

STATEMENT OF CONSIDERATIONS

REQUEST BY XANTREX TECHNOLOGY INC. (XANTREX) FOR AN ADVANCE WAIVER OF DOMESTIC AND FOREIGN PATENT RIGHTS UNDER DOE COOPERATIVE AGREEMENT NO. DE-FC36-07GO17043; W(A)2008-010

The Petitioner, Xantrex, has requested a waiver of domestic and foreign patent rights for all subject inventions arising from its participation under the above referenced cooperative agreement entitled “Grid-Competitive Residential and Commercial Fully Automated PV Systems Technology - An SAITPP Project of SunPower Corporation.” This agreement is part of DOE’s Solar America Initiative Technology Pathways Partnerships program. Petitioner is a subawardee of SunPower, which is not subject to this waiver request because it petitioned for, and received separately, its own patent waiver.

The objective of the agreement is that Petitioner will work as subcontractor to SunPower to directly address a number of the Tier 2 Technical Improvement Opportunities (TIOs) related to inverters, as set forth in DOE’s Solar Energy Technologies Program (SETP) plan. In particular, through a multi-disciplinary approach, Petitioner will extend expected inverter life to 15 years with minimal cost increases. This improvement in reliability will lead to a proportional reduction in the inverter related component of LCOE.

The total anticipated cost of the agreement with SunPower is \$52,647,068, with Petitioner and its partners providing 53.08 % cost share, totaling \$27,947,068. Petitioner is providing \$982,850 in cost share, which is 50% of the total subagreement amount of \$1,965,700¹. This waiver is contingent upon the Petitioner maintaining the above cost sharing percentage over the course of the agreement.

Petitioner is a manufacturer of inverters for PV application and in this program will improve the performance, reliability and lifetime and lower the cost of energy produced by PV inverter based systems. Petitioner is a publicly traded Canadian company, and is the leading North American based manufacturer of inverters for PV applications with over 15 years experience in development and manufacture of PV power conversion products. Petitioner is unique as it has commercialized products in all solar segments; single phase grid tie, three phase grid tie, battery based grid tie and off grid and has deployed over 150 MW of grid connected PV inverters in the US market alone with over a 70% share of the US three-phase grid-tie segment. Petitioner has the proven capability to successfully develop and commercialize new product designs on a global basis. Petitioner designs, manufactures, and markets a wide range of electronic power conversion products with over 58% of overall sales coming from renewable energy products. Sales cover a broad range of markets around the world, with approximately 59% arising in the U.S., 10% within Canada, and 31% from international locations.

¹These figures are slightly different from those stated in the petition because the petition was based on cost estimates. The figures stated herein are based on the final agreement.

The work under this subagreement will build upon Petitioner's extensive investment in its development of PV power conversion and control products and technology. With an R&D staff of over 150 people in the U.S. and Canada, there are ample resources to draw upon to fully staff this three-year program. The major portion of Petitioner's R&D effort will continue to be focused on renewable energy products, and this subagreement fits well within Petitioner's strategic plans for product development in this area. Granting this waiver will ensure that Petitioner can fully develop the technology into successful commercial products.

Petitioner 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, Petitioner has agreed to the U.S. competitiveness provisions as attached to this Statement. In brief, Petitioner has agreed that products embodying intellectual property developed under this agreement shall be substantially manufactured in the United States, and that Petitioner 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, the PV inverter market is highly competitive, with relatively minor technology and performance differences driving the success of the market leaders. Granting this waiver will help ensure that any new developments achieved under this program are brought to the commercial marketplace by Petitioner, which will help drive continued technology development by all competitive players. Granting of the waiver will also allow Petitioner to more freely publish technical papers and patents that can increase the knowledge base for the entire PV industry.

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

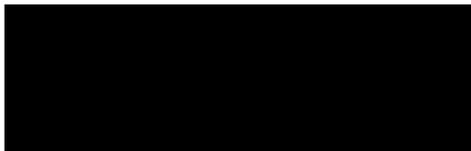


Julia Cook Moody
Patent Attorney
Golden Field Office

Date: July 29, 2008

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 agreement, where through such modification or extension, the purpose, scope, or cost of the agreement has been substantially altered.

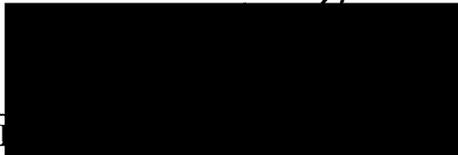
CONCURRENCE:



John Lusnitsky, Program Manager
Solar Energy Technology
EE-3A

Date: 8-2-08

APPROVAL:



Assistant General Counsel for Technology
Transfer and Intellectual Property

Date: 8-07-08

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.