

STATEMENT OF CONSIDERATIONS

PETITION FOR ADVANCE WAIVER OF PATENT RIGHTS BY 3M COMPANY ("3M") UNDER COOPERATIVE AGREEMENT NO. DE-FC36 07G017006 BETWEEN 3M AND DOE; W(A)-08-018; CH-1441

The Petitioner, 3M, has requested a waiver of domestic and certain foreign patent rights for all subject inventions that may be conceived or first actually reduced to practice by 3M arising from its participation under the above referenced cooperative agreement entitled "Advanced Cathode Catalysts and Supports for PEM Fuel Cells."

The objectives of the project are development of a durable, low cost (pt group metal content and manufacturability), high performance cathode catalyst and support system capable of demonstrating mass activity greater than or equal to 0.44 A/mgPt, generating a stack specific power density of less than 0.5 g/kW rated with total PT group precious metal (PGM) loading per MEA of less than 0.3 mg PGM/cm², and durability of catalyst surface area and activity sufficient to operate at; SOC for 5000 hours under cycling operation, for transportation applications.

The total cost of the project is approximately \$10,429,337 with the 3M providing about 20% cost sharing. This waiver is contingent upon the 3M maintaining, in aggregate, the above cost sharing percentage over the course of the cooperative agreement. The period for performance is April 1, 2007 through March 31, 2011.

As noted in its waiver petition, 3M is a leading supplier of fuel cell MEA's to a wide range of customers. 3M's customers include both research oriented and commercial customers. In the development of fuel cell components, 3M has made multi-million dollar investments in research and capital equipment. At the present time, 3M's technical efforts involve over 45 skilled persons working on various elements of fuel cell technology. The work to be performed under this agreement builds on work performed under five previous cooperative agreements between 3M and DOE.

Considering 3M's technical expertise and significant investment in this technology including sizable cost sharing in this cooperative agreement, it is reasonable to conclude that 3M will continue to develop and ultimately commercialize the technology and products which may arise from this cooperative agreement.

3M has agreed that this waiver shall be subject to the march-in and preference for U.S. industry provisions, as well as the U.S. Government license, comparable to those set out in 35 U.S.C. 202-204. Further, Petitioner has agreed to the attached U.S. Competitiveness provision paragraph (t). In brief, Petitioner has agreed that products embodying a waived invention or produced through the use of a waived invention will be manufactured substantially in the-United States unless the Petitioner can show to the satisfaction of the DOE that is not commercially feasible to do so.

Referring to item 10 of the waiver petition, granting this waiver is not anticipated to have any adverse impact on competition. If anything, the technology forming the subject matter of the collaboration can be expected to stimulate competition. A number of commercial organizations have developed or are thought to be developing competitive technologies.

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Considering the foregoing, it is believed that granting this waiver will provide 3M with the necessary incentive to invest its resources in the commercialization of the results of the cooperative agreement in a fashion which will make the above technology available to the public in the shortest practicable time. Therefore, upon evaluation of the waiver petition and in view of the objectives and considerations set forth in 10 CFR 784, all of which have been considered, it is recommended that the requested waiver be granted.


Joy Alwan
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Intellectual Property Law Division

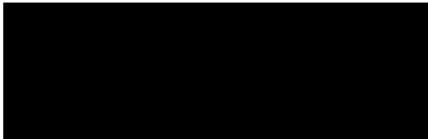

Brian J. Lally
Assistant Chief Counsel
Intellectual Property Law Division

Date: 22 July 08

Date: 7/22/08

Considering the foregoing, it is believed that granting this waiver will provide 3M with the necessary incentive to invest its resources in the commercialization of the results of the cooperative agreement in a fashion which will make the above technology available to the public in the shortest practicable time. Therefore, upon evaluation of the waiver petition and in view of the objectives and considerations set forth in 10 CFR 784. all of which have been considered, it is recommended that the requested waiver to be granted. Based upon the foregoing Statement of Considerations and representations in the attached waiver petition, it is determined that the interests of the United States and the general public will best be served by a waiver of patent rights of the scope described above, and therefore the waiver is granted. This waiver shall not apply to any modification or extension of the cooperative agreement, where through such modification or extension, the purpose, scope or cost of the cooperative agreement has been substantially altered.

CONCURRENCE:



Richard Farmer
Acting Program Manger
Office of Fuel Cell, Technologies
Program E-2H

Date: 5-5-2010

APPROVAL:



Paul A. Gottlieb
Assistant General Counsel
for Technology Transfer and
Intellectual Property

Date: 5/5/10

WAIVER ACTION – ABSTRACT
W(A)2008-018

REQUESTOR
3M

CONTRACT SCOPE
The objective of the project
is development of advanced cathode
Catalysts and supports for the PEM
Fuel cells.

RATIONAL FOR DECISION
>20% Cost Sharing

U. S. Competitiveness

The Contractor agrees that any products embodying any waived invention or produced through the use of any waived invention will be manufactured substantially in the United States unless the Contractor can show to the satisfaction of the DOE that it is not commercially feasible to do so. In the event the DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, e.g., recoupment of the Government's investment, etc. The Contractor agrees that it will not license, assign or otherwise transfer any waived invention to any entity unless that entity agrees to these same requirements. Should the Contractor or other such entity receiving rights in the invention undergo a change in ownership amounting to a controlling interest, then the waiver, assignment, license, or other transfer of rights in the waived invention is suspended until approved in writing by the DOE.