

STATEMENT OF CONSIDERATIONS

PETITION FOR ADVANCE WAIVER OF PATENT RIGHTS BY DOW CORNING CORPORATION ("DOW-CORNING") UNDER A SUB-AWARD OF COOPERATIVE AGREEMENT NO. DE-FC36-08GO18028 BETWEEN SUNPOWER CORPORATION AND DOE; W(A)-08-030; CH-1448

The Petitioner, DOW-CORNING, 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 DOW-CORNING arising from its participation under a sub-award to the above referenced cooperative agreement entitled "Grid Compatible Residential and Commercial Fully Automated PV Systems Technology."

The objective of the project is the development of adhesive and encapsulation material and application systems optimized for front glass replacement and adhesive and encapsulation materials for photovoltaic systems.

The total cost of the sub-award is approximately \$750,000 with the Petitioner providing about 50% cost sharing. This waiver is contingent upon the Petitioner maintaining, in aggregate, the above cost sharing percentages over the course of the cooperative agreement.

As noted in its waiver petition, Petitioner is a world leader in silicone and related technologies. DOW-CORNING invests significant amounts of its profits each year into research and development of technologies related to photovoltaics including several ongoing projects with the DOE. DOW-CORNING is a recognized leader in electronic device protection products.

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

Petitioner 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. DOW-CORNING has an extensive history of partnership and licensing arrangements with companies in various commercial markets.

Considering the foregoing, it is believed that granting this waiver will provide Petitioner 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.



Brian J. Daly
Assistant Chief Counsel
Intellectual Property Law Division
DOE Chicago Office

Date: July 28, 2008

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.

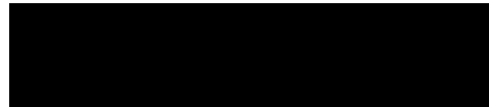
~~CONCURRENCE:~~



John Zushetsky
Program Manager
Office of Solar Energy
Technology Program, EE-2A

Date: 4/30/16

APPROVAL:



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

Date: 5/3/10

WAIVER ACTION - ABSTRACT
W(A)-08-030

REQUESTOR
DOW-
CORNING

CONTRACT SCOPE
The objective of the project is the development of adhesive and encapsulation material and application systems optimized for front glass replacement and adhesive and encapsulation materials for photovoltaic systems.

RATIONALE FOR DECISION
50% Cost Sharing

(t) 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.