

## STATEMENT OF CONSIDERATIONS

### REQUEST BY MICRON TECHNOLOGY, INC. FOR AN ADVANCE WAIVER OF DOMESTIC AND FOREIGN PATENT RIGHTS UNDER DOE GRANT NO. DE-EE0000141; W(A) 2009-062

The Petitioner, Micron Technology, Inc., has requested a waiver of domestic and foreign patent rights for all subject inventions arising from its participation under DOE Grant No. DE-EE00000141 awarded to the State of Idaho under DOE's State Energy Program. The Petition is a sub-awardee of Idaho. Specifically, the Petitioner is receiving a \$5 million dollar grant from the State of Idaho, which received the funds from DOE under SEP.

The purpose of the sub-award to the Petitioner is to provide assistance in the creation of a pilot light-emitting diodes ("LED") production line and the production of LED prototypes in the United States. Specifically, the Petitioner's goal is to develop LED manufacturing capabilities and know-how that will allow it to successfully enter into the LED industry. According to the Petitioner, the LED industry in the U.S. is dangerously behind the rest of the worlds and that, without a "game-changing investment," the LED industry will continue to decrease. The Petitioner's strategy is to secure a competitive U.S. base within the LED industry by developing cost effective, innovative and robust products and protecting those products and other differentiating technologies through a strong patent portfolio.

Prior to the sub-award, the Petitioner did not have a commercial position in the LED industry. However, the Petitioner is one of the world's leading semiconductor companies. The Petitioner is also a technology innovator as evident by its leading position in the number and quality of patents it holds as further described in the petition. The Petitioner believes that there are significant synergies between its memory products and LED technology and productions such that its significant semiconductor experience, know-how, and patent portfolio will allow it to successfully develop LED manufacturing and products.

In addition to the available technology and know-how, the Petitioner is making a substantial financial investment into this project of developing LED manufacturing and products. To date, the Petitioner has invested over \$24 million in equipment and expenses and has over 30 highly-compensated engineers and several hundred people in technical support roles to this project. Over \$150 million is estimated to be spent on this project by the Petitioner within a span of three years.

Referring to Item 10 of the waiver petition, granting this waiver is not anticipated to create an anticompetitive environment. It is believed that the opposite is correct, i.e., the granting of waiver would assist in developing a more competitive LED industry. Although the LED industry is rapidly growing, the competition with the LED industry has been concentrating. A waiver would help to foster an additional competitor, the Petitioner, into the industry. Moreover, with the Petitioner's well-established market presence and potential synergies in its sales channels, the Petitioner should be able to have a significant and positive impact for enhancing competition in the international marketplace and driving further technical innovation and cost reductions for businesses and consumers.

As noted above, the sub-award to the Petitioner is through the State Energy Program under the 2009 Recovery Act. Specifically, the State of Idaho received approximately \$35 million dollars under State Energy Program. From this allotment, Idaho granted the Petitioner five million dollars for this project of developing an LED manufacturing and products in Idaho and to support local job creation. Under the State Energy Program, there is no cost share requirement. Although cost share is not required, it is evident that the Petitioner is investing or intends to invest significant amounts of its own financial resources. Moreover, this waiver shall be contingent upon the Petitioner investing at least five million dollars of private funding into the project, which is equivalent of the Petitioner having a 50% cost share.

The 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, the Petitioner has agreed to the U.S. competitiveness provisions as attached to this Statement. In brief, the Petitioner has agreed that products embodying intellectual property developed under this agreement shall be substantially manufactured in the United States, and that the Petitioner will not license, assign, or otherwise transfer any waived invention to any entity unless that entity agrees to these same requirements.

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

  
Glen R. Drysdale  
Patent Attorney  
Golden Field Office

Date: 4/27/10

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.

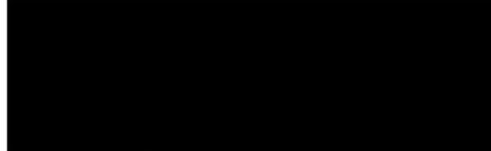
CONCURRENCE:



Claire Johnson  
Acting Program Manager  
Weatherization and Intergovernmental Program

Date: 5/11/10

APPROVAL:



Paul J. Cottrell  
Assistant General Counsel for Technology  
Transfer and Intellectual Property

Date: 5/14/10

## **U.S. COMPETITIVENESS**

The Petitioner 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 Petitioner 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 Petitioner 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 Petitioner 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.