

STATEMENT OF CONSIDERATIONS

PETITION FOR ADVANCE WAIVER OF PATENT RIGHTS BY DOW CORNING CORPORATION ("DOW-CORNING") UNDER A SUB-AWARD OF AWARD NO. DE-FG36-08GO18068 BETWEEN UNIVERSITY OF DELAWARE AND DOE; W(A)-09-019; CH-1486

The Petitioner, DOW-CORNING, has requested a waiver of domestic and certain foreign patent rights for all subject inventions that may be conceived or first actually reduced to practice by DOW-CORNING arising from its participation under a sub-award to the above referenced award entitled "Development of a Low Cost Insulated Foil Substrate for Cu(InGa)Se₂ Photovoltaics"

The objective of the subaward is (1) the evaluation of various stainless steel silicon based resin (SBR) coating combinations and the optimization of such combinations for use as a photovoltaic substrates and (2) delivery of SBR coated stainless steel samples and rolls to the University of Delaware, Institute of Energy Conversion (IEC). The current activity is in support of DOE's Solar America Initiative.

The total cost of the sub-award is approximately \$445,408 with the Petitioner providing about 80% cost sharing. This waiver is contingent upon the Petitioner maintaining, in aggregate, the above cost sharing percentages over the course of the award.

As noted in its waiver petition, Petitioner is a world leader in organo-silicone resins and related technologies. DOW-CORNING invests significant amounts of its profits each year into research and development of technologies related to photovoltaics (PV) including several ongoing projects with the DOE. DOW-CORNING is a recognized leader in innovation and product development of silicon-based sealants and other materials for PV based cells.

Considering Petitioner's technical expertise and significant investment in this technology including sizable cost sharing in this award, it is reasonable to conclude that Petitioner will continue to develop and ultimately commercialize the technology and products which may arise from this award.

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 attached U.S. Competitiveness provision paragraph (t). In brief, Petitioner has agreed that products embodying a waived invention or produced through the use of a waived invention will be manufactured substantially in the United States unless the Petitioner can show to the satisfaction of the DOE that is not commercially feasible to do so.

Referring to item 10 of the waiver petition, granting this waiver is not anticipated to have any adverse impact on competition. If anything, the technology forming the subject matter of the collaboration can be expected to stimulate competition. DOW-

CORNING has an extensive history of partnership and licensing arrangements with companies in various commercial markets.

Considering the foregoing, it is believed that granting this waiver will provide Petitioner with the necessary incentive to invest its resources in the commercialization of the results of the award in a fashion which will make the above technology available to the public in the shortest practicable 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.

/Brian J. Lally/


Brian J. Lally
Assistant Chief Counsel
Intellectual Property Law Division
DOE Chicago Office


Date: April 14, 2009

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 described above, and therefore the waiver is granted. This waiver shall not apply to any modification or extension of the award, where through such modification or extension, the purpose, scope or cost of the award has been substantially altered.

CONCURRENCE:

APPROVAL:


John Lushetsky
Program Manager
Office of Solar Energy
Technology Program, EE-2A


Assistant General Counsel
for Technology Transfer and
Intellectual Property

Date: 2-8-10

Date: 2-18-10

WAIVER ACTION - ABSTRACT
W(A)-09-019

<u>REQUESTOR</u>	<u>CONTRACT SCOPE</u>	<u>RATIONALE FOR DECISION</u>
DOW- CORNING	The objective of the subward is (1) the evaluation of various stainless steel silicon based resin (SBR) coating combinations and the optimization of such combinations for use as a photovoltaic substrates and (2) delivery of SBR coated stainless steel samples and rolls to the University of Delaware, Institute of Energy Conversion (IEC). The current activity is in support of DOE's Solar America Initiative.	80% Cost Sharing

(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.