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Patent Pool fostering: Frequently Asked Questions

What is MC-IF's initiative for fostering a patent pool covering VVC essential patents?

MC-IF proposes to foster the formation of a patent pool covering patents essential to the new standard Versatile Video Coding (VVC). "Pool fostering" is an initial, precommercial step leading ideally to the formation of a single, voluntary patent pool. Participants in MC-IF's pool fostering effort will seek to select a pool facilitator that will complete pool formation and administer the pool, including licensing, royalty collection and distribution. MC-IF will not itself complete the pool or administer it.

MC-IF anticipates that its role in pool fostering, and the handoff to a commercial facilitator, will be completed during 2020.

MC-IF's goal in pool fostering is to encourage patent holders to create a single pool with a critical mass of VVC standard essential patents (SEPs). MC-IF discourages the creation of multiple pools licensing fragments of VVC SEPs. Today multiple pools cover HEVC, a predecessor codec to VVC. This has confused the licensee community and slowed broad adoption of HEVC.

MC-IF has decided that its fostering of a pool, shortly after formal approval of the VVC standard, could avoid fragmentation of the VVC licensing market. In pool fostering, VVC is using a model applied successfully by the DVB Project for other audiovisual standards.

These FAQs address in greater depth the elements of pool fostering. Note that these FAQs should not be considered legal advice. When considering whether to participate in MC-IF's pool fostering effort, a company should consult its legal counsel and business advisors.

What is MC-IF?

The Media Coding Industry Forum (MC-IF) is an open industry forum with the purpose of furthering the adoption of MPEG standards, initially focusing on VVC, by establishing them as well-accepted and widely used standards for the benefit of consumers and industry. MC-IF is working on non-technical aspects of deployment of media standards, notably including facilitating licensing discussions. MC-IF is a hub for information related to implementations, tools, profiles, interoperability, and guidelines for the use of VVC and related standards. MC-IF has recently taken the step of fostering the formation of a single patent pool with patents essential to the VVC standard. The fostering effort is further discussed in these FAQs. Note that membership in MC-IF is not required for a holder of potentially essential patents to participate in this fostering effort. But any party that supports MC-IF's goals is invited to join the Forum! To join MC-IF, see www.MC-IF.org.

What is “fostering”?

Fostering is the process of encouraging holders of patents essential to the VVC standard to consider the formation of a patent pool. The goal is a common choice of a pool facilitator that will take participants forward to complete the pool and to launch a licensing program of their standard-essential patents.

What is an “essential patent”?

A “standard essential patent” (or SEP) is a patent that includes claims that are necessarily infringed, from a technical point view, by the implementation of a standard. There are other, broader definitions of SEP, including those that include patents that are “commercially necessary”. The definition of the SEPs to be ultimately included in the VVC pool will be decided by pool participants and their administrator.

Who participates in fostering?

Fostering participants are those with a well-founded belief that they hold SEPs. (“Well-founded belief” is discussed below.) Meetings of the participants are convened by a neutral third party. The conveners will be Jud Cary, Chair MC-IF, who is employed by CableLabs as Deputy General Counsel, and Carter Eltzroth, who is experienced in similar pool fostering at the DVB Project, and is with Helikon.net (an MC-IF member). Antitrust counsel may be present. It is expected that the conveners will give periodic reports of their progress to MC-IF, implementers, and other stakeholders.

But isn’t fostering the same as pool facilitation?

No. Fostering is a pre-commercial activity undertaken before pool formation and licensing. Pool facilitation is generally led by a commercial pool administrator. Facilitation includes negotiations on licensing terms, royalty distribution, and the administrator’s fees.

As a pre-commercial activity, fostering provides, typically as the standard approaches completion, a forum for discussion among SEP holders regarding their choice of a pool facilitator. The goal is the selection of a single facilitator. Royalty rates and other commercial terms are not discussed.

Early fostering helps settle the licensing landscape, supports the goal of early implementation of the new standard, builds on MPEG’s licensing policy of voluntary declaration of essential patents, and is consistent with the commitment to license on fair, reasonable and non-discriminatory terms.

What are the steps leading to the licensing of VVC patents?

MC-IF contemplates three steps:

- Pool fostering, convened by MC-IF, comprised of one or more meetings among SEP holders to decide on a methodology for the choice of a patent pool administrator; and ideally, concluding with the choice of a single facilitator;

- Facilitation, managed by a commercial facilitator that leads commercial discussion on the terms of a license covering VVC essential patents; a separate agreement on royalty distribution and other arrangements among pool participants; and fees and other terms for the pool administrator; and
- Administration, undertaken by a commercial administrator (that is typically the same as the facilitator), handling licensing to VVC implementers, royalty collection and distribution, and other matters.

What are you trying to achieve with the fostering of patent pool formation process?

Fostering has been successfully used by standards bodies to speed up the formation of a patent pool for their standard, and to achieve a single, efficient, one-stop shop patent pool licensing program (as determined by the SEP owners). These outcomes help to promote the commercial success and adoption of the standard. MC-IF would like to apply this process to VVC to achieve similar outcomes.

Will MC-IF discuss royalties, pricing, or other license terms during the Fostering process? Are there not antitrust prohibitions for this activity by standards bodies?

No. Fostering is a pre-commercial activity. It precedes commercial facilitation of a licensing program undertaken by a commercial facilitator. There will be no discussion of royalties, other licensing terms, royalty distribution or administrator fees. Rather, through fostering, MC-IF will encourage the formation of a single pool, including choice of a patent pool facilitator by the SEP owners. After such selection of a patent pool facilitator, MC-IF's role terminates, and the patent pool facilitator and the various SEP owners will continue the effort that may lead to completion of a VVC pool, including agreement on license terms, royalties, and other arrangements for a licensing program.

