STATEMENT OF CONSIDERATIONS

Request by General Electric Global Research Center, for an Advance Waiver of Domestic and Foreign Invention Rights under DOE Cooperative Agreement No. DE-FC26-03NT41945 W(A)-04-003, CH-1174

The Petitioner, General Electric Global Research Center (GE GRC), was awarded this cooperative agreement for the performance of work entitled, "Novel Nanophosphors for High-Efficiency Fluorescent Lamps". The purpose of the cooperative agreement is to reduce lighting energy use with concurrent reduction in pollution from fossil fuel power plants. This will be achieved by developing advanced phosphor systems, containing nanophosphors (NCPs), aimed at improving the 185nm conversion efficiency of the mercury discharge in linear fluorescent lamps. These novel phosphor systems will increase the efficiency of fluorescent lamps by up to 32%.

The total estimated cost of the cooperative agreement is $3,179,360 with the DOE share being $2,007,805 or 63%, and the petitioner's share being $1,171,555, or 37%. The period of performance is three years, from September 30, 2003 to September 30, 2006.

In its response to questions 5 and 6 of the attached waiver petition, GE GRC has described its technical competence in the field of lamps, novel phosphors, and nanotechnology. GE GRC is one of the three largest manufacturers of lmaps in the world. It is a world leader in the lamp business and has extensive expericence in the manufacrue of lamp phosphors and other specialty chemicals used in the worldwide production of GE lamps, as well as external markets. A representative sample of pertinent patents and publications relevant to this technology is attached to the waiver petition as Appendix A. GE GRC's response demonstrates its technical competency in the field of phosphors and fluorescent lamps.

In its response to questions 9 and 10 of the attached waiver petition, GE GRC states that grant of the waiver will promote the development and commercial utilization of subject inventions by GE Consumer Products. Grant of the waiver will encourage the business investments necessary for commercialization. In addition, since GE GRC is one of three large lamp manufacturers in the world, with the other two holding strong technical and competitive positions of their owen, grant of the wavier will not create an anticompetitive position for GE. Therefore grant of the waiver will have a positive effect on competition and market concentration.

The subject cooperative agreement will be modified to add the Patent Rights--Waiver clause in conformance with 10 CFR 784.12, wherein GE GRC has agreed to the provisions of 35 U.S.C §§ 202, 203, and 204. This waiver clause will also include a paragraph entitled U.S. Competitiveness, in which GE GRC agrees to substantial U. S. manufacture of subject inventions (attached hereto). Additionally, GE GRC agrees not to transfer subject inventions to any other entity unless that other entity agrees to these same requirements. The petitioner has further agreed to modification of the data clause of the subject cooperative agreement (48 C.F.R. 952.227-14) by adding paragraph (k), Alternative VI, concerning contractor licensing of data.

Considering the foregoing, it is believed that granting the waiver will provide the Petitioner with the necessary incentive to invest 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 practicable time. In addition, it would appear that grant of the above requested waiver would not

result in an adverse effect on competition nor result in excessive market concentration. 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.

Mark P. Dvorscak

Mark P. Dvorscak
Assistant Chief Counsel
Office of Intellectual Property Law

March 1 2004
Date

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:

Michael J. McCabe, EE-2J
Program Manager, Building Technologies
Office of Energy Efficiency and
Renewable Energy

Date: March 25, 2004

APPROVAL

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

Date: 3/31/04

(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.