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PATENT

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## Correspondent Name and Address

Area Code and Telephone Number

630-252-204

Name Robert J. Fisher

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## Pages

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# 15

## Application Number(s) or Patent Number(s)

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Patent Application Number(s)

Patent Number(s)

10/063,188

If this document is being filed together with a new Patent Application, enter the date the patent application was

Month Day Year

## Patent Cooperation Treaty (PCT)

Enter PCT application number only if a U.S. Application Number has not been assigned.

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Brain J. Lally

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Signature

Date

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**MIDWEST RESEARCH INSTITUTE**

**APPENDIX MRI/FORD-C**

**INTELLECTUAL PROPERTY PROVISIONS**

**Appendix MRI/FORD-C**  
**09/20/93**

**PATENT**  
**REEL: 015168 FRAME: 0088**

APPENDIX MRI/FORD-C

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## CLAUSE 1 - ADVANCE WAIVER PATENT RIGHTS

### A. *Definitions.*

1. "*Subject invention*" means any invention or discovery of the Subcontractor conceived or first actually reduced to practice in the course of or under this subcontract, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plants, whether patented or unpatented under the Patent Laws of the United States of America or any foreign country.
2. "*Subcontract*" means any contract, grant, agreement, understanding, or other arrangement, which includes research, development, or demonstration work, and includes any assignment or substitution of Parties.
3. "*States and domestic municipal governments*" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and any political subdivision and agencies thereof.
4. "*Government agency*" includes an executive department, independent commission, board, office, agency, administration, authority, Government corporation, or other Government establishment of the Executive Branch of the Government of the United States of America.
5. "*To the point of practical application*" means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine and under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.
6. "*Patent Counsel*" means the DOE Patent Counsel assisting the procuring activity.
7. "*Contracting Officer*" means the DOE Contracting Officer for prime contract No. DE-AC02-83CH10093 with the Midwest Research Institute.

### B. *Allocation of Principal Rights.*

1. *Assignment to the Government.* The Subcontractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each Subject Invention, except to the extent that rights are waived to and retained by the Subcontractor under paragraphs B2 and C of this clause.
2. *Greater Rights Determinations.* The Subcontractor or the employee-inventor with authorization of the Subcontractor may request greater rights than the domestic and foreign patent rights provided in Paragraph C of this clause on identified inventions in accordance with 41 CFR 9-9.109-6. Such requests must be submitted to Patent Counsel (with notification by Patent Counsel to the Contracting Officer) at the time of the first disclosure pursuant to paragraph E2 of this clause, or not later than nine (9) months after conception or first actual reduction to practice, whichever occurs first, or such longer period as may be authorized by Patent Counsel (with notification by Patent Counsel to the Contracting Officer) for good cause shown in writing by the Subcontractor.

### C. *Rights to the Subcontractor.*

1. *Minimum Subcontractor License.* The Subcontractor reserves an irrevocable, nonexclusive, paid-up license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government acquires title. The license shall extend to the

than 60 days before the expiration period for any action required by the foreign Patent Office.

- (iii) Conveyances requested pursuant to paragraphs C3(i) and C3(ii) of this clause shall be made by delivering to the Patent Counsel duly executed instruments and such other papers as are deemed necessary to vest in the Government the entire right, title, and interest in the invention to enable the Government to apply for and prosecute patent applications covering the invention in this or the foreign country, respectively, or otherwise establish its ownership of the invention.
- (iv) For each invention in which the Subcontractor initially elects pursuant to C2(i) or C2(ii) of this clause not to retain the rights waived, the Subcontractor shall inform the Patent Counsel promptly in writing of the date and identity of any on sale, public use, or public disclosure of the invention which may constitute a statutory bar under 35 USC 102, which was authorized by or known to the Subcontractor, or any contemplated action of this nature.

(v) *Government License.*

With respect to any Subject Invention in which the Subcontractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any Subject Invention throughout the world.

