

STATEMENT OF CONSIDERATIONS

REQUEST BY TIMKEN FOR AN ADVANCE WAIVER OF DOMESTIC AND FOREIGN PATENT RIGHTS UNDER DOE COOPERATIVE AGREEMENT NO. DE-FC07-99ID13819; W(A)-00-016; CH-1021

The Petitioner, Timken Company, has requested a waiver of domestic and foreign patent rights for all subject inventions arising under the above referenced cooperative agreement and on behalf of its lower-tier subcontractors. The cooperative agreement is entitled, "Controlled Thermo-Mechanical Processing of Tubes and Pipes for Enhanced Manufacturing and Process."

The objective of this cooperative agreement is to develop, build and demonstrate controlled thermo-mechanical processing technology for tubes and pipes. The technology is expected to help deliver optimized microstructure and concomitant properties at reduced processing and energy costs in all major sectors of the tube and pipe industry.

The total anticipated cost of the cooperative agreement, which will continue through 2/12/2004, is \$10.7 million, with the Petitioner and lower-tier subcontractors sharing \$3.5 million (33%) of the cost. The waiver is contingent upon the Petitioner maintaining the above cost sharing percentages during the course of the agreement.

As noted in its waiver petition, Petitioner is the world's largest manufacturer of seamless alloy mechanical steel tubing, with sales of tubing totaling \$882 million in 1998. The Petitioner currently operates five processing lines; three located in Canton, Ohio, one located in Wooster, Ohio, and one in Leicester, England. Further, Petitioner has an extensive body of knowledge, experience and resources in the field of tube manufacturing, with research facilities in Ohio, Pennsylvania, and England. Petitioner's research efforts cover a wide range of disciplines, including engineering, tribology, physics, mathematics, computer science, chemistry, metallurgy, electronics, machinability and corrosion. Considering Petitioner's technical expertise, established market position, and significant investment in this technology including sizable cost sharing in this cooperative agreement, it is reasonable to conclude that Petitioner will continue to develop and ultimately commercialize the technology and products which may arise from this cooperative agreement.

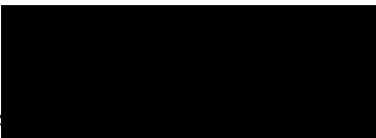
As set out in the attached waiver petition, Petitioner has, on behalf of its lower-tier subcontractors, also requested a waiver of patent rights in the subject inventions of its lower-tier subcontractors. This waiver contemplates that Petitioner and its subcontractors will allocate title or other rights to inventions among themselves as they deem appropriate during the course of their association consistent with the terms of this

waiver. Accordingly, title may be waived directly to such subcontractors that acknowledge their right to request a waiver and agree to the same terms and condition of this waiver. This waiver will only extend to Petitioner and subcontractors under this cooperative agreement. This waiver shall not impact the rights of those parties subject to Public Law 96-517, as amended, nor shall it grant any rights in inventions made by employees of the National Laboratories.

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 U.S. competitiveness provisions as attached to this Statement. In brief, Petitioner has agreed that products embodying any waived invention or produced through the use of any waived invention will be manufactured substantially in the United States unless Petitioner can show to the satisfaction of the DOE that it is not commercially feasible to do so, and that Petitioner will not license, assign or otherwise transfer any waived invention to any entity unless that entity agrees to these same requirements. Additionally, Petitioner has agreed to Industry Licensing Provisions and contractor data licensing provisions as attached herein.

Referring to item 10 of the waiver petition, granting this waiver is not anticipated to have any adverse impact on competition. Because of high cost, this technology is not currently being developed by the U.S. industry. This waiver would allow Timken to pursue this technology and allow this technology to develop within the U.S.. In this regard, Petitioner has agreed to license this technology to third parties after three years.

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 cooperative agreement 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 Part 784, all of which have been considered, it is recommended that the requested waiver be granted.




Daniel D. Park
Assistant Chief Counsel
Intellectual Property Law
Division

Date: 3/6/01

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 cooperative agreement, where through such modification or extension, the purpose, scope or cost of the cooperative agreement has been substantially altered.

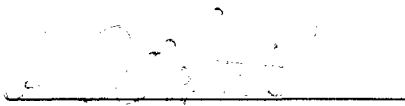
CONCURRENCE:



William Parks
Director, Office of Industrial
Cross-cut Technologies
EE-20

Date: 3/22/01

APPROVAL:



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

Date: 3-22-01

WAIVER ACTION - ABSTRACT
W(A)-00-016

REQUESTOR

The Timken Company

CONTRACT SCOPE OF WORK

Controlled Thermo-Mechanical
Processing of Tubes and Pipes

RATIONALE FOR DECISION

33% cost sharing