

## PATENT ASSIGNMENT

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SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
CONVEYING PARTY DATA	
Name	Execution Date
STICHTING ENERGIEONDERZOEK CENTRUM NEDERLAND (ENERGY RESEARCH CENTRE OF THE NETHERLANDS)	04/21/2005
RECEIVING PARTY DATA	
Name:	FUELCELL ENERGY, INC.
Street Address:	3 GREAT PASTURE ROAD
City:	DANBURY
State/Country:	CONNECTICUT
Postal Code:	06813
PROPERTY NUMBERS Total: 2	
Property Type	Number
Patent Number:	6344289
Patent Number:	6761927
CORRESPONDENCE DATA	
Fax Number:	(212)575-0671
Phone:	212-790-9200
Email:	ram@ccl.com
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>	
Correspondent Name:	COWAN, LIEBOWITZ & LATMAN, P.C.
Address Line 1:	1133 AVENUE OF THE AMERICAS
Address Line 2:	Anastasia Zhadina / Ruth Montalvo
Address Line 4:	NEW YORK, NEW YORK 10036-6799
ATTORNEY DOCKET NUMBER:	B429-101A (25803.092)
NAME OF SUBMITTER:	Anastasia Zhadina
Total Attachments: 6	

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# PATENT ASSIGNMENT AGREEMENT

**AN AGREEMENT**, made between:

- 1. ENERGY RESEARCH CENTRE OF THE NETHERLANDS**, having an office at Westerduinweg 3, P.O. Box 1, NL-1755 ZG Petten, the Netherlands ("**ECN**"); and
- 2. FUELCELL ENERGY, Inc.**, having an office at 3 Great Pasture Rd., Danbury, CT 06813 USA ("**FCE**");

## **RECITALS:**

1. As a not-for-profit research institute in the field of energy, funded by the Netherlands government, ECN wishes to contribute to greater energy efficiency in industry, the implementation of renewable energy and the reduction of environmentally harmful emissions from fossil fuels by conducting research, development and demonstration projects and licensing the use of technology.
2. ECN is committed to the policy that technology developed at ECN should be used for the greatest possible public benefit, and believes that every reasonable incentive should be provided for the prompt introduction of such technology into public use, all in a manner consistent with the public interest.
3. ECN has developed and patented the Inventions (as defined) under funding agreements with and/or grants of the European Union, the Netherlands government and/or any of its agencies;
4. FCE is in the business of development and commercialization of carbonate and other fuel cells.
5. ECN wishes to assign the Patents (as defined) to FCE.

## **NOW THEREFORE IT IS AGREED AS FOLLOWS:**

### **Clause 1 - Definitions**

The following expressions shall have the meanings specified in this Clause.

#### "Effective Date"

the date of signature of this Agreement by the later party to sign.

#### "Patents"

the patent applications and patents granted thereon, as detailed in Appendix 1 to this Agreement, and any extensions, divisions, continuations, continuations-in-part or reissues of such patent applications and patents, and any subsequent filings in any country claiming priority therefrom.

#### "Inventions"

each of the inventions as claimed in the Patents.

### **Clause 2 - Assignment of the Patents**

- (1) ECN hereby agrees to assign to FCE all the rights, title and interests of ECN in and to the Patents, including all statutory and common law rights. The rights so assigned shall include the right to sue for, and to recover any damages and other remedies in respect of any infringement of the Patents which occurred or commenced prior to the Effective Date.
- (2) FCE agrees to take all necessary steps to effect and register promptly the assignment of the Patents in the relevant registers of patents following the execution of the assignment in question. ECN agrees, at the request and expense of FCE, to do any act and procure the execution of any further document that FCE may reasonably require, as soon as reasonably practicable and in any event within forty-five (45) days of receipt of FCE's request, to effect the assignment of the Patents and to register such assignment at the relevant patent offices.
- (3) FCE shall be responsible for and shall bear all expenses including, but not limited to, official fees associated with recording the assignment of the Patents.
- (4) Promptly after assignment of each Patent, ECN shall arrange for the attorneys and/or agents who act for ECN in relation to such Patent(s) to be notified of the assignment thereof to FCE.
- (5) Responsibility for the prosecution, maintenance, defense and enforcement of the Patents shall be deemed to have passed to FCE on January 1, 2005, all of which shall be at FCE's sole discretion. FCE shall reimburse ECN for maintenance fees paid by ECN for the Patents

from May 1, 2004 to December 31, 2005 upon receipt of a detailed invoice from ECN itemizing payments made by country and by patent.