(vi) *Reporting on Utilization of Subject Inventions.*

The Subcontractor agrees to submit on request, periodic reports, no more frequently than annually, on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the Subcontractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Subcontractor, and such other data and information as DOE may reasonably specify. The Subcontractor also agrees to provide additional reports as may be requested by DOE in accordance with paragraph (vii) of this clause. To the extent data or information supplied under this section is considered by the Subcontractor, its licensee or assignees to be privileged and confidential and is so marked, DOE agrees that, to the extent permitted by 35 USC 202(c)(5), it will not disclose such information to persons outside the Government.

(vii) *Preference for United States Industry.*

Notwithstanding any other provision of this clause, the Subcontractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any Subject Invention in the United States unless such person agrees that any products embodying the Subject Invention or produced through the use of the Subject Invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Subcontractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

- (c) In the event that a Party, any assignee or licensee elects to grant licenses to non-affiliated third parties under any Subject Invention or patent or patent application based thereon, such Party, assignee or licensee as the case may be, will give preference to U.S. manufacturers (especially small and disadvantaged businesses) who have demonstrated the capability of providing high quality products and services.
- (d) For five (5) years after the termination or expiration of this Subcontract, major hybrid vehicle propulsion components that use Subject Inventions, copyrighted works or Protected Hybrid Vehicle Information first produced under this Subcontract, will be manufactured substantially in the United States.
- (e) The Parties agree that DOE may sublicense Subject Inventions, copyrighted works and Protected Hybrid Vehicle Information first produced under this Subcontract, under reasonable royalty bearing terms, for use or sale in the United States, beginning five (5) years after the termination or expiration of this Subcontract.

#### 4. *Terminations.*

- (i) Any waiver or retention of rights by the Subcontractor under paragraphs B2, C1, or C2 of this clause may be terminated at the discretion of the Secretary or his designee, in whole or in part, if the request for waiver or retention of rights by the Subcontractor is found to contain false material statements or nondisclosure of material facts, and such were specifically relied upon in reaching the waiver determination or the agreement to the retention of rights by the Subcontractor.
- (ii) Any waiver of the rights reserved in accordance with paragraph C2, as applied to particular inventions, may be terminated at the discretion of the Secretary or his designee, in whole or in part, if the Subcontractor fails to comply with the provisions set forth in paragraph C3 and paragraph D of this clause, and such failure is determined by the Secretary or his designee to be material and detrimental to the interests of the United States and the general public.
- (iii) Prior to terminating any waiver of rights under paragraph C4(i) or C4(ii) of this clause, the Subcontractor will be given written notice of the intention to terminate the waiver of rights, the extent of such proposed termination and the reasons therefor, and a period of 30 days, or such longer period as the Secretary or his designee shall determine for good cause shown in writing, to show cause why the waiver of rights should not be so terminated.
- (iv) All terminations of waivers of rights under paragraph C4(ii) shall be subject to the rights granted in paragraph C1 of this clause, and termination shall normally be partial in nature, requiring the Subcontractor to grant nonexclusive or partially exclusive licenses to responsible applicants upon terms reasonable under the circumstances.

#### 5. *Effective Date of Waivers.*

Waivers shall be effective on the following dates:

- (i) Files or causes to be filed a United States or foreign patent application thereon; or
  - (ii) Submits the final report required by paragraph E2(iii) of this clause, whichever is later.
2. However, the Subcontractor shall not forfeit rights in a Subject Invention if, within the time specified in 1(i) or 1(ii) of this paragraph G, the Subcontractor:
- (i) Prepared a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the subcontract and delivers the same to the Patent Counsel (with notification by Patent Counsel to the Contracting Officer); or
  - (ii) Contending that the invention is not a Subject Invention the Subcontractor nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel (with notification by Patent Counsel to the Contracting Officer); or
  - (iii) Establishes that the failure to disclose did not result from the Subcontractor's fault or negligence.
3. Pending written assignment of the patent application and patents on a Subject Invention determined by the Secretary or his designee to be forfeited (such determination to be a final decision under the Disputes Clause of this contract), the Subcontractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph G shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to Subject Inventions.

**H. *Examination of Records Relating to Inventions.***

- 1. The Contracting Officer or his authorized representative, until the expiration of 3 years after final payment under this subcontract, shall have the right to examine any books (including laboratory notebooks), records, documents, and other supporting data of the Subcontractor which the Contracting Officer or his authorized representative reasonably deem pertinent to the discovery or identification of Subject Inventions or to determine compliance with the requirements of this clause.
- 2. The Contracting Officer or his authorized representative shall have the right to examine all books (including laboratory notebooks), records and documents of the Subcontractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this subcontract to determine whether any such inventions are Subject Inventions, if the Subcontractor refuses or fails to:
  - (i) Establish the procedures of paragraph E1 of this clause; or
  - (ii) Maintain and follow such procedures; or
  - (iii) Correct or eliminate any material deficiency in the procedures within thirty (30) days after the Contracting Officer notifies the Subcontractor of such a deficiency.

3. Before revocation or modification of the license, DOE will furnish the Subcontractor a written notice of its intention to revoke or modify the license, and the Subcontractor will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the Subcontractor) after the notice to show cause why the license should not be revoked or modified. The Subcontractor has the right to appeal, in accordance with 37 CFR 404 and 10 CFR Part 781, any decision concerning the revocation or modification of its license.

**(F) Subcontractor Action to Protect Government's Interest.**

1. The Subcontractor agrees to execute or to have executed and promptly deliver to the Patent Counsel all instruments necessary to:
  - (i) Establish or confirm the rights the Government has throughout the world in those Subject Inventions to which the Subcontractor elects to retain title, and
  - (ii) Convey title to DOE when requested under D. above and to enable the Government to obtain patent protection throughout the world in that Subject Invention.
2. The Subcontractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Subcontractor each Subject Invention made under this subcontract in order that the Subcontractor can comply with the disclosure provisions of (C) above and to execute all papers necessary to file patent applications on Subject Inventions and to establish the Government's rights in the Subject Inventions. The disclosure format should require, as a minimum, the information required by subparagraph (C)1 above. The Subcontractor shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to United States or foreign statutory bars.
3. The Subcontractor will notify the Patent Counsel of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.
4. The Subcontractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement "This invention was made with Government support under (identify the subcontract awarded by Midwest Research Institute, Solar Energy Research Institute Division under identify DOE contract number) awarded by the Department of Energy. The Government has certain rights in this invention."
5. The Subcontractor agrees to:
  - (i) Upon request, provide a report prior to the close-out of the subcontract listing all Subject Inventions or stating that there were none;

specifications or related performance or design type documents or computer software (including computer programs, computer software data bases, and computer software documentation).

Examples of Technical Data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical Data as used herein do not include financial reports, cost analyses, and other information incidental to subcontract administration.

2. *"Proprietary data"* means Technical Data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:
  - (i) Are not generally known or available from other sources without obligation concerning their confidentiality;
  - (ii) Have not been made available by the owner to others without obligation concerning their confidentiality; and
  - (iii) Are not already available to the Government or MRI without obligation concerning their confidentiality.
3. *"Contract data"* means Technical Data first produced in the performance of this subcontract, Technical Data which are specified to be delivered under this subcontract, Technical Data that may be called for under the *Additional Technical Data Requirements* clause of this subcontract, if any, or Technical Data actually delivered in connection with this subcontract.
4. *"Unlimited Rights"* means rights to use, duplicate, or disclose Technical Data, in whole or in part, in any manner and for any purpose whatsoever, and permit others to do so.
5. *"Government"* means the Government of the United States of America.
6. *"Subcontract"* means this subcontract between the Subcontractor and the Midwest Research Institute (MRI).
7. *"Know-how"* means unpatented technical information, assistance, training or expertise including drawings, designs, specifications, blueprints, or manuals owned or controlled by the Subcontractor.
8. *"Protected Hybrid Vehicle Information"* means Technical Data or commercial or financial data first produced in the performance of this subcontract which, if it had been obtained from and first produced by a Non-Federal party, would be a trade secret or commercial or financial information that is privileged or confidential under the meaning of 5 U.S.C. 552 (b) (4), and which is marked as being Protected Hybrid Vehicle Information by a party to this subcontract.

