

## STATEMENT OF CONSIDERATIONS

REQUEST BY W.L. GORE & ASSOCIATES, INC. (GORE) FOR AN ADVANCE WAIVER OF DOMESTIC AND FOREIGN PATENT RIGHTS UNDER DOE GRANT NO. DE-EE0000465; W(A) 2010-041

Gore has requested a waiver of patent rights of the United States of America to any inventions conceived or first actually reduced to practice by Gore in the course of or under the above referenced grant entitled "Materials and Modules for Low Cost, High Performance Fuel Cell Humidifiers" (such inventions are hereafter referred to as "waived inventions"). As explained in more detail further below, the waiver is subject to certain rights and conditions.

Gore has partnered with one sub-awardee, DPoint Technologies, for this grant. DPoint Technologies is a foreign small business. The waiver only applies to inventions conceived or first actually reduced to practice under the grant by Gore. DPoint Technologies would have to request a separate waiver of patent rights to any inventions conceived or first actually reduced to practice under the grant by DPoint Technologies.

Technical progress has been made in improving power density and durability of fuel cell stacks. However, operating durability at high performance levels under relatively dry conditions remains elusive for even the best fuel cell membrane electrode assemblies. Therefore, it is essential to humidify the gases into the fuel cell inlets. The objective of the grant is to provide a new, inexpensive, composite membrane structure capable of very high water vapor transport and low air cross-over. The membrane structure is designed to reduce cost, while maintaining performance and durability. The membrane is intended to be used as part of an innovative, low-cost humidifier module.

The total anticipated cost of the project funded by the grant is \$1,865,203 with Gore and DPoint Technologies providing approximately 20% cost share, totaling \$373,040. Specifically, the cost of the project attributable to Gore is \$1,010,803, with Gore providing 20% cost share or \$202,161. This waiver is contingent upon Gore maintaining the foregoing cost sharing percentage over the course of the grant.

As noted in its waiver petition, Gore is a recognized leader in the fuel cell industry as evident by nearly 60 technical publications regarding fuel cell technologies, over 1000 issued U.S. patents, and numerous awards and distinctions in the area of fuel cells. Gore has over 1000 associates, the research and manufacturing capacity to produce hundreds of thousands of square meters of product annually, and on-going research and commercial development programs with all major automotive and stationary fuel cell system manufacturers. Gore's experience, technical know-how, and capacity indicate that Gore is well suited to expedite the commercialization of the research, development, and demonstration results under this grant.

Gore has agreed that this waiver shall be subject to the march-in rights 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, Gore has agreed to the U.S. competitiveness provisions as attached to this Statement.

In brief, Gore has agreed that products embodying any waived invention shall be substantially manufactured in the United States, and that Gore will not license, assign, or otherwise transfer any waived invention to any entity unless that entity agrees to these same requirements.

Referring to item 10 of the waiver petition, Gore believes that competition and market concentration would not be affected by the granting of this waiver due to the number and size of competitors in this field. Specifically, Gore's competitors in the fuel cell industry including two major U.S. corporations, DuPont and 3M, and several major international companies, such as BASF, Inc., Asahi Glass Company, Asahi Chemical Company and Johnson Matthey, Inc. These competitors already have established intellectual property position in the field. Therefore, even with the granting of this waiver, the fuel cell industry should remain competitive.

Considering the foregoing, it is believed that granting this waiver will provide Gore with the necessary incentive to invest its resources in commercializing the results of the grant in a manner that will make the above technology available to the public in the shortest 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.

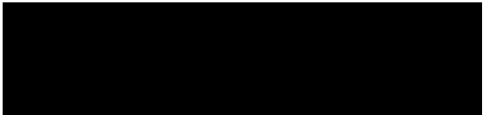


Glen R. Drysdale  
Patent Attorney  
Golden Field Office

Date: 7/28/10

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 determined above, and therefore the waiver is granted. This waiver shall not apply to any modification or extension of the grant, where through such modification or extension, the purpose, scope, or cost of the grant has been substantially altered.

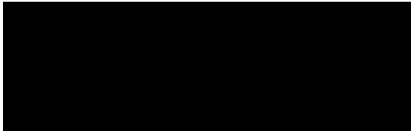
CONCURRENCE:



~~Richard W. Farmer~~ *Sunita Satyapal*  
Acting Program Manager  
Fuel Cell Technologies Program

Date: 10/14/10

APPROVAL:



~~John T. Lucas~~  
Acting Assistant General Counsel for  
Technology Transfer and Intellectual Property

Date: 10/19/2010

## **U.S. COMPETITIVENESS**

Gore 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 Gore can show to the satisfaction of DOE that it is not commercially feasible to do so. In the event 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. Gore further agrees to make the above condition binding on any assignee or licensee or any entity otherwise acquiring rights to any waived invention, including subsequent assignees or licensees. Should Gore or other such entity receiving rights in any waived invention undergo a change in ownership amounting to a controlling interest, then the waiver, assignment, license, or other transfer of rights in any waived invention is suspended until approved in writing by DOE.