

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PRAXAIR DISTRIBUTION, INC.,
Petitioner,

v.

INO THERAPEUTICS LLC,
Patent Owner.

Case IPR2015-00884
Patent 8,291,904 B2

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

FITZPATRICK, *Administrative Patent Judge*.

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

I. INTRODUCTION

Petitioner, Praxair Distribution, Inc., filed a Petition to institute an *inter partes* review of claims 1–16 of U.S. Patent No. 8,291,904 B2 (Ex. 1001, “the ’904 patent”) pursuant to 35 U.S.C. § 311(a). Paper 1, “Pet.” Patent Owner, INO Therapeutics LLC, filed a Preliminary Response pursuant to 35 U.S.C. § 313. Paper 9, “Prelim. Resp.”

We have authority to determine whether to institute an *inter partes* review. 35 U.S.C. § 314(b); 37 C.F.R. § 42.4(a). Upon consideration of the Petition and the Preliminary Response, and for the reasons explained below, we determine that the information presented shows a reasonable likelihood that Petitioner would prevail with respect to all challenged claims. *See* 35 U.S.C. § 314(a). Accordingly, we grant the Petition to institute an *inter partes* review.

A. Related Matters

The parties identify *INO Therapeutics LLC v. Praxair Distribution, Inc.*, Civil Action No. 1:15-cv-00170 (D. Del.), as a related judicial matter. Pet. 7; Paper 6, 2.

Petitioner asserts that “U.S. Patent Application Nos. 14/328,150, 14/065,962, 14/[]629,742 (unpublished), and 29/471,765 (unpublished) are currently pending and purport to claim the benefit of the ultimate priority document of the ’904 Patent.” Pet. 7. In a purported response, Patent Owner states that “[c]ontrary to Petitioner’s allegation, there are no pending continuing patent applications that claim the benefit of U.S. Patent No. 8,291,904.” Paper 6, 2. Patent Owner’s statement, however, is not responsive to Petitioner’s assertion.

B. The '904 Patent

The '904 patent relates to the administration of a therapy gas, such as nitric oxide (NO), to a patient. Ex. 1001, 1:14–16. In a background section, it states that there was a need “to ensure that patient information contained within [a] computerized system matches the gas that is to be delivered” 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 1:40–45.

The '904 patent describes a gas delivery system comprised of a valve assembly having a valve and circuit in communication with a control module to control administration of the therapy gas to a patient. *Id.* at 5:59–6:4. Administration of the therapy gas to the patient is controlled by controlling delivery of the gas from the gas source (i.e., a cylinder 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

