

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*.

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

Praxair Distribution, Inc. (“Praxair”) 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.”).¹ We instituted trial for claims 1–7 of the ’209 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, IPR2015-00891, 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 1–7 of the ’209 patent are unpatentable. We dismiss INO’s Motion to Exclude as moot.

¹ The ’209 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.

I. BACKGROUND

A. The '209 Patent (Ex. 1001)

The '209 patent (Ex. 1001), titled “Gas Delivery Device and System,” relates generally to a gas delivery system, and a method for administering therapy gas, such as nitric oxide (NO), to a medical patient. Ex. 1001, (54), 1:5–17, Fig. 1. The gas delivery system includes valve assembly 100 having valve 107 shown below in wireless communication with control module 200. *Id.* at 4:65–67, Fig. 1.

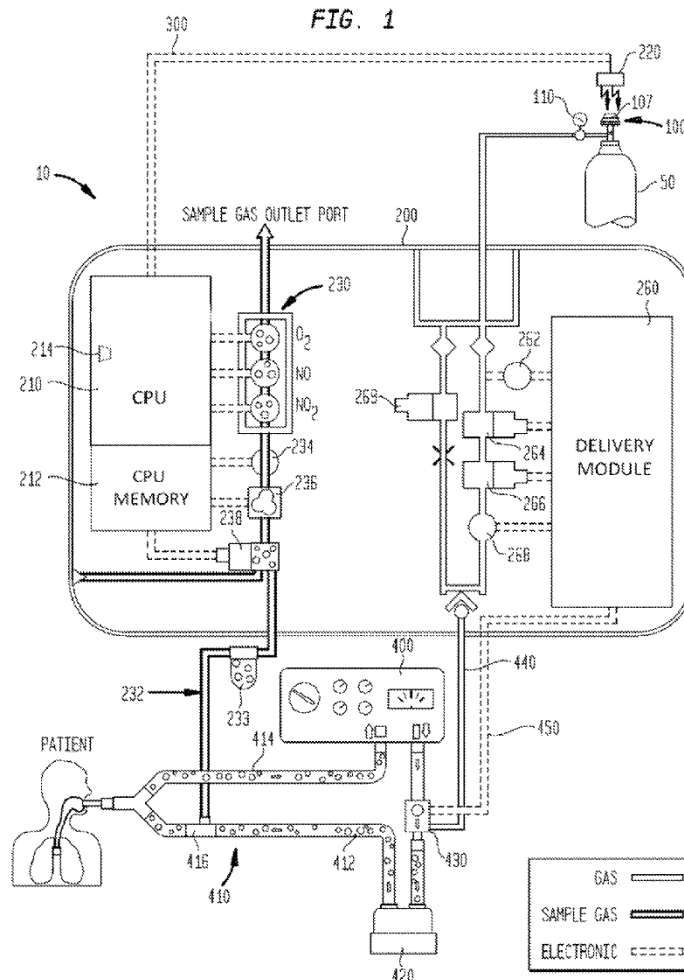


Figure 1 of the '209 patent, above, depicts a diagrammatic representation of a gas delivery system for administering therapy gas from gas source 50 (i.e., a tank to which the valve assembly is mounted) through valve 107 and via control module 200 to a patient. *Id.* at 5:41–63. In the delivery system, administration of therapy gas to the patient is regulated by control module 200 to a medical device for introducing gas to the patient (e.g., ventilator 400, nasal cannula, endotracheal tube, face mask, etc.). *Id.* Gas is initially supplied to control module 200 from gas source via valve assembly 100 by opening valve 107.

Valve assembly 100 is shown in greater detail in Figures 2 and 3 reproduced below.

