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Subpart C—Application for a License Pursuant to Section 153b(2) of the Atomic Energy Act of 1954

§ 780.30 Filing of application.

An applicant for a license pursuant to section 153b(2) of the Act, under a patent which the Department has declared to be affected with the public interest, shall file an application with the Board in accordance with § 780.5. The Board will docket the application and serve notice of the docketing upon all parties.

§ 780.31 Contents of application.

Each application shall contain, in addition to the requirements specified in § 780.5, the following information:

(a) The activities in the production or utilization of special nuclear material or atomic energy to which applicant proposes to apply the patent license;

(b) The nature and purpose of the applicant's intended use of the patent license;

(c) The relationship of the invention or discovery to the authorized activities to which it is to be applied, including an estimate of the effect on such activities stemming from the grant or denial of the license;

(d) Efforts made by the applicant to obtain a patent license from the owner of the patent;

(e) Terms, if any, on which the owner of the patent proposes to grant the applicant a patent license;

(f) The terms the applicant proposes for the patent license; and

(g) A request for either a hearing or a decision on the record.

§ 780.32 Response and request for hearing.

Any party within thirty (30) days after service of the notice of docketing of the application:

(a) May file with the Board a response containing a concise statement of the facts or law or any other relevant information which that party believes should be considered by the Board in opposition to or in support of the proposed application; and

(b) May file a request for a hearing or for a decision on the record.

§ 780.33 Hearing and decision.

If any party requests a hearing, the Board will proceed with a hearing and decision. If a hearing is not requested, the Board shall on the basis of the record prepare and issue its decision.

§ 780.34 Criteria for decision to issue a license.

A license shall issue to the applicant to use the invention covered by the patent declared to be affected with the public interest pursuant to subsection 153b(2) of the Act upon a final decision that:

(a) The activities to which the patent license is proposed to be applied are of primary importance to the applicant's conduct of an activity authorized under the Act; and

(b) The applicant has made efforts to obtain reasonable commercial terms and conditions and such efforts have not been successful within a reasonable period of time. The requirement to make such efforts may be waived by the Board in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. Where this requirement is waived due to national emergency or other circumstances of extreme urgency, the owner of the patent shall be notified as soon as reasonably practicable. Where this requirement is waived for a public non-commercial use, the owner of the patent shall be notified promptly.

[46 FR 39581, Aug. 4, 1981, as amended at 58 FR 68734, Dec. 29, 1993]

§ 780.35 Communication of decision to General Counsel.

Following a determination to issue a patent license under section 153b(2) of the Act, the Board shall send the decision to the General Counsel and instruct the General Counsel to issue the license on terms deemed equitable by the Department and generally not less fair than those granted by the patentee or by the Department to similar licensees for comparable use.

§ 780.36 Conditions and issuance of license.

(a) Upon receipt of the Board's decision and instruction to issue a patent