Competent antitrust counsel will be present at the meetings of fostering participants. The conveners, and fostering participants, will also be vigilant to avoid antitrust issues.

What is the test for participating in the meeting? What is meant by “well-founded belief” that I hold one or more SEPs?

Participation is based on the participant's “well-founded belief” that it holds one or more patents essential to the VVC standard. It means that the participant, as a result of inquiry and its own evaluation, believes that it holds SEPs. A fostering participant does not declare, or offer a claim chart or the results of an essentiality review showing, that it holds patents essential to the VVC standard.

If I participate in the fostering process, do I have to commit my patents to the final chosen regime and patent pool administrator?

No. Participating in the fostering process is entirely a voluntary process, and so is participation to the formation and participation in a patent pool. There is no obligation on a participant to license its patents, or to join a patent pool selected by the participants. Note that even if a patent holder participates in a patent pool, a patent holder remains entitled to license its patents bilaterally.

Why isn't MPEG, the standards body developing VVC, responsible for forming a VVC patent pool or some other licensing arrangement?

The developers of VVC have focused on the technical specification. Under the rules of the standards bodies now completing work on VVC, the participants are bound to grant licenses to their SEPs to implementers on terms that are reasonable and non-discriminatory. But these rules also forbid discussion of specific licensing arrangements, including pools, in the context of the standards development. MC-IF has been formed in part to facilitate the discussion of licensing terms. And in this regard it has decided to take forward the pool fostering initiative.

Is MC-IF going to be the pool administrator?

No. Rather, MC-IF will convene the fostering meetings and undertake administrative tasks; reach out to potential commercial patent pool facilitators and SEP owners; organize virtual meetings; provide antitrust counsel. At the end of the fostering process, the participants will consider proposals from candidate commercial patent pool administrators, and ideally select a single patent pool facilitator. This facilitator will complete the pool and, as administrator, manage the licensing program.

What benefit of pool fostering is there to commercial patent pool administrators?

Commercial patent pool administrators seek to coalesce a critical mass of SEP owners representing a large number of SEPs related to the standard (VVC). Bringing a large number of SEP owners together at pool fostering meetings provides an efficient use of time and a single location for commercial patent pool administrators to meet with SEP owners.

If a patent pool is formed, is participation mandatory for either SEP licensors or VVC licensees?

No. Participation in any patent pool formed by the SEP owners and the patent pool administrator is completely voluntary. Likewise, an implementer is not obligated to take a license from the patent pool; other sources of licensing may exist (e.g., bilateral licensing, cross licensing amongst companies).

Can anyone participate in fostering process?

No. Only those who have a "well-founded" belief that they own a SEP in VVC can join as a participant. You do not need to be a member of MC-IF, although it is encouraged.

Do I have to be a member of MC-IF to participate in the fostering process?

No, although membership in MC-IF is encouraged.

Is the fostering process under NDA?

Generally, the meetings are under terms of confidentiality, with the understanding that within the participant's company information related to the meetings is made available on a need-to-know basis. However, the SEP owners could change the confidentiality status, apply Chatham House rules, or come to other arrangements.

Is there a fee associated with participating in the fostering process?

MC-IF will convene the meetings and pay for the Convenor and antitrust counsel as needed.

Will a pool administrator be chosen at the end of the fostering process?

MC-IF expects that this will be the outcome of fostering, but the selection of administrator is a decision to be taken by the fostering participants.

Pool fostering appears to work for DVB: there are a number of DVB pools that are based on early pool fostering. Are there other SDOs which have used pool fostering?

IEEE has twice launched pool fostering efforts but for a number of reasons these did not result in pools. Pool fostering has been encouraged in Chinese standards development and more recently by the European Commission.

Are there any differences among pool administrators? How can potential VVC licensors select the right administrator?

Pool administrators generally follow the framework for joint licensing programs set out in business review letters issued by the US Department of Justice. But there are significant differences in their commercial practices and experience in pool formation and management. Candidate administrators are likely to highlight their different approaches to pooling in the materials and presentations they offer during the fostering process.

What if MC-IF fails to achieve its objective, and there is more than one pool formed covering VVC SEPs?

MC-IF hopes that the fostering participants will agree on a facilitator, leading to a single pool covering a critical mass of VVC SEPs. MC-IF members, and others, wish to avoid a repetition of the fragmentation found today in the HEVC patent licensing market caused by the multiplicity of HEVC pools.

However, there can be no assurance that MC-IF's fostering efforts will result in consensus around a single pool facilitator. Those participating in MC-IF fostering are not obligated to join the facilitation effort or, if they do, they may choose to abandon that process at any time. As a result, the chosen pool facilitator may not be able to complete a pool with a critical mass of VVC patents. And notwithstanding the selection made by participants in the MC-IF fostering effort, other commercial facilitators may launch competing facilitation efforts.

Wow, this is great. Where do I get more information? When's the first meeting? Where do I sign up?

Further information about MC-IF's initiative to foster the formation of a pool for VVC-essential patents can be found at www.mc-if.org/fostering. That webpage includes a registration form, together with a link to these FAQs and other background information.

Queries on this initiative can be addressed to poolfostering@lists.mc-if.org.

MC-IF intends to hold at least one remote virtual meeting during summer 2020. The remaining schedule depends largely on the direction taken by the fostering participants, but it is anticipated that the fostering work will have concluded, and a pool administrator selected, by late 2020 or early 2021.