

STATEMENT OF CONSIDERATIONS

REQUEST BY DELPHI AUTOMOTIVE SYSTEMS, LLC (DELPHI) FOR AN ADVANCE WAIVER OF DOMESTIC AND FOREIGN PATENT RIGHTS UNDER DOE AWARD NO. DE-EE0000478; W(A) 2011-037

DELPHI 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 cooperative agreement entitled "Solid Oxide Fuel Cell Diesel Auxiliary Power Unit." The cooperative agreement was awarded under the DE-PS36-09GO98009 Research Development of Fuel Cell Technologies for Automotive Stationary and Portable Power Applications Funding Opportunity Announcement. PACCAR and TDA Research are also performing work under the cooperative agreement. However, this waiver only applies to inventions of DELPHI.

The objective of the project funded by the cooperative agreement is to develop and demonstrate a 3kW Solid Oxide Fuel Cell (SOFC) Auxiliary Power Unit (APU) for heavy duty commercial class 8 trucks. The intent of the SOFC APU is to utilize diesel fuel from a truck's main tank to generate electricity to power equipment in the truck's cab, including air conditioning, television, refrigerator and microwave. Currently, drivers and fleets power those accessories by idling their main engines or with diesel engine APUs.

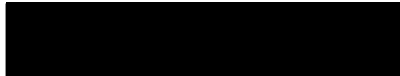
The total anticipated cost of the cooperative agreement is \$4,800,000 with DELPHI, PACCAR and TDA Research providing \$2,400,000 as cost share funds for a cost share percentage of 50%. More specifically, the cost of the cooperative agreement contributable to work performed by DELPHI is \$4,035,202 with DELPHI providing \$2,017,601 for a cost share percentage of 50%. This waiver is contingent upon DELPHI maintaining, in aggregate, a cost share percentage of 50% or more over the course of the cooperative agreement.

DELPHI is a leading global supplier of electronics and technologies for automotive, commercial vehicle and other market segments. As set forth in its petition requesting this waiver, DELPHI is an active industry team member in DOE's Solid State Energy Conversion Alliance program, has proven to be a technical and manufacturing leader in the development of SOFCs, and has nearly two hundred U.S. patents and pending patent applications. DELPHI has successfully demonstrated its SOFC APU at a public forum. At the forum, the SOFC utilized diesel fuel from a truck's main tank to generate electricity to power the equipment in the truck's cab.

The 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, DELPHI has agreed to the U.S. competitiveness provisions as attached to this Statement. In brief, DELPHI has agreed that products embodying any waived invention or made through the use of any waived invention shall be substantially manufactured in the United States, and that DELPHI 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, in granting this waiver, DELPHI does not believe that this waiver will give DELPHI a dominant position in this field due to the several other global companies developing its own SOFC technologies.

Considering the foregoing, it is believed that granting this waiver will provide DELPHI with the necessary incentive to invest its resources in commercializing the results of the cooperative agreement 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 approved.


Glen R. Drysdale
Patent Attorney
Golden Field Office


Date: 5/19/11

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 approved. This waiver shall not apply to any modification or extension of the cooperative agreement, where through such modification or extension, the purpose, scope, or cost of the cooperative agreement has been substantially altered.

CONCURRENCE:

APPROVAL:


Sunita Satyapal
Program Manager
Fuel Cell Technologies


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

Date: 5/27/11

Date: 5/31/2011

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 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.