**B. Allocation of rights.**

1. The Government shall have:
  - (i) Unlimited Rights in Contract Data except as otherwise provided below with respect to Proprietary Data or Protected Hybrid Vehicle Information;
  - (ii) The right to remove, cancel, correct or ignore any marking not authorized by the terms of this subcontract on any Technical Data furnished hereunder, if in response to a

the Government with respect to such data. In the event of refusal by a lower-tier subcontractor to accept a clause affording the Government such rights, the Subcontractor shall:

1. Promptly submit written notice to the Government through MRI setting forth reasons for the lower-tier subcontractor's refusal and other pertinent information which may expedite disposition of the matter;
2. Not proceed with the lower-tier subcontract without the written authorization of the Government through MRI; and
3. As used in this Rights in Technical Data (Long Form) clause, the term "Lower-Tier Subcontractor" includes any person or entity responsible for fulfilling the Subcontractor's obligations to the Government with respect to Technical Data.

**E. Withholding of Proprietary Data.**

Notwithstanding the inclusion of the *Additional Technical Data Requirements* clause in this subcontract or any provision of this subcontract specifying the delivery of Technical Data, the Subcontractor may withhold Proprietary Data from delivery, provided that the Participant furnishes in lieu of any such Proprietary Data so withheld Technical Data disclosing the source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements ("Form, Fit, and Function" data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.), or a general description of such Proprietary Data where "Form, Fit, and Function" data are not applicable. The Government shall acquire no rights to any Proprietary Data so withheld except that such data shall be subject to the "inspection rights" provisions of Paragraph F, the "Limited Rights in Proprietary Data" provisions of Paragraph G, and, if included, the "Subcontractor Licensing" provisions of Paragraph H and/or the "Commercialization of Hybrid Vehicle Technology" provisions of Paragraph I.

**F. Inspection Rights.**

Except as may be otherwise specified in this subcontract for specific items of Proprietary Data, which are not subject to this paragraph, the Government's and MRI's representatives, at all reasonable times up to three (3) years after final payment under this subcontract, may inspect (but not duplicate or remove) at the Subcontractor's facility any Proprietary Data withheld under Paragraph E for the purpose of verifying that such data properly fell within the withholding provisions of Paragraph E or for evaluating work performance.

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**G. Limited Rights in Proprietary Data.**

Except as may be otherwise specified in this subcontract as Technical Data which are not subject to this paragraph, the Subcontractor shall, upon written request from MRI or from the Government at any time prior to three (3) years after final payment under this subcontract, promptly deliver to the Government or MRI any "Proprietary Data" withheld pursuant to Paragraph E of the *Rights in Technical Data (Long Form)* clause of this subcontract. The following legend and no other is authorized to be affixed on any "Proprietary Data" delivered pursuant to this provision, provided the "Proprietary Data" meets the conditions for initial withholding under Paragraph E of the *Rights in Technical Data (Long Form)* clause. The Government and MRI will thereafter treat the "Proprietary Data" in accordance with such legend.

**LIMITED RIGHTS LEGEND**

This "Proprietary Data," furnished under "Subcontract No. \_\_\_\_\_"  
with MRI under Prime Contract No. DE-AC02-83CH10093 with the U.S.  
Department of Energy may be duplicated and used by the Government and

2. For the purposes of this section, technology is defined as the hybrid propulsion system developed under this subcontract, the equipment to be provided with the sale of the technology or necessary to achieve the performance under the license of the technology; this may include equipment in addition to that which is included in this subcontract.