- (6) Notwithstanding Clause 2(1), ECN retains a non-exclusive license to practice the Inventions for research purposes in any field of use and in any country of the world. ECN's right is fully paid-up, non-transferable and irrevocable and includes the right to extend such license to any third party for research purposes only and only with FCE's prior written consent, which shall not be unreasonably withheld.
- (7) FCE understands and agrees that:
  - (a) the Inventions have been developed under funding agreements with and/or grants of the European Union, the Netherlands government and/or any of its agencies, and that these entities as well as certain other third parties having participated with ECN in research and development projects so sponsored by said entities may have certain rights relative thereto. ECN shall promptly provide to FCE a list of all such third parties and provisions which remain in effect as of the date of this Agreement. This Agreement is explicitly made subject to such third parties' rights under such agreements or grants and any law or regulation applicable to such agreement or grant. If there is a conflict between such agreement, grant, applicable law or regulation and this Agreement, the terms of such agreement, grant, applicable law or regulation shall prevail; and
  - (b) certain of the inventions assigned herein were licensed under a certain License and Technology Assistance Agreement between ECN and Gas Technology Institute, Illinois, USA ("GTI"), which agreement has been terminated.

### **Clause 3 - Payment**

- (1) In consideration of the assignment of the Patents by ECN to FCE pursuant to this Agreement, FCE shall pay to ECN the sum of US\$ 50,000 (fifty-thousand US Dollars) on the Effective Date. Said sum shall be payable within thirty (30) days after receipt of ECN's invoice therefor. Said sum is expressed exclusive of value added tax, which if payable shall be paid in addition by FCE.

### **Clause 4 - Warranties**

- (1) Subject to Clause 2(7) ECN warrants that at the Effective Date:
  - (a) ECN holds all legal and beneficial right, title and interest in the Patents;
  - (b) the Patents are subsisting, provided that some Patents have lapsed and may or may not be recovered by FCE as detailed in Appendix 1, in any case the knowledge of such patents will be transferred by ECN to FCE;
  - (c) ECN has the right to assign the Patents to FCE on the terms of this Agreement;
  - (d) Any licenses to practice the Inventions have terminated and ECN has not granted any other licenses to use the Inventions;
  - (e) the Patents are not the subject of any charge, mortgage or other encumbrances; and
  - (f) ECN has not knowingly done or omitted to do and is not aware of any act that will prevent the Patents from being granted.
  - (g) There are no known claims of infringement.
- (2) ECN shall be responsible for, and shall indemnify, defend and hold FCE harmless from and against any loss or damage suffered by FCE as the result of any breach of the warranties given in Clause 4(1). ECN's aggregate liability under this Clause 4(2) shall not exceed the amount referred to in Clause 3(1). Any claim by FCE under this Clause 4(2) shall lapse entirely if FCE has not notified ECN of such claim within twelve (12) months of the Effective Date.
- (3) Except as otherwise expressly set forth in this Agreement, ECN makes no representations or warranties of any kind concerning the Patents, express or implied, including without limitation warranties of merchantability, fitness for a particular purpose, noninfringement, validity of patent rights claims, whether issued or pending, and the absence of latent or other defects, whether or not discoverable. Specifically, and not to limit the foregoing, ECN makes no warranty or representation (i) regarding the validity or scope of the Patents, and (ii) that the

#### **Clause 5 - Liability and Indemnity**

- (1) In no event shall ECN, its officers, employees, agents and affiliates be liable for incidental or consequential damages of any kind, including economic damages or injury to property and lost profits, regardless of whether ECN shall be advised, shall have other reason to know, or in fact shall know of the possibility of the foregoing, nor shall ECN's aggregate liability under this Agreement exceed the amount referred to in Clause 3(1).
- (2) FCE shall indemnify, defend, and hold harmless ECN and its officers, employees, agents and affiliates and their respective successors, heirs and assigns ("Indemnitees"), against any liability, damage, loss, or expense (including reasonable attorneys fees and expenses) incurred by or imposed upon any of the Indemnitees in connection with any claims, suits, actions, demands or judgments arising out of any theory of liability (including without limitation actions in the form of tort, warranty, or strict liability and regardless of whether such action has any factual basis) concerning any product, process, or service that is made, used, sold, imported, or performed pursuant to any right assigned under this Agreement.
- (3) Any performance of any obligation on behalf of a party under this Agreement shall be deemed to be performance or rendering by that party and the other party accordingly releases all affiliates, officers, agents and employees of the first party and the officers, agents and employees of the first party's affiliates from any liability, including liability for negligence, connected with any such performance.

