

STATEMENT OF CONSIDERATIONS

REQUEST BY STUART ENERGY USA FOR AN ADVANCED WAIVER OF DOMESTIC AND FOREIGN INVENTION RIGHTS UNDER COOPERATIVE AGREEMENT NO. DE-FC36-97GO10221,A001, W(A)-98-017, CH-0983

The Petitioner, Stuart Energy USA, a wholly owned subsidiary of Electrolyser Corporation Ltd. of Toronto, Canada, was awarded this cooperative agreement in response to a proposal to build and supply working models and prototypes of hydrogen fuel appliances based on water electrolysis.

The initial phase of this work is being performed under DOE Contract No. DE-FC36-97GO10221. Stuart Energy USA is a large business and has requested a waiver of domestic and foreign patent rights for all subject inventions made by its employees under this agreement.

As brought out in Stuart Energy USA's response to question 3, the total estimated cost of the project is \$5,386,656 with DOE providing \$2,324,023. Stuart Energy USA's share of the costs is approximately 57%.

In response to question 5 of its petition, Stuart Energy USA as a part of the Electrolyser Group, states that it is a world leader in packaged hydrogen supply systems. Numerous patents and publications have placed Stuart Energy USA to the forefront of the emerging hydrogen market especially in the area of transportation fuels for new generation vehicles including fuel cell powered buses.

In response to question 9, Stuart Energy USA states that commercialization will require an ongoing program to attract additional private venture risk capital. Patent ownership is an important consideration to potential investors. Approval of the advanced waiver petition would strengthen Stuart Energy USA's patent portfolio and provide an additional incentive for investment and commercialization of this technology by private investors. In this connection, it should be noted that grant of the waiver is not expected to have any adverse effect on competition nor result in an excessive market concentration.

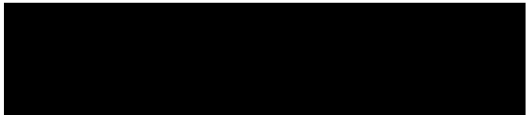
The Petitioner has agreed to the standard patent waiver provisions including march in rights, U.S. preference, and U.S. Government license as set out in 35 U.S.C. § 202-204. Additionally, the Petitioner has agreed that products embodying any waived invention or produced through the use of waived invention will be manufactured substantially in the United States unless the recipient demonstrates to the satisfaction of DOE, that it is not commercially feasible to do so, as well as the usual background patent and third party data licensing provisions.

Considering the foregoing, it is believed that granting a waiver will provide the Petitioner with the necessary incentive to invest its resources in the commercialization of the results of the agreement in a fashion which will make the agreement's benefits available to the public in the shortest practical time. Therefore, 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, as set forth above, be granted.



Thomas G. Anderson
Assistant Chief Counsel
Office of Intellectual
Property Law

Date: 12/4/98

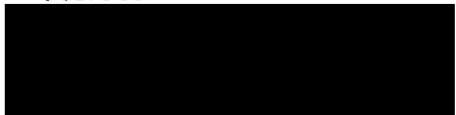


Joy Alwan
Patent Attorney
Office of Intellectual
Property Law

Date: 4 Dec 98

Based on the foregoing Statement of Considerations and the representations in the attached waiver petition, it is determined that the United States and the general public will best be served by a waiver of rights of the scope described above, and therefore the waiver is granted. This waiver shall not apply to any modification or extension of this agreement, where through such modification or extension, the purpose, scope, or cost of the agreement is substantially altered.

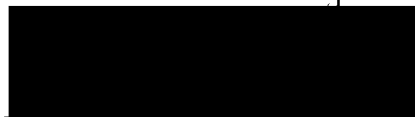
CONCURRENCE:



Neil Rossmeissle
Hydrogen Program Manager
EE-13

Date: 6/2/99

APPROVAL:



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

Date: 6-9-99

WAIVER ACTION - ABSTRACT

REQUESTOR: Stuart Energy USA
DE-FC36-97G010221

CONTRACT SCOPE OF WORK: Build and supply working models and prototypes of hydrogen fuel appliances based on water electrolysis.

RATIONAL FOR DECISION: Granting of the waiver will provide the incentive to commercialize the inventions in a fashion which will benefit the public in the shortest practical time.

DISPOSITION: