

**EXHIBIT 3****STATEMENT OF CONSIDERATIONS****REQUEST BY THE UNITED STATES ADVANCED BATTERY CONSORTIUM (USABC)  
FOR AN ADVANCE WAIVER OF DOMESTIC AND FOREIGN PATENT RIGHTS UNDER  
DOE COOPERATIVE AGREEMENT NO. DE-FC02-95EE50425; W(A)-95-039; CH-0877  
AND FOR LARGE BUSINESS SUBCONTRACTS THEREUNDER**

USABC has requested an advance waiver of domestic and foreign patent rights for all subject inventions conceived or first actually reduced to practice under the above referenced cooperative agreement, as well as under all subcontracts thereunder with parties other than National Laboratories, domestic small businesses or nonprofit or educational institutions. USABC is a large business partnership between the General Motors Corporation, the Ford Motor Company and the Chrysler Corporation created under the authority of the National Research Cooperative Act of 1984.

The cooperative agreement, characterized as "Advanced Battery Research and Development for New Generation Vehicle," is to conduct research and development of new high power energy storage technologies. The program contemplated by the agreement is expected to proceed in four phases. Phases 1 and 2 will be to establish and demonstrate the feasibility of a baseline electrode design for various batteries and ultracapacitors. Phases 3 and 4 will be to develop and deliver a number of complete subsystems for integration, test and evaluation in concept demonstration vehicles and production prototype vehicles.

USABC has agreed to a cost sharing of fifty percent (50%), in aggregate, for this project. The proposed cost for phases 1 and 2 is estimated to be \$35 million, while costs for phases 3 and 4 have not yet been determined. Initially, phase 1 has been approved for approximately \$6.8 million for six months. It is anticipated that USABC will be receiving cost sharing contributions from its various subcontractors. However, the ultimate burden of providing the 50% cost sharing will rest on USABC, with the continuation of the waiver being contingent upon USABC maintaining, in aggregate, substantially this cost sharing percentage over the entire course of the agreement.

As set out in the attached waiver petition, USABC appears to be fully committed to the development and ultimate commercialization of this technology. Each of the partners of USABC has a broad based, in-depth experience and capability in the field of electrochemical energy storage technology suitable for use in electric and hybrid vehicles. Further, the partners have invested millions of dollars in their facilities and staff which are committed to research and development in the area of battery and hybrid vehicle technology. Therefore, considering the partners' technical expertise, commercial position and significant investment in this technology, including sizable cost sharing in this cooperative agreement, it is reasonable to conclude that USABC and/or its partners will continue to develop and ultimately commercialize the products which may arise from this cooperative agreement.

With respect to inventions resulting from subcontracts, it is the intention of USABC to

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negotiate the ownership rights to these inventions and to grant to the subcontractor the right to take title to its inventions if the subcontractor provides 50% cost sharing or other mutually acceptable cost share of the total subcontract value. It is believed that this approach will minimize fragmentation of invention rights among the parties as the program progresses, expedite USABC's subcontract negotiations and give USABC a mechanism to obtain meaningful cost sharing or other rights which will facilitate timely commercialization of the technology. It is expected that, as a result of the negotiations between USABC and individual subcontractors, the actual disposition of title to subject inventions may vary with each subcontractor. Accordingly, this waiver allows title to be waived directly to USABC's subcontractors upon their acceptance of the terms of this waiver, including the advance waiver patent provisions. This waiver is not intended to impact the rights of those parties subject to Public Law 90-317, as amended.

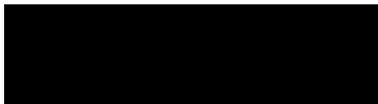
With regards to U.S. competitiveness, USABC has agreed to the U.S. Competitiveness clause attached to this Statement. The U.S. Competitiveness clause is essentially the same as the one provided in the previous waiver W(A)-91-016 to USABC under agreement no. DE-FC02-91CE50336. In brief, USABC has agreed to limit its ability to assign or license subject inventions to non-U.S. companies and entities and to use its best efforts to require in production contracts with non-U.S. entities that, for products embodying or produced through the use of a subject invention, at least 51% of said requirements are met through U.S. manufacturing. Any changes in the U.S. Competitiveness clause, including when negotiating with lower tier subcontractors, must be approved by DOE Patent Counsel with DOE program concurrence.

