

STATEMENT OF CONSIDERATIONS

Request by Whirlpool Corporation for an Advance Waiver of Domestic and Foreign Invention Rights under DOE Cooperative Agreement No. DE-EE0003910; W(A)-2010-063, CH-1584

The Petitioner, Whirlpool Corporation (Whirlpool) was awarded this cooperative agreement for the performance of work entitled "Advanced Sequential Dual Evaporative Cycle for Refrigerators." The goal of the cooperative agreement is to produce residential refrigeration units that operate with higher efficiency than current refrigerators and to implement such energy efficient technologies into refrigerators at a cost of less than \$100 to the consumer. Whirlpool projects that refrigerators conceived under this project may deliver a potential reduction of .45 quads of energy per year out of the 1.8 quads of energy per year used by current refrigerators. The waiver is intended to apply only to Whirlpool's employee subject inventions.

The total estimated cost of the cooperative agreement is \$3,983,600 million, with the DOE share being \$2,042,700 or 52%. Cost sharing of the project by Whirlpool is \$1,920,900 million, or 48%. The period of performance of the agreement is from October 1, 2010 to September 30, 2011.

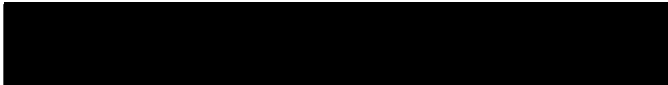
In its response to questions 5 and 6 of the attached waiver petition, Whirlpool has described its technical competence in the field of refrigerator appliance technologies. Specifically, Whirlpool states that it is a worldwide leader in the manufacture and development of appliances to include refrigerators, washing machines, and dishwashers. Its R&D in these technologies had led to refrigerators that enable the reduction of energy consumption in refrigerators, and a list of representative patents is listed in Appendix B to Whirlpool's petition. Whirlpool states it has the largest U.S. market share for residential refrigerator sales and that it produces the most residential refrigerators in the U.S. Whirlpool has demonstrated its technological expertise in the area of refrigerator appliance technologies.

From its response to question 10, Whirlpool states that grant of the waiver will not unfairly affect competition and market concentration. The market for refrigerators includes an Energy Star standard, and the technology pursued under this project is one of many ways to produce a refrigerator with a high Energy Star rating. Whirlpool further states that since energy-efficient refrigerators are currently available, the introduction of refrigerators made under this project will not unfairly affect competition and market concentration. It is therefore unlikely that competition will be adversely effected by grant of the waiver.

Whirlpool has taken exception to DOE's standard U.S. Competitiveness clause. A modified U.S. Competitiveness clause has been proposed by Whirlpool, the terms of which have been reviewed and agreed to by the undersigned Patent Counsel and EERE Program Official. The subject cooperative agreement will be modified to add the Patent Rights--Waiver--Modified- clause in conformance with 10 CFR 784.12. This waiver clause will thus include a paragraph entitled U.S. Competitiveness, Modified, in which Whirlpool has provided agreement that provides a net benefit to the U.S. economy should it not be able to manufacture in the United States (attached hereto). Additionally, Whirlpool agrees not to transfer subject inventions to any other entity unless that other entity agrees to these same requirements.

Considering the foregoing, it is believed that granting the waiver will provide the Petitioner with the necessary incentive to invest resources in the commercialization of the results of the agreement in a fashion which will make the agreement's benefits available to the

public in the shortest practicable time. In addition, it would appear that grant of the above requested waiver would not result in an adverse effect on competition nor result in excessive market concentration. Therefore, 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, as set forth above, be granted.

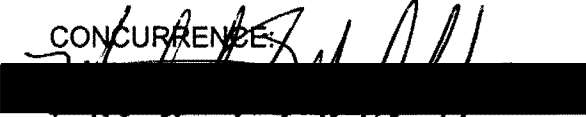


Mark P. Dvorscak
Deputy Chief Counsel
Office of Intellectual Property Law

Date December 1, 2010

Based on the foregoing Statement of Considerations and the representations in the attached waiver petition, it is determined that the United States and the general public will best be served by a waiver of rights and consent to assignment of the scope described above, and therefore the waiver is granted. This waiver shall not apply to any modification or extension of this agreement, where through such modification or extension, the purpose, scope, or cost of the agreement is substantially altered.

CONCURRENCE:



Roland Risser
Acting Program Manager
Office of Building Technologies Program,
EE-2J

Date 4/7/11

APPROVAL:



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

Date 4/11/2011

(t) U.S. Competitiveness, *modified, DE-EE0003910, Whirlpool Corporation, W(A) 2010-063*

The Contractor agrees that any products or processes embodying any waived invention or practiced through the use of any waived invention will be manufactured or practiced substantially in the United States unless the Contractor can show to the satisfaction of the DOE that it is not commercially practicable to do so. It is recognized, in part based on Attachment A to this petition, that it may not be commercially practicable to direct manufacture of any such subject inventions in the United States. In the area of a refrigerator unit, the use of energy savings technology will result, contributing to the creation of technologies that contribute to and enhance the pathway to net-zero energy homes. Sales of refrigerators incorporating waived inventions will benefit the U.S. economy through the sale, distribution and maintenance of such units. In the event that the Contractor cannot comply with the foregoing, 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, or the Contractor will agree to license (nonexclusive at a reasonable royalty rate) the waived invention to a manufacturer who can comply with this clause. 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. DOE written approval, which shall not be unreasonably withheld, is required to maintain the waiver, assignment, license or other transfer of rights, should the Contractor undergo a change in ownership amounting to a controlling interest.