

# If There's a Patent Pool, Should You Jump In?

Everyone agrees more RFID standards are needed. But a patent pool may just add an unnecessary layer of bureaucracy. *By Dan Mullen, Interim CEO of AIM*

Dec. 16, 2002 - Everyone involved with RFID -- current and potential users, vendors, researchers and media -- agrees that more standards are needed to help the technology reach its potential to help businesses and consumers. The members of AIM enthusiastically share this view and have put uncounted years of collective effort into convincing standards organizations to accept RFID work projects, educating users and regulatory agencies about the technology, and developing the standards themselves.

The industry is now undergoing a debate on how to best ensure an open, competitive market in the future. One of the options is to create a patent pool to collectively manage and share intellectual property (IP) related to RFID. While this suggestion might appear to be an easy answer to potential IP concerns, many difficult questions will need to be addressed along the way. The questions should not be oversimplified.

The vendor community has spent tremendous amounts of money and man-years in making RFID discoveries that now manifest as intellectual property. Should this intellectual property now be submitted to a third party? Companies who retain their intellectual property can, and already do, participate in the international standardization process. Will submission in a patent pool prevent legal wrangling or encourage it? Will a patent pool or the open standardization process be the most expeditious path to widespread use of RFID?

None of these questions (and the many others) have simple, indisputable answers. Any final recommendation can only be made once all of the patent pool details have been revealed, but in my opinion, a patent pool is an unnecessary step that would add an unnecessary layer of bureaucracy. In fact, it could stifle competition and draw valuable resources away from the development of open international standards.

The establishment of internationally recognized standards would make a patent pool unnecessary. Standards create a level playing field that encourages competition and innovation without limiting the exchange of intellectual property or subjecting it to artificial, and possibly, subjective controls imposed by a pool administrative body. Companies in every industry share their intellectual property through licensing, cross licensing and sales, and RFID vendors are no different. Market forces readily encourage IP exchanges and present very efficient, time-honored mechanisms to conduct them. An RFID patent pool is simply not necessary to move IP out of research labs and into commercial products.

Standards offer more protections to consumers and vendors alike than a patent pool could ever hope to attain. The International Organization for Standardization (ISO) has well-defined rules for participation that guarantee access to companies large and small from anywhere in the world.

To see how standards help develop markets to the benefit of users and vendors alike, we need look no further than the bar code industry. Open, internationally recognized symbology standards have helped create a competitive landscape that offers users dozens of interoperable reader and printer choices. By competing on common ground, vendors are forced to continually innovate and hold prices in check. Hundreds of impressive symbologies and products have been developed over the years, but only those that have stood up to the

international standardization process have won widespread commercial success. Today's bar code products are more widely used and provide greater price-performance value than ever before, in part because strong IP positions force competitors to continually invent, adapt and improve.

The Automatic Identification and Data Capture (AIDC) industry is like all others: when market conditions necessitate products that require IP from different companies, market participants buy, sell or cross-license their intellectual property assets in whatever manner best suits their businesses. They do not give their valuable assets away or submit them to a third party to manage. Intellectual property is one of many elements that determine a company's competitiveness. Others include manufacturing capacity, sales and marketing acumen, distribution efficiency and working capital.

The way companies develop and use these assets determines their identities and competitiveness. It would be implausible to suggest that RFID vendors pool their factories to attain more efficient tag production, or combine all their R&D funds in a single research lab. Similarly, there is no justification for collectively managing proprietary IP for the common good. IP pooling is an attractive option for entities that don't possess the necessary IP, just as contract manufacturing is attractive for inventors without factories and bank loans are an option for businesses that lack the funds to pursue opportunities. Free enterprise makes these options available, but for a price.

There is no guarantee that a patent pool would streamline the process of converting IP into marketable products. Just defining what IP to put in the pool would be a difficult and contentious task. Should the pool cover the complete RFID tags, or only inlays? Should it cover chips, and if so, does that include how chips are fabricated? Virtually every aspect of electronic design and production could conceivably qualify for the pool. Obviously, participants would contest inclusion of certain processes or performance measures to protect their competitive advantage

Defining "poolable assets" and managing the pool would require significant time and ongoing administrative resources. Such efforts would need to be funded, and thus would impose a de facto "tax" on products produced under the pool's auspices. RFID vendors, who work fervently to reduce costs in pursuit of inexpensive tags, can ill afford to take on these expenses.

At this point, international standards are clearly a safer, simpler and superior mechanism than patent pools for creating an open, competitive RFID market. Patent pools are not needed to facilitate the flow of IP within an industry. A patent pool by itself cannot create a level playing field because it does not carry the recognition or the authority of international standards.

AIM and its members have seen firsthand how the bar code industry flourished following the development of internationally recognized standards. We played a leading role in developing these standards for the bar code industry and continue our efforts so that RFID users can enjoy the same benefits. We encourage technology developers and users everywhere to lend their expertise to the effort of establishing meaningful RFID standards. Furthermore, AIM stands ready to facilitate a useful dialogue about the various options and help the vendor and user communities move forward expeditiously.

Copyright ©2005 RFID Journal, Inc. All Rights Reserved