

STATEMENT OF CONSIDERATIONS

REQUEST BY NUVERA FUEL CELLS, INC. (NUVERA) FOR AN ADVANCE WAIVER OF DOMESTIC AND FOREIGN PATENT RIGHTS UNDER DOE AWARD NO. DE-FG36-07GO17014; W(A) 2010-046

NUVERA has requested a waiver of domestic and foreign patent rights of the United States of America in all subject inventions arising from its participation under the above referenced grant entitled "Subfreezing Start/Stop Protocol for an Advanced Metallic Open-Flowfield Fuel Cell Stack" (referred to by NUVERA as "CIRRUS").

The objective of the project funded by the grant is to define combinations of enabling materials, fuel cell stack designs, and operating methods that enable a fuel cell stack to be repeatedly started up from a static subfreezing condition while respecting an auxiliary energy budget for doing so, in the interest of achieving technology targets consistent with the Department of Energy's goal of hydrogen-fueled vehicles capable of meeting real-world performance targets.

The period of performance of the grant is expected to be from August 2007 to July 2010. The total anticipated cost of the grant is \$7,131,000 with NUVERA providing \$2,160,512 as cost share funds for a cost share percentage of 30%. This waiver is contingent upon NUVERA maintaining, in aggregate, a cost share percentage of at least 30% over the course of the grant.¹

As set forth in its petition, NUVERA is a global leader in the advancement of hydrogen production and PEM fuel cell technologies. NUVERA and its precursor organizations have been working in these fields since 1992. More specifically, NUVERA has been investing in automotive fuel cell stack development for over a decade and its technology in this area reflects the state of the art. NUVERA has been working with several automotive original equipment manufacturers (OEMs) to encourage significant collaboration between NUVERA and the OEMs with the ultimate goal of technology placement in a commercial vehicle.


NUVERA 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, NUVERA has agreed to the modified U.S. competitiveness provision as attached to this Statement. In brief, NUVERA has agreed that the manufacturing processes related to the final assembly, conditioning, and shipping of any products embodying any waived invention or made through the use of any waived invention shall occur substantially in the United States, and that NUVERA 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, several stack developers, including NUVERA, have publicized their ability to start their stacks from cold conditions. The corresponding operating protocols will likely be customized and optimized for the different stack architectures. Therefore, the operating protocols developed by NUVERA for NUVERA's stack

¹ According to the last financial status report from Nuvera, Nuvera has contributed \$2,302,492 in cost share or 31.66%.

architecture should not interfere with the other stack developers' ability to develop protocols for their stack architectures. However, the granting of the waiver should help NUVERA remain competitive with the other stack developers helping to increase the overall competition in the marketplace.

Considering the foregoing, it is believed that granting this waiver will provide NUVERA 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: 10/6/10

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 agreement has been substantially altered.

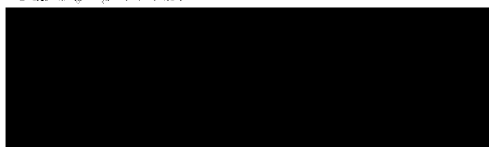
CONCURRENCE:



Sumta Satyapal
Program Manager
Hydrogen, Fuel Cells & Infrastructure
Technologies

Date: 11/15/10

APPROVAL:



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

Date: 11/15/2010

U.S. COMPETITIVENESS

The Contractor agrees that the manufacturing processes related to the final assembly, conditioning, and shipping of any products embodying any waived invention or made through the use of any waived invention shall occur substantially in the United States, unless the Contractor 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. The Contractor 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 the Contractor 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.