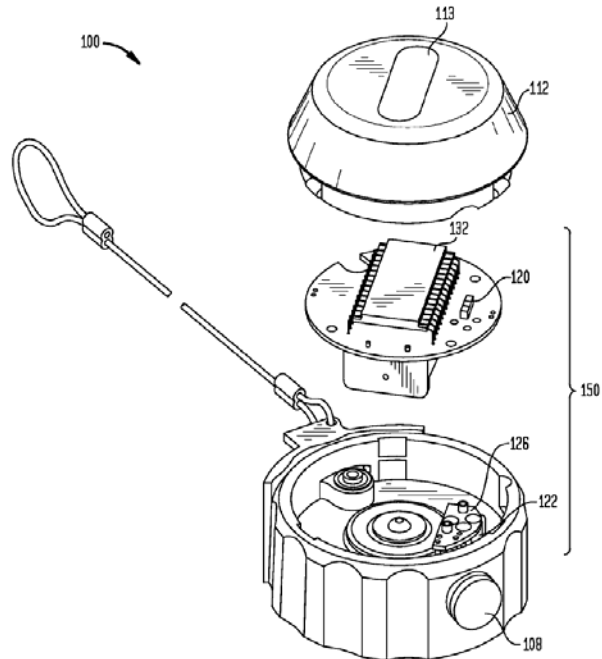


Figure 2 depicts valve assembly 100 and actuator 114 of the gas delivery device in communication via valve 107 with gas source 50. Figure 3 illustrates an exploded view of actuator 114 and valve assembly 100.

Circuit 150 of valve assembly 100, shown diagrammatically below, is disposed in actuator 114 and communicates, for example via a wireless link by valve transceiver 120, with the control module. *Id.* at 6:20–25.

**FIG. 4**

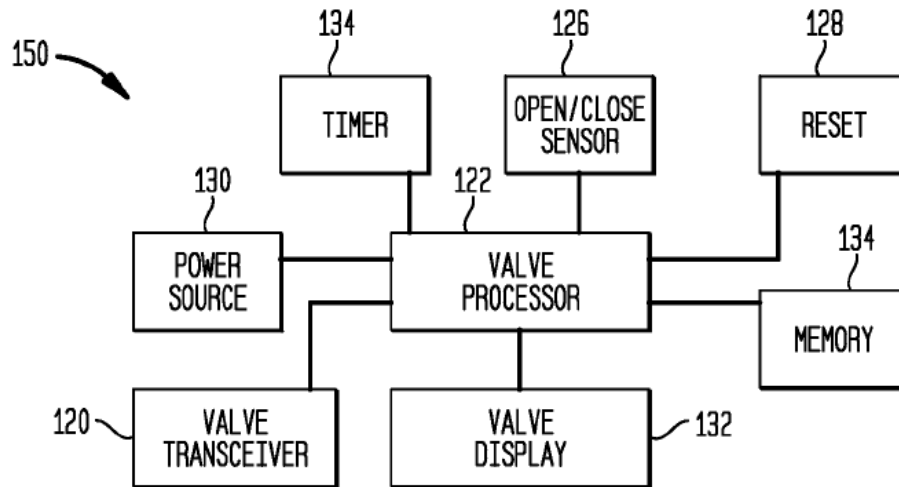


Figure 4 is a block diagram depicting various components of circuit 150.

Circuit 150 includes *inter alia* valve processor 122, memory 134, valve transceiver 120, power source 130, and valve display.<sup>1</sup> 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 7:5–10. 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 for which the valve was open for an event. *Id.* at 7:30–38. 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

<sup>1</sup> Timer component is apparently mislabeled as 134, and recited in the specification as reference number 124.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.