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The IP Cloud on the Horizon

Since Intermec Technologies announced in January that it would not license its RFID patents on a reasonable and nondiscriminatory (RAND) basis, a lot has been written about the potential effect of this on the RFID market. Behind the scenes, vendors have been exploring different strategies to deal with the IP issue.

Vendors that determine that their products require the use of patented technology have a few options. They can:

- Enter negotiations to license the patents
- Redesign their products to avoid infringing on relevant patents
- Find potential markets where the IP holder hasn't filed patents
- Forge ahead regardless of the outcome of any due diligence investigations.



A group of hardware providers has been meeting secretly to explore the possibility of somehow blocking or fighting Intermec's patents.

At least two companies—SAMSys Technologies, a maker of RFID readers, and Zebra Technologies, a manufacturer of RFID printers—have chosen the first option. Both have signed on to Intermec's Rapid Start IP program, which allows them to gain unlimited access to certain patents. (Intermec has grouped its patents into four portfolios covering four product categories—RFID chips and dies, RFID tags and labels, fixed RFID readers and printers, and mobile or handheld RFID readers and printers.)

Under the program, companies licensing Intermec's patents pay an initial fee, which Intermec has not disclosed, and a royalty of 2.5 percent to 7.5 percent on sales of their products. Both SAMSys and Zebra have cross-licensed their own patents with Intermec, which lowers their royalty fees.

While the decisions by SAMSys and Zebra to join the licensing program seem to validate Intermec's patent claims, not all vendors are jumping on board. Only these two companies had done so when we went to press. And rfid journal has learned that a group of hardware providers has been meeting secretly to explore the possibility of somehow blocking or fighting Intermec's patents. Several people who attended one or more of the meetings declined to say how many companies, or which ones, are involved.

It's not clear exactly what strategy the group will adopt—early meetings have focused primarily on how to avoid contravening antitrust laws—but two possible approaches have been discussed. The first would combine resources to try to fight Intermec's claims in court. The second would try to create some kind of patent pool, an idea that was originally floated by the MIT Auto-ID Center, the research group that developed the original EPC protocols, but rejected by EPCglobal.

A patent pool would seem to be a nonstarter unless Intermec were willing to join. Obviously, Intermec has little incentive

to do so. If it can take the lion's share of the licensing fees, why should it share them with others in a patent pool? The only way such an arrangement might work is if Intermec needed the IP in the pool to build its own products. Then, the members of the pool could require Intermec to cross-license its patents with the group that contributed to the pool. And it's not clear what chance, if any, there is of negating Intermec's patents. That would have to be decided in court, something that could take years.

Vendors are likely to come under increasing pressure to decide on a strategy. Intermec's Rapid Start licensing program, under which the firm says it is offering more favorable licensing terms, will end on Aug. 31. Even greater pressure will come from the fact that the products based on the second-generation EPC UHF air-interface protocol will hit the market later this year. Vendors who license IP could have an advantage in the market because end users might choose to purchase hardware from companies that are not likely to be sued for patent infringement (though vendors that sign Intermec's licensing deal could still be sued by other patent holders).

Some commentators have suggested that Intermec's approach will be harmful to the RFID industry. They say it will prevent rapid adoption of the technology because it will increase the cost of hardware and make end users reluctant to buy products, fearing that they, as well as the makers of those products, could be sued.

Both SAMSys and Zebra say they will not charge more for their products because of royalties. But it's likely some companies will not be able to absorb the cost of royalty fees and will pass on at least some of the cost to end users in the form of higher prices. And even though Intermec has said it won't sue end users, some end users might be concerned about buying products from companies that could be sued by Intermec, particularly smaller vendors that might not have the resources

to wage an expensive court battle and service their clients.

Another (perhaps bigger) concern is that companies will file for patents in an attempt to make money without ever producing products, which could block adoption of certain solutions. For instance, companies have applied for broad patents for using RFID to secure buildings, for using RFID in games, for embedding RFID transponders in corrugated packaging and for using tags with foam spacers on metal objects. These kinds of patents could prevent other companies from deploying RFID technology even when there is no research or innovation behind the patent.

But there may be a silver lining. It's a sure bet that venture capitalists, entrepreneurs and researchers are keeping an eye on the situation. If they see companies are willing to pay licensing fees—and end users will pay for higher-priced hardware—they'll be more likely to invest their time, energy, resources and intellectual capital in a market where innovation is rewarded financially. That means that young companies working to improve the performance or reduce the cost of UHF RFID will likely have an easier time raising money and recruiting talent because if they succeed, other vendors will pay them royalties to use the technology in EPC products. That will lead to more innovation, and innovation is good for end users.

Some Recent VC Investments in RFID Companies

June 2005: RF Code, an eight-year-old Mesa, Ariz., developer of RFID data-management software and enabling technologies, closed its first round of institutional funding with \$20 million of venture capital from QuestMark Partners of Baltimore and Intel Capital of Santa Clara, Calif.

April 2005: Tagsys, a French RFID systems provider, completed a \$12.2 million round of funding from Endeavour, a venture

firm in Geneva, and New York hedge fund Elliott Associates and its affiliates. The additional funding brought Tagsys' total financing to more than \$40 million.

February 2005: Xterprise, a Dallas systems integrator, raised \$2 million in investment funding from LogiSpring, a Swiss firm that funds companies with technology, services and solutions for supply chains.

November 2004: RFID reader maker Applied Wireless Identification Group (AWID) closed a \$10 million round of funding from Yuen Foong Yu Paper Manufacturing Co. of Taiwan, EMMT Systems, Microelectronics Technology, Hau Nan Commercial Bank and Sunsino Venture Capital.

October 2004: T3Ci, a Mountain View, Calif., startup that provides software that analyzes RFID data, raised \$9.4 million in a first round of private equity financing. The Series A investors included Venrock Associates, Red Rock Ventures, SAP Ventures and company founders.



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