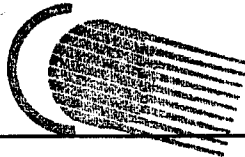
#### **Clause 6 - Miscellaneous**

- (1) Except as expressly permitted in this Agreement, neither party shall be entitled to assign, transfer or delegate any of its rights or obligations under this Agreement save with the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.
- (2) Notwithstanding Clause 6(1), FCE may assign or grant licenses under the Patents as it sees fit provided that any such assignment or license shall be subject to ECN's rights in respect of the Patents granted in this Agreement and subject to third parties' rights in respect of the Patents as detailed in Clause 2(7).
- (3) This Agreement sets out the entire understanding of the parties with respect to the subject matter hereof, and none of its provisions shall be deemed to have been waived or amended, except by written instrument signed by both parties.
- (4) Notices required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by registered post or facsimile to the party concerned at the address first stated above or such other address as shall have been notified in writing to the other party. Any such notice shall take effect, if delivered or posted, upon delivery; and if sent by facsimile, when a complete and legible copy of the communication, whether that sent by facsimile or a hard copy delivered by hand or sent by registered post, has been received at the appropriate address.
- (5) Neither party shall be liable for any loss or damage of any nature whatsoever incurred or suffered as a result of any failure or delay in performance due to any cause or circumstance beyond its reasonable control, provided however that this shall not apply to any obligation to make payments.
- (6) This Agreement, the relationship hereunder between the parties and any dispute referred to in Clause 6(8) shall be exclusively interpreted in accordance with and governed by Netherlands law to the exclusion of any conflict of law provisions.
- (7) Any dispute which may arise either in contract or at law out of or in connection with this Agreement shall be finally and exclusively settled by arbitration by three arbitrators in London, England, in accordance with the Rules of the International Chamber of Commerce The language of the arbitration shall be English.
- (8) The parties shall mutually agree on a press release to make public the general terms of this Agreement, but excluding any compensation details which shall remain confidential between the parties.

AS WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate original on the dates indicated below.

ECN

FCE



Name : Dr. A.B.M. Hoff  
Title : Managing Director  
Date : February 10, 2005

ECN  
energy innovation

Name : Ross M. Levine  
Title : Director, Gov't Contracts  
Date : April 21, 2005

## APPENDIX 1 – THE PATENTS

Patent Title	Patent/Appln. No.	Inventors	Countries
Reactant flow arrangements of a power system of several internal reforming fuel cell stacks (ref 40776)	EP 0947022 NL 1004513 US 6,344,289 AU 720425 CA 2271739 KR 997004235 JP 10-522420	N.J.J. Dekker R.G. Fellows	AT, CH, DE, DK, ES, FR, GB, IT, NL, SE, AU, CA, JP, KR, USA, EP
Separator plate for use in a gas fuel cell which comprises a set of electrodes, and also a stack of fuel cells (ref 35745)	EP 0408104 US 5,084,364 CA 2021040 JP 2076071	H.J.A. Quaadvliet	DE, DK, ES, FR, GB, IT, NL, CA, JP, USA, EP
Corrosion resistant separator plate (High Al steel) (ref 42794)	WO 01/13450 NL 1012823	R.C. Makkus	NL
Method for coating a support plate and fuel cell provided with such a support plate (TiOxide barrier layer) (ref 41866)	NL 1010269 US 6,761,927 EP 1119881 CA 2346486 JP 2000-575179	R.C. Makkus E. Bullock A.H.H. Janssen Y. Denos M. Cassier	DE, DK, ES, FR, GB, IT, NL, CA, JP, USA, EP
Fuel cell and fuel cell stack provided with a matrix seal plate (ref 41577)	WO 99/57776 NL 1009061	G. Rietveld	NL
Seal for matrix plate electrode (ref 41578)	WO 99/57777 NL 1009062	G. Rietveld	NL
Fuel cell containing an anode produced by powder metallurgy (ref 36104)	US 5,238,755 EP 443683 CA 2036549 JP 2629080	C.A.M. van Beijnen S.B. van der Molen	DE, DK, ES, FR, GB, IT, NL, JP, CA, USA, EP
Method of manufacturing an electrochemical cell (ref 39181)	WO 96/08050 EP 804812 JP 2960548*	E.F. Sitters F.H. van Heuveln	NL, JP, EP
Method for the production of an MCFC electrochemical cell (ref 42018)	WO 00/08702 NL 1009815*	R. C. Makkus E. F. Sitters	NL

Measurement of the in situ flow distribution of fuel cell stacks (ref 40354)	EP 898789* NL 1003042* US 6162557** AU 711931* CA 2253540* JP 09-539796*	G. J. Kraaij	AT, DE, DK, ES, GB, IT, FR, CH, SE, NL, CA, JP, AU, USA, EP
MCFC anode with lithium ferrite (ref 38966)	EP 448517*	R. A. Donado K. E. Hrdina R. J. Remick	BE, DE, ES, FR, GB, IT, NL, EP
Ex situ sintered LiCoO <sub>2</sub> cathode for MCFC (ref 36756)	EP 473236* NL9001916* JP 03-220471*	E. F. Sitters L. Plomp	DE, ES, FR, GB, IT, LU, NL, EP, JP

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\* Recovery of the patent/application may be possible.

\*\* Recovery of the patent is possible if abandonment was unintentional or unavoidable.