

STATEMENT OF CONSIDERATIONS

REQUEST BY CRAY INC (CRAY) FOR AN ADVANCE WAIVER OF DOMESTIC AND FOREIGN RIGHTS TO INVENTIONS MADE UNDER SUBCONTRACT NO. B580786, DOE WAIVER NO. W(A) 2010-012.

The Petitioner, Cray, has requested a waiver of all domestic and foreign patent rights to inventions that may be conceived or first actually reduced to practice in the course of Cray's work under Subcontract No B580786 entitled "ACES – Cray Interconnection Network Project" with the U.S. Department of Energy/National Nuclear Security Administration (DOE/NNSA).

This contract involves joint analysis of Network Interface chips, their features and how the features map to application performance. The joint analysis will be completed by Cray and ACES. The Alliance for Computing at Extreme Scale (ACES) is a formal collaboration between LANL and SNL, administered by SNL procurement. The analysis will start with existing Cray network interconnect chips (Gemini and Aries) currently in development and will be used to guide development of Cray's fourth generation chip, code name Pisces.

The agreement covers an initial period of performance from April 1, 2010 through September 30, 2015 at a total estimated cost to DOE of \$9,000,000, not to exceed \$3,000,000 in any year. This contract will be incrementally funded. Cray will provide at least \$25,000,000 (50%) up to as much as \$85,000,000 (77%) as a cost share over the life of this agreement. The government contribution will be made through Budget & Reporting Code NN9002000 sponsored by the Office of Advanced Simulation and Computing ASC (NA-121.2).

Cray is based in Seattle, WA and is a world leader in the design and development of high performance computer (HPC) Server Systems. Petitioner's intellectual property encompasses the design of leading edge very complex application specific integrated circuits. Petitioner intends to use the work results of this contract in the creation of a future commercial HPC Server System for its Commercial HPC Server Business, in which Petitioner currently holds approximately a twenty percent (20%) market share. Petitioner will not gain a dominant market position due to the Waiver, but will remain competitive with companies much larger in size and market position.

The current research and development is only being partially funded by DOE/NNSA. There exists a wide range of technologies for HPC systems. As such, based on the nature of the technology, as well as the research, development and production being done in this field worldwide, and the existing myriad of competing technologies, it is not foreseen that the grant of this waiver would decrease competition, cause undesirable market concentration, or place Cray in a dominant market position.

Cray has agreed to abide by 35 U.S.C. §§ 202, 203 and 204, as well as the provisions of the Standard Patent Rights clause for an Advance Waiver, which is reasonable given Cray's investment in this program. Additionally, as part of the petition itself Cray has agreed to the provisions of the U.S. Competitiveness Clause, which requires Petitioner to substantially manufacture any products embodying or produced through any waived invention in the United States, unless Petitioner can convince DOE it is not commercially feasible to do so. Cray will abide by the Export Control laws and will require its licensees, if any, to do the same. Cray will expend such sums as may be required to maintain the necessary patent protection and provide incentive for commercial development of the invention.

Considering Cray's status as a world leader in HPC Servers, it is concluded that the grant of the requested waiver is most likely to achieve successful, sustained production, and to commercialize any intellectual property developed under this agreement.

As such, upon evaluation of the Waiver Petition in view of the objectives and considerations set forth in 10 CFR 784.4, all of which have been considered, it is recommended that the requested waiver be granted.



Arthur N Trausch
NNSA Patent Attorney
NNSA Service Center

Based on the foregoing Statement of Considerations and the representations of 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 a modification or extension of the cooperative financial assistance agreement where, through such modification or extension, the purpose, scope or DOE cost of the cooperative financial assistance agreement have been substantially altered.

CONCURRENCE:



Robert Meisner
Director
Office of Advanced Simulation and Computing (ASC)
NA-121.2

Date: 5/17/10

APPROVAL:



~~Paul A. Gottlieb~~
Assistant General Counsel for
Technology Transfer and
Intellectual Property (GC-62)

Date: 5/20/2010