

STATEMENT OF CONSIDERATIONS

**REQUEST BY MAXWELL LABORATORIES, INC., FOR AN
ADVANCE WAIVER OF DOMESTIC AND FOREIGN INVENTION
RIGHTS UNDER ITS SUBCONTRACT WITH EG&G IDAHO, INC.,
NO. EGG-C91-103647, UNDER CONTRACT NO. DE-AC07-76ID01570
W(A)-93-008, CH-0759**

Under this subcontract with EG&G Idaho, Inc. (EG&G), Maxwell Laboratories (Maxwell) is providing the design and fabrication of Ultra Capacitor devices for an electric vehicle. A recent study by the Idaho National Engineering Laboratory (INEL) has shown that the Ultra Capacitor is a good candidate for use as a second power source in electric vehicle propulsion systems. This study also shows that the present status of Ultra Capacitor technology is not suitable for electric vehicle application. The research and development to be conducted by Maxwell under this subcontract will be focused on developing practical and affordable capacitors to be used to load level the main battery in an electric vehicle. The end product of this subcontract is a capacitor unit that can be tested and evaluated in the INEL Battery Laboratory using test cycles closely related to those that the device would experience in an electric vehicle.

The total estimated cost of the subcontract is \$2,282,300, of which Maxwell's cost share is \$251,843, or 11% of the total cost. This is a multi-year contract, projected to be completed in September 1995. To augment the 11% cost sharing, Maxwell has agreed to a cost reimbursement - cost share - no fee subcontract. In addition, Mr. Edward Dowgiallo, the DOE program director in the Office of Assistant Secretary for Conservation and Renewable Energy, has stated that Maxwell's participation in this project is vital to program success. Mr. Dowgiallo indicated that the Ultra Capacitor program has potential relevance and importance to the United States Advanced Battery Consortium (USABC).

Maxwell is technologically competent in high density capacitors. Its ongoing technology development relates to the manufacturing and engineering concepts and know-how applicable to capacitors (including capacitors utilizing mixed fiber composite materials). The Maxwell technology includes scale-up and packaging techniques for capacitors. As brought out in response to question 7, Maxwell has provided approximately \$560,000 of its own funding as financial and technological investments with regard to the work performed under this contract. These expenditures do not include the \$251,843 of contract cost share costs, and the lost opportunity for fee waived under the contract.

Maxwell has demonstrated a commitment to the technology and a likelihood of an effort to commercialize the results of this contract. Specifically, Maxwell has been granted exclusive rights in the basic technology to be demonstrated under this contract by Auburn University, which has patented this technology. Representative copies of the patents are attached as "Exhibit 1". In response to questions 8 and 9, Maxwell has indicated that it intends to commercialize products produced from technologies

developed under the contract and that it will assume primary responsibility for commercialization of products resulting from this technology. It intends to invest in the necessary manufacturing and product improvement, and to organize marketing and sales to bring a product to the market.

Maxwell has agreed to standard provisions with respect to the invention waivers with the substitution of the U.S. Government license, March-In Rights, and U.S. manufacturing preference, provided in 35 U.S.C. 202 - 204. Additionally, Maxwell has indicated acceptability of the background patent and data provisions of paragraphs (k) and (h), respectively of the "Patent Rights - (Long Form) clause and Rights in Data-General clause. Maxwell has also agreed to the provisions of the attached U.S. Competitiveness clause.

Considering the foregoing, it is believed that granting the waiver will provide Maxwell 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 practicable time. Therefore, in view of the objectives and considerations set forth in DOE PR 9-9.109-6, all of which have been considered, it is recommended that the requested waiver, as set forth above, be granted.

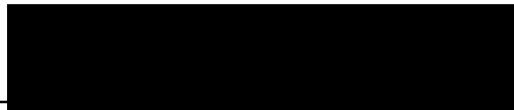


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Property Counsel

Date: 5-2-93

Based on the foregoing Statement of Considerations and the 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 agreement where, through such modification or extension, the purpose, scope, or cost of the agreement is substantially altered.

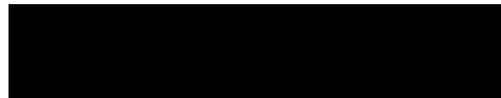
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Date: 5/25/93

APPROVAL:



Richard E. Constant
Assistant General Counsel for
Intellectual Property

Date: 5/26/93

U.S. COMPETITIVENESS PROVISION

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 Contracting Officer that it is not commercially feasible to do so. In the event the Contracting Officer agrees to foreign manufacture, there will be a requirement that the Government's support of the area of technology which was the subject of this waiver petition 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.