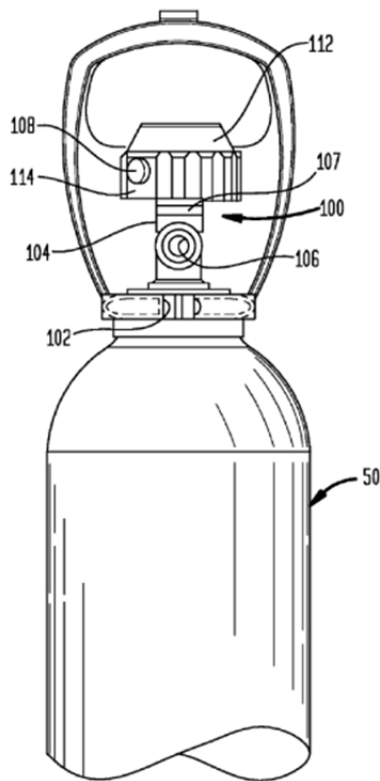


FIG. 3

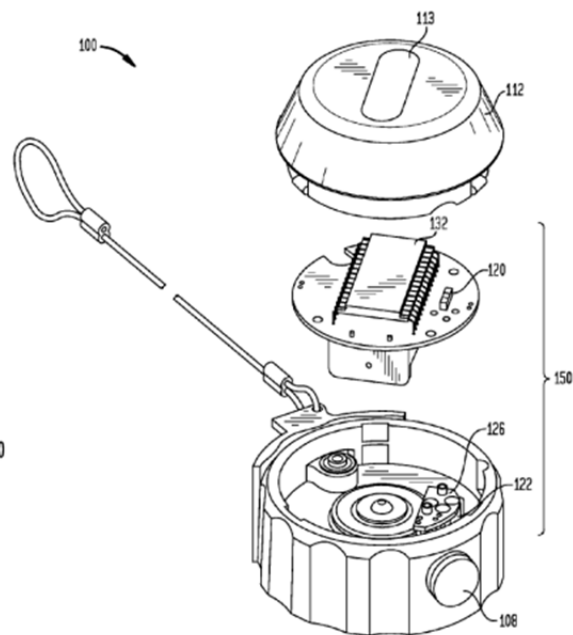


Figure 2 shows valve assembly 100 attached to gas source (cylinder) 50 via attachment portion 102. Ex. 1001, 6:26–29. The valve assembly includes inlet 104, outlet 106, valve 107, data input 108, and actuator 114 with cap 112 mounted thereto, as well as a circuit that is not shown in Figure 2. *Id.* at 6:26–37. Figure 3 shows the assembly valve partially disassembled, thus revealing circuit 150 within the actuator. *Id.* at 6:30–35.

Figure 4 is reproduced below.

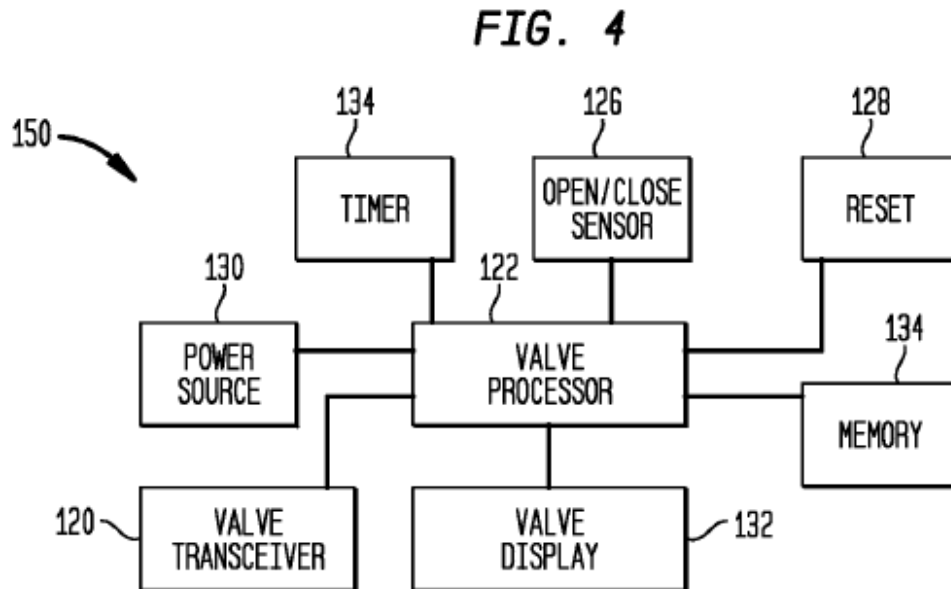


Figure 4 shows a block diagram of circuit 150 having valve processor 122, valve memory 134, valve transceiver 120, valve display 132, reset 128, power source 130, timer 124,¹ and open/close sensor 126. Ex. 1001, 6:41–54. Gas data, such as gas composition and concentration, can be input to memory 134 in various ways such as programmed by the gas supplier or scanned from a bar code on the gas source itself. *Id.* at 7:5–21. The valve assembly is configured to communicate with the control module via wireless optical line-of-sight transmission between the valve transceiver and a CPU transceiver of the control module. *Id.* at 8:41–48.

¹ Figure 4 mislabels the timer as 134. It should be labelled 124. Ex. 1001, 6:45.

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