USABC 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, USABC has agreed to third party background patent and data licensing provisions which assure commercialization of the technology developed under the cooperative agreement.

Granting this waiver is not anticipated to have any adverse impact on competition and market concentration. It is USABC's intention to grant licenses to companies so as to advance the establishment of a U.S. based battery industry for electric and hybrid vehicles. Additionally, with numerous companies pursuing a variety of electrochemical energy storage technologies, the success of this agreement would serve to increase competition in this and related technologies as well.

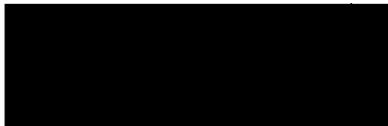
Considering the foregoing, it is believed that granting this waiver will provide USABC with the necessary incentive to invest its resources in the commercialization of the results of the cooperative agreement in a fashion which will make the cooperative agreement's benefits available to the public in the shortest practicable time. Therefore, upon evaluation of the waiver

petition and in view of the objectives and considerations set forth in 41 CFR 9-9 109-6, all of which have been considered, it is recommended that the requested waiver be granted.



Thomas G. Anderson  
Assistant Chief Counsel  
Intellectual Property Law  
Department

Date: 3-21-96



Daniel D. Park  
Patent Attorney  
Intellectual Property Law  
Department

Date: 3/21/96

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.



Pandit G. Patil  
Director, Office of Advanced  
Automotive Technologies  
EE-32

Date: 3/22/96

APPROVAL:



Assistant General Counsel  
for Technology Transfer  
and Intellectual Property

Date: 3-22-96

(ix) U.S. Competitiveness

(1) In the event that Contractor or any assignee transfers title in any subject invention or patent or patent application based thereon, to, or the Contractor or any assignee is or becomes, a company or an entity which is majority owned or controlled, directly or indirectly, by a non U.S. company or entity, then Contractor or assignee as the case may be, at DOE's request, shall grant sublicenses under such invention, patent and/or patent application to U.S. owned or controlled companies identified to Contractor or assignee by DOE, under fair and reasonable terms. In the event that Contractor, any assignee or licensee elects to grant licenses to non-affiliated third parties under any subject invention or patent or patent application based thereon, Contractor, assignee or licensee as the case may be, will give preference to U.S. manufacturers who have demonstrated capability of providing high quality products and services.

(2) The Contractor shall not grant or transfer in any way, to a company or an entity which is majority owned or controlled, directly or indirectly, by a non U.S. company or entity, the right to manufacture in a foreign country, any products embodying a subject invention or produced through the use of a subject invention without the express written approval of DOE. This paragraph does not apply to rights obtained by a subcontractor hereunder pursuant to any waiver of rights issued by DOE.

(3) The Contractor will use its best efforts to assure in any future production contracts between any of the Contractor's constituent Partners, and a party who has engaged in research and development of Advanced Batteries pursuant to this Agreement or licensed by the Contractor pursuant to the Contractor's partnership agreement, where such party is majority owned or controlled, directly or indirectly, by a non U.S. company or entity, that such future production contract shall require at such time that such party has produced product embodying a subject invention or produced through the use of a subject invention pursuant to such production contract in a specified volume, such party shall provide sufficient manufacturing in the United States to supply at least an average of 51% of the requirements of the partner over a minimum five (5) year period. A foreign entity associated with this agreement includes any party who has engaged in research and development pursuant to this agreement, or who is licensed by Contractor pursuant to Contractor's partnership agreement, where such party is majority owned or controlled, directly or indirectly, by a non U.S. company or entity.

(4) Paragraphs (1) and (2) of this clause shall be included in any subcontract where exclusive rights in subject inventions are retained by a Contractor pursuant to any waiver issued by DOE under this program.

**WAIVER ACTION - ABSTRACT**

W(A)-95-039; CH-0877

REQUESTER

USABC

CONTRACT SCOPE OF WORK

Research and development of  
new high power energy storage  
technologies.

RATIONAL FOR DECISION

50% cost sharing

DISPOSITION

Recommended