

STATEMENT OF CONSIDERATIONS

PETITION FOR ADVANCE WAIVER OF PATENT RIGHTS BY 3M COMPANY ("3M")
UNDER COOPERATIVE AGREEMENT NO. DE-FC3607G017006 BETWEEN 3M AND
DOE; W(A)2008-019; CH-1442

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 "Membranes and MEA's for Dry, Hot Operating Conditions."

The objective of the project is development of new proton exchange membranes and integrate them into membrane electrode assemblies (MEA's) and then into fuel stacks. The primary target is for MEA's to be capable of meeting the performance and durability requirements outlined in the solicitation, operating under low humidification conditions and at temperatures up to 120°C to meet 2010 commercialization) targets for automotive fuel cells.

The total cost of the project is approximately \$11,450,500 with the 3M providing about 22% 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.

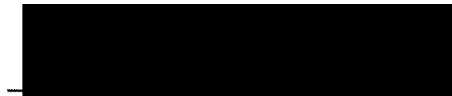
Considering 3M's technical expertise and significant investment in this technology including sizable cost sharing in this cooperative agreement, it is reasonable to conclude that 3M will continue to develop and ultimately commercialize the technology and products which may arise from this cooperative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



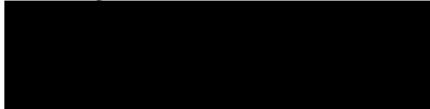
Brian J. Lally
Assistant Chief Counsel
Intellectual Property Law Division

Date: 15 July 08

Date: 7/22/08

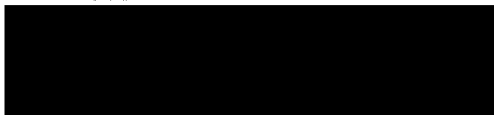
Considering the foregoing, it is believed that granting this waiver will provide 3M with the necessary incentive to invest its resources in the commercialization of the results of the cooperative agreement in a fashion which will make the above technology available to the public in the shortest practicable 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 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 Manager
Office of Fuel Cell,
Technologies
E-2H

APPROVAL:



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

Date: 5-5-2010

Date: 5/5/10

WAIVER ACTION – ABSTRACT
W(A)2008-019

REQUESTOR
3M

CONTRACT SCOPE
The objective of the project is
Development of new proton
Exchange membranes

RATIONAL FOR DECISION
>20% Cost Sharing

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.