

STATEMENT OF CONSIDERATIONS

PETITION FOR ADVANCE WAIVER OF PATENT RIGHTS BY UNITED SOLAR OVONIC, LLC ("UNITED SOLAR") UNDER COOPERATIVE AGREEMENT NO. DE-FC36-07G017053 BETWEEN UNITED SOLAR AND DOE; W(A)-09-068; CH-1540

The Petitioner, UNITED SOLAR, 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 UNITED SOLAR arising from its participation under the above referenced cooperative agreement entitled "Low Cost Thin Film Building-Integrated PV Systems."

The objective of the project is to develop the lowest cost solution for the commercial building integrated photovoltaic (BIPV) market. Currently the installed cost of PV on commercial buildings ranges from between about \$6 to \$8 a watt. The goal is to reduce the Levelized Cost of Energy (LCOE) from 15.83 ¢/kWh in 2006 to 12.8 ¢/kWh in 2010 and 7.6 by 2015. This will require substantial cost reduction in solar module costs, installation costs, and other indirect costs. Petitioner plans on reducing the cost of all cost centers by pursuing a stage-gate approach to meet the project objectives. More specifically, Petitioner will explore the use of high efficiency nc-Si:H materials and cells, better integration of inverters for building applications etc.

The total cost of the project is approximately \$40 million with the Petitioner providing at least 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 pioneer in the development of thin film amorphous silicon photovoltaics and has emerged as the world's largest manufacturer of flexible solar panels that can be directly integrated within building structures. Furthermore, UNITED SOLAR has invested millions of dollars into research and development of BIPV technologies.

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 an adverse impact on competition. The photovoltaic market is extremely competitive, is highly diversified and there are several competitors working on alternative technologies.

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

Date: December 30, 2009

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:



JoAnn Miliken
Acting Program Manager
Office of the Solar Energy Technology
Program, EE-2A

Date: 4-30-10

APPROVAL:



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

Date: 5/3/10

WAIVER ACTION - ABSTRACT
W(A)-2009-068

<u>REQUESTOR</u>	<u>CONTRACT SCOPE</u>	<u>RATIONALE FOR DECISION</u>
UNITED SOLAR	The objective of the project is to develop the lowest cost solution for the commercial building integrated photovoltaic (BIPV) market	~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.