OFFICE OF THE UNDER SECRETARY OF DEFENSE

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ACQUISITION,
TECHNOLOGY
AND LOGISTICS

AUG 2 3 2004

Robert T. Marlow
Vice President, Government Division
Aerospace Industries Association
1000 Wilson Boulevard, Suite 1700
Arlington, VA 22209-3901

Dear Mr. Marlow,

I appreciate the efforts of the Aerospace Industries Association (AIA) in support of the Department of Defense (DoD) Unique Identification (UID) initiative. In your letter of June 29, 2004, you raised issues concerning patent infringement liability and recommended the use of certain Federal Acquisition Regulation (FAR) clauses and additional actions to address these issues. In fact, it appears that the application of the standard FAR policies and clauses available for the acquisition of intellectual property rights are sufficient to address your concerns without the need for the additional actions you recommended.

More specifically, you noted that there are privately owned patent rights covering technologies associated with the implementation of the 2D marking requirements, and therefore issues regarding patent infringement liability must be resolved before industry can move forward in implementing these requirements. These issues are directly addressed by FAR coverage on authorization and consent (A&C), patent indemnity (PI), and cost principles. For example: general guidance is provided at FAR 27.104(b)-(d); the A&C clauses are prescribed for nearly all contracts at FAR 27.201, although we are strictly prohibited from agreeing to indemnify contractors for patent infringement by section 27.201-1(b)(1); the PI clauses are prohibited in many circumstances and optional in most others pursuant to FAR 27.203, and are intended to apply only to commercial technologies (see also FAR 52.212-4(h)); and the allowability of costs for obtaining appropriate patent license rights is provided at FAR 31.205-37.

These policies and requirements are intended to address a wide range of patent infringement and licensing issues in acquisitions involving technologies covered by privately owned patent rights. The diligent application of these contracting procedures to DoD acquisitions involving UID technologies and requirements should address the concerns you raised in your letter. However, if you have more specific rationale for how these standard procedures fail to adequately address these issues in the context of the UID initiative, please forward that information.

Again we thank you for your continued support of the UID initiative and your efforts to keep us informed regarding the issues and implementation challenges your industry is working to meet these requirements. If you have further questions regarding this matter, my point of contact is Ms. Lydia Dawson, 703-695-1098 or lydia.dawson@osd.mil.

Sincerely,

Deidre A. Lee
Director, Defense Procurement
and Acquisition Policy