

STATEMENT OF CONSIDERATIONS

Request by Applied Materials, Inc., for an Advance Waiver of Domestic and Foreign Invention Rights under DOE Cooperative Agreement No. DE-EE0003838, W(A) 2011-002, CH-1600

The Petitioner, Applied Materials, Inc., (Applied) was awarded the subject cooperative agreement with DOE for the performance of work entitled, "Recovery Act: Development of High Rate Coating Technology for Low-Cost Electrochromic Dynamic Windows." The objective of the work are to improve the energy efficiency of residential and commercial building windows and envelope components, including to produce fundamental window and day lighting technology improvements for net-zero energy homes and buildings. Applied will conduct research in the area of dynamic windows. Dynamic windows will play a critical part in obtaining the program's goals because these windows offer year-round energy savings. Further details of the program objectives are found in response to question 2 of the attached waiver petition. The waiver will apply only to inventions made by Applied employees.

The work under this agreement is expected to take place from September 1, 2010 through March 31, 2012. The total amount of the contract is \$3,999,300, with Applied providing \$1,999,815 or 50% cost share. DOE is providing the remaining 50% cost share or \$1,999,815.

In its response to question 5 of the attached waiver petition Applied has described its technical competence in the field of substrate processing equipment to the semiconductor, flat panel, and solar industries. Applied states it has substantial experience and expertise regarding organic light-emitting diodes (OLEDs) manufacturing systems, roll-to-roll coating systems (such as for packaging and flexible electronics application), and energy efficient glass/window coating systems (such as for packaging and flexible electronics application), and energy efficient glass/window coating systems. Applied has also conducted significant research and development in areas related to glass processing and EC HVM systems. Applied states it has acquired Komatsu, Limited's 50% interest in the parties' joint venture (Applied Komatsu Technology Incorporated (AKT)). AKT has provided a listing of its U.S. Patents for Electrochromics. Applied's response demonstrates its technical competency in the field of substrate processing equipment.

In its response to question 10 of the attached waiver petition, Applied states that grant of the waiver will not likely have an effect on competition and market concentrations, nor place Applied in a preferred or dominant position. There is substantial competition and R&D related to advanced manufacturing and process systems. Applied has competing vendors that are developing their unique manufacturing designs. Applied further states that the waiver is essential to Applied's ability to continue to compete effectively to achieve the commercialization of its dynamic window technology. Therefore grant of the waiver will have a positive effect on competition and market concentration.

The subject contract will be modified to add the Patent Rights--Waiver clause in conformance with 10 CFR 784.12, wherein Applied has agreed to the provisions of 35 U.S.C §§ 202, 203, and 204. This waiver clause will also include a paragraph entitled U.S. Competitiveness, in which Applied agrees to substantial U.S. manufacture of subject inventions (attached hereto). Additionally, Applied 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.

[Redacted]

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

Date: January 11, 2011

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 of the scope described, 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:

[Redacted]

Roland Risser
Office of Energy Efficiency and
Renewable Energy
Office of Building Technology, EE-2J

Date [Redacted]

APPROVAL:

[Redacted]

John T. Lucas, Acting
Assistant General Counsel for
Technology Transfer and
Intellectual Property, GC-62

Date [Redacted]

(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.