FIG. 2

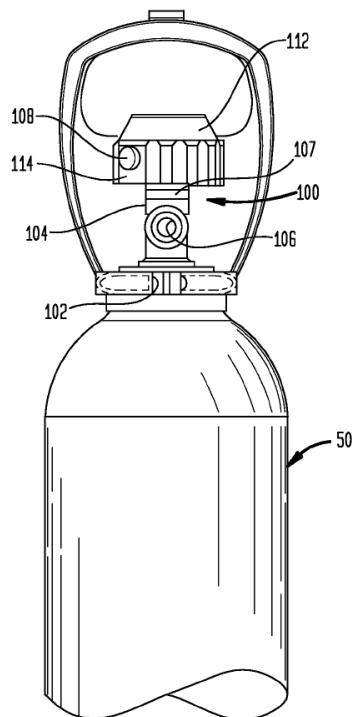


FIG. 3

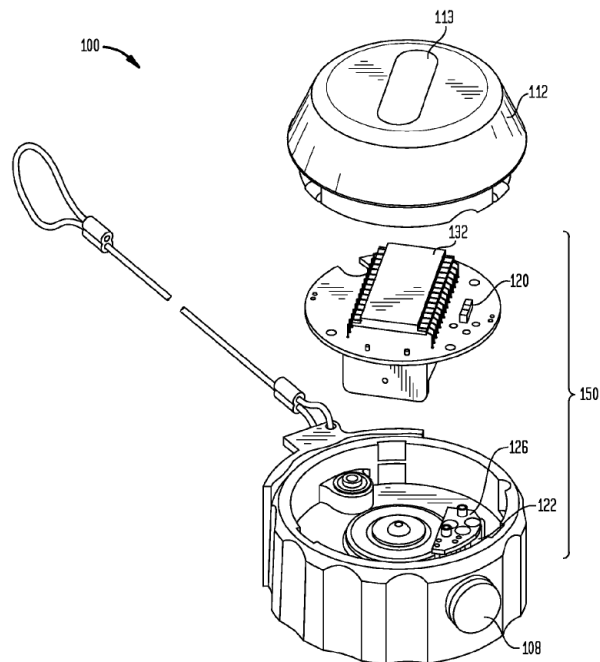


Figure 2 depicts valve assembly 100 and actuator 114, a rotatable knob or handle, for opening and closing valve 107 that is connected between gas source 50 and control module 200. Figure 3 illustrates an exploded view of actuator 114. As best observed in Figure 3 above, the valve assembly includes circuit 150 disposed in actuator 114. *Id.* at 5:64–66. The circuit communicates with the control module, for example via a wired or wireless link, by valve transceiver 120. *Id.* at 5:64–6:6.

Illustrated by Figure 4 of the '209 patent, below, is a block diagram of circuit 150.

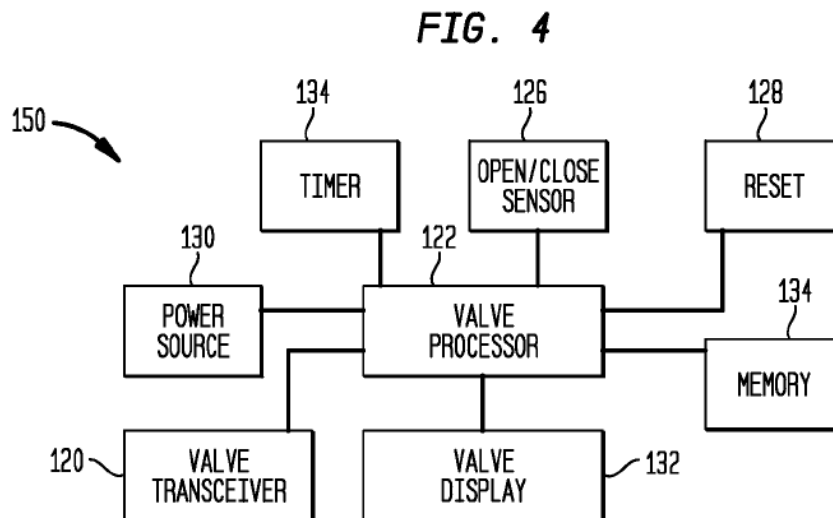


Figure 4 depicts various components of circuit 150 including, *inter alia*, valve processor 122, memory 134, valve transceiver 120, power source 130, and valve display 132.²

The primary purpose of circuit 150 and valve processor 122 is not to open or close the valve, but to communicate to control module 200 gas data, specifically gas identification, gas expiration date, and gas concentration.

² In Figure 4, timer component apparently is mislabeled as 134, and recited in the specification as reference number 124.

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