

STATEMENT OF CONSIDERATIONS

CLASS WAIVER FOR INDUSTRIAL USERS OF THE OAK RIDGE LEADERSHIP COMPUTING FACILITY UNDER DOE'S NATIONAL CENTER FOR COMPUTATIONAL SCIENCES INDUSTRIAL PARTNERSHIP PROGRAM; W(C)2009-002 [ORO-797]

Under the Office of Science of the U.S. Department of Energy's (DOE) National Center for Computational Sciences (NCCS) Industrial Partnership Program, DOE is allocating computing time on the Oak Ridge Leadership Computing Facility (OLCF) at Oak Ridge National Laboratory (ORNL) to help researchers in U.S. industry working on projects for developing innovative products and services for competitive gain.

The NCCS Industrial Partnership Program is a subset of the OLCF Director's Discretionary Program and is designed to offer companies an opportunity to accelerate their problem solving capabilities. Industry will be able to address strategic problems and enhance its competitive position by accessing the leadership computational capability of the OLCF. As problem solving by industry is advanced under this Program, the nation will realize an increased return on its investment in OLCF. The NCCS Industrial Partnership Program is complementary to DOE's INCITE Program and will provide an expanded opportunity for companies, which may not have qualified or applied under the INCITE Program, to benefit from access to the OLCF's problem solving computational resources. Initially, a limited number of companies will be selected under a one-year pilot for a maximum of three projects, with review of the projects during operational assessment. The one-year pilot will commence with the approval of the first proposal under the Industrial Partnership program.

Because the Industrial Users would be executing user agreements with UT-Battelle, LLC, as operator of the OLCF under its contract with DOE to operate ORNL, and such user agreements are not considered "funding agreements" under Public Law 96-517, the user agreements would normally be covered by the existing Proprietary and Non-proprietary Class Waivers.

Under the Class Waiver W(C)2008-005 for proprietary users of designated user facilities (limited to use of laboratory equipment by the user), users fully fund their own experiments and own all of the resulting inventions and data, with no Government license or march-in rights in the inventions, and no obligations to publicly disclose the resulting data, except that the user must provide DOE and the Laboratory Contractor a non-proprietary report describing the work performed. That proprietary user class waiver was intended to also be available to users who fully fund the work they perform at supercomputer user facilities, at the discretion of the participating supercomputer user facilities, where no collaboration with the Laboratory scientists was contemplated.

Where full cost recovery was not intended, then the Nonproprietary Class Waiver W(C)2008-003 (which permitted collaborative work with Laboratory researchers) applied to inventions and data, and that waiver required, as a matter of policy, the Government license, standard march-in rights, U.S. Preference, unlimited rights for the Government in data produced under the user agreement, as well as the right to ensure that the results of the research can be published.

The present class waiver will apply to Industrial Users selected under the Industrial Partnership Program and is intended to permit industrial users to perform non-collaborative proprietary research at the OLCF without full cost recovery. Thus, neither the above proprietary (requiring full cost recovery) nor non-proprietary (not applicable to proprietary research) class waivers apply. Likewise, the class waiver under the INCITE Program does not apply since the Industry Partnership Program is not part of the INCITE Program. Inventions and data produced under the user agreements will be owned by the User with no Government license, U.S. Preference or march-in rights in user inventions. However, UT-Battelle and the User will be required to agree on a meaningful list of research results and data generated during the work performed under the user agreement that will be publicly released. There will be no other obligation to publish any other data produced by the User. This is fully consistent with the latest class waiver applicable to the INCITE Program.

As considered in the class waiver, W(C) 2006-003, most recently granted in the INCITE Program, experience with other user agreements supports the premise that few if any new inventions will be made by Industrial Users of OLCF, such that foregoing any of these rights by the Government still meets the objectives of DOE's Patent Waiver Regulations, 10 CFR 784.

This class waiver will apply to inventions of the Industrial Users conceived or first actually reduced to practice in the course of or under the user agreement for use of the OLCF under the Industrial Partnership Program including extensions of the Program, if any, beyond the initial one-year pilot. This waiver does not cover inventions of ORNL employees which are governed under the terms of UT-Battelle's M&O contract with DOE, nor will it apply when the Industrial User is operating under an agreement with DOE or another federal agency that requires a different disposition of patent rights.


OLCF has been established for use in computationally intensive large-scale research projects that can make high-impact scientific and industrial advances in fields not necessarily of primary interest to DOE and was established not only for utilization by DOE, but also for advancing research by offering its unique capabilities to the research efforts of industry. The grant of this class waiver, therefore, will not only be consistent with legislative intent of Bayh-Dole, but will also reflect the guidance provided to DOE in Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974, as amended (42 U.S.C.5908), as implemented by DOE regulations governing the granting of patent waivers, in the 1983 Presidential Memorandum on Government Patent Policy, and Executive Order 12591.

It is within DOE's programmatic purposes under the Industrial Partnership Program to encourage widespread utilization of supercomputer user facilities in the support of computer intensive research by industry. It is believed that, by not requiring full-cost recovery and providing Users with exclusive rights to user inventions (without Government rights) made by the Industrial Users of the OLCF, this waiver would best encourage such utilization. Accordingly, this waiver is consistent with the objectives and considerations of DOE's patent waiver regulations.

In view of the fact that this waiver will initially apply to a limited number of Industrial Users selected under the Industrial Partnership Program, there appears to be little chance the waiver would cause an adverse effect on competition. Accordingly, in view of the objectives to be attained and the factors to be considered under DOE's statutory waiver policy, all of which have been considered, it is believed that a waiver of U.S. and foreign patent rights to Industrial Users participating in the Industrial Partnership Program as described above, will best serve the interests of the United States and the general public. It is therefore recommended that the waiver be granted.



Emily G. Schneider
Assistant Chief Counsel for Intellectual Property
Oak Ridge Operations Office



Date

Pursuant to the authority provided in Section 152 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2182), Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974, as amended (42 U.S.C. 5908), and the implementing regulations promulgated there under for waivers of patent rights, it is concluded that it is in the best interests of the United States and the general public to grant a waiver of patent rights to the class represented by Industrial Users under the Industrial Partnership Program. Therefore, it is ordered that a waiver of U.S. and foreign patent rights to the class of Industrial Users described in the foregoing Statement of Considerations is hereby granted. The waiver is limited to inventions of the Industrial Users which are conceived or first actually reduced to practice in the course of or under an agreement for the use of the supercomputing facilities for the Industrial Partnership Program, and is subject to all the limitations, terms, and conditions set forth in the foregoing Statement of Considerations. The Assistant General Counsel for Technology Transfer and Intellectual Property shall be responsible for issuing instructions for implementation of this waiver in accordance with DOE regulations for the waiver of patent rights.

Concurrence:



Michael R. Strayer
Associate Director
Office of Advanced Scientific Computing
(SC-21)

8/3/09
Date

Approval



Paul A. Gottlieb
Assistant General Counsel
for Technology Transfer and Intellectual
Property

8-63-09
Date