**J. Data Available to the Public.**

The Subcontractor agrees that the following types of Technical Data are not considered to be proprietary and shall be provided to the Government and MRI when required by this subcontract without any claim that the data are proprietary or that the data are to be protected as Protected Hybrid Vehicle Information. DOE and MRI agree that these types of Technical Data are considered necessary to be publicly available.

The parties agree, however, that notwithstanding the following list of types of data, nothing precludes the Government and MRI from seeking delivery of additional Technical Data in accordance with this subcontract, or from making publicly available additional non-proprietary or non-protected Technical Data, nor does the following list constitute any admission by the Government or MRI that Technical Data not on the list is proprietary.

1. A "black box" diagram of typical operating configurations showing at least the major subsystems of the overall hybrid vehicle concept under development, sufficient to provide a general understanding of its proposed operation in contrast to other hybrid vehicle approaches (an example of such diagrams is attached as Exhibit 1 to this Appendix);
2. Annual status of, and changing projections regarding, on-road and total energy efficiency of the hybrid vehicle under development;
3. Annual status of, and changing projections regarding, composition and flow rates of materials and energy entering and leaving the specific hybrid vehicle under development. This would include, for example, (a) the composition and consumption of fuels and other energy streams provided for the propulsion of the vehicle, and (b) quantitative information on the composition and flow of exiting combustion products;
4. Annual status of, and changing projections regarding, infrastructure capabilities which are to be provided by others but which are necessary for the planned operation of the hybrid vehicle under development; the breadth of these observations should include fuel and other energy resource availability, refueling/recharging services, and vehicle maintenance/emergency road services.
5. General description of program deliverables, reports and hardware, articles and presentations.
6. Goals for hybrid components, systems, and vehicle performance, e.g., fuel efficiency, emissions, general customer attributes, 0-60 mph time, reliability, etc.
7. The general timing and major milestones dates for the subcontract.
8. The Subcontractor's lower-tier subcontractors' (team members or partners) names.
9. The total dollar amount of the program including the total dollar amount of lower-tier subcontractors (team members or partners).
10. The approximate number of personnel, key staff members' names and major facilities committed to the subcontract.

## PROTECTED HYBRID VEHICLE INFORMATION

This Protected Hybrid Vehicle Information was produced under "Subcontract No. ZCB-3-13032-02" with MRI under Prime Contract No. DE-AC02-83CH10093 with the U.S. Department of Energy and may not be published, disseminated or disclosed to others by the Government and MRI until five (5) years after completion of this subcontract, unless express written authorization is obtained from the Subcontractor. Upon expiration of the period of protection set forth in this legend, the Government shall have Unlimited Rights in this data. This legend shall be marked on any reproduction of this data, in whole or in part.

3. Any such marked Protected Hybrid Vehicle Information may be disclosed under obligations of confidentiality for the following purposes:
  - (i) This "Protected Hybrid Vehicle Information" may be disclosed for evaluation purposes under the restriction that the "~~Proprietary Data~~" be retained in confidence and not be further disclosed;
4. The Subcontractor shall have the right to license such Protected Hybrid Vehicle Information or include such Protected Hybrid Vehicle Information in a license with other technology developed under this Hybrid Vehicle Program and, in accordance with Paragraph H of this clause, agrees to license such Protected Hybrid Vehicle Information to responsible third parties. Such licenses shall include terms and conditions that are reasonable under the circumstances, including obligations of confidentiality.
5. The obligations of confidentiality and restrictions on publication and dissemination shall end for any Protected Hybrid Vehicle Information;
  - (i) At the end of the protected period, as indicated in the Legend, i.e., five (5) years after completion of this subcontract;
  - (ii) If the data becomes publicly known or available from other sources without a breach of the obligations of confidentiality with respect to the Protected Hybrid Vehicle Information;
  - (iii) If the same data is independently developed by someone who did not have access to the Protected Hybrid Vehicle Information and such independently developed data is made available without obligations of confidentiality; or
  - (iv) If the Subcontractor disseminates or authorizes another to disseminate such data without obligations of confidentiality.