

RPX Corp., which has already signed on a number of vendors with RFID products as members, is aggregating patents to protect high-tech companies from litigation.

By Beth Bacheldor

Apr. 8, 2009—[RPX Corp.](#), a startup firm that is buying various patent portfolios, including those involving radio frequency identification, in order to help high-tech companies fight patent assertions and associated litigation costs, has added five more member companies to its ranks, thus bringing the total number up to 11 since it began conducting business in November 2008. To date, RPX owns patents valued at more than \$70 million, and has signed on as member companies Cisco, IBM, LG Electronics, Panasonic, Philips, Samsung and Seiko-Epson (all of which sell hardware, software or services involving RFID), as well as Shortel, TiVo and Vlingo.

The firm is doing what John Amster, RPX's co-CEO, calls defensive patent aggregation—that is, purchasing patents on behalf of its member companies in order to protect them from the growing number of non-practicing entities (NPEs) that acquire patents not to manufacture or market a patented invention, but to sue businesses they allege are infringing on the patents. Moreover, since NPEs do not sell products or services, they do not infringe on patent rights. Thus, companies are unable to counter-assert patents (which often occurs in patent battles among competitors).



John Amster

"There's been a lot of investment going into NPEs, and their goal is to use that money to go and acquire more patents," Amster says. "We came up with the idea that what the market needs is a company to act on behalf of very large group of companies, to be a defensive buyer that can provide a counterbalance to the NPEs."

According to Amster, there are more than 220 identified NPEs in the United States, with roughly 350 cases involving perhaps as many as 1,000 defendants filed by NPEs in 2008. "Just the legal cost alone is around \$1 billion," Amster states, "and that is just in the cost, not any settlements. With that, it is probably a lot more—closer to \$5 billion."

In the past decade, NPEs have raised in excess of \$6 billion in private capital to acquire patents. What's more, offensively initiated lawsuits by NPEs in the United States grew nearly 300 percent during this period, and now represent 16 percent of all U.S. patent litigation, according to [PatentFreedom](#), a research organization focused on the activities, techniques, staff, funding and patent holdings of NPEs. The rapid growth of patent lawsuits involving NPEs, PatentFreedom reports, has been fueled by the increased numbers of patents awarded, as well as the promise of big returns on relatively modest costs (the median price for a patent is approximately \$100,000). A powerful example of that is the \$612 million payment made by [Research in Motion](#) in 2006 to patent-holding company NTP.

Amster states that his firm is not out to sue anyone to make money. "We will never assert our patents to anybody; we'll always wear the white hat and will never threaten litigation," he says. Instead, RPX's plan is to make money from the fees its members pay. The company is backed by blue-chip venture capital firms [Kleiner Perkins Caufield & Byers](#) and [Charles River Ventures](#). Members pay an annual fee ranging from \$35,000 to \$4.9 million, based on a rate card that takes a member's operating income into account.

The firm's patent coffers include approximately 300 different patents in the mobile, Internet search, telecommunications, consumer electronics and RFID markets, Amster says, all chosen for their potential to be acquired by NPEs. One particular portfolio, acquired by RPX in October 2008, comprises patents related to the use of RFID tags in a supply chain. The portfolio consists of 93 U.S.-granted or -allowed patents and 38 pending applications, and has four sub-portfolios covering the use of product codes in search engines to retrieve product details, a variety of methods for linking product codes to information and purchasing channels, a number of RFID tagging and payment systems (including tracking technologies), and technologies such as the watermarking of digital audio files.

"The reason we bought that portfolio is that it was very broad, and this is exactly the type of portfolio an NPE would look for—a patent that is very broad, and that could be asserted against a lot of companies," Amster states. "There's the potential to assert against not only companies that make RFID products, but against companies that use RFID tags, such as retailers."

To enable its defensive patent-aggregation service, RPX's team of 19 employees search for patents—and in some cases, patent rights—that create value for its members. RPX will even buy patents in the midst of assertion, which Amster says RPX has done three times already. The firm does not consult with its members when buying patents—in fact, the RFID-related portfolio, as well as many other patents, was acquired before any members signed on. It is largely this characteristic that makes the company's model different from what are known as patent pools. Typically, a patent pool is formed by a group of businesses that get together to cross-license their patents and aggregate intellectual property (IP) rights (see [Justice Department Gives Nod to EPC Gen 2 Patent Pool](#)).

A patent pool generally sticks to the patents and IP rights that belong to its members, without actively acquiring patents. Not only does RPX not consult its members, it also doesn't narrow patent acquisitions to a few technologies or industries. Instead, the firm focuses its buying decisions on those patents likely to be purchased by NPEs, as well as patent portfolios that are broadly based and can be asserted against a lot of companies, products and services. RPX indicates it would consider purchasing additional patents involving RFID in the future, however, assuming those patents were relevant to its members' businesses.

The value to RPX's members, Amster explains, is that they'll receive licenses to all patents held by the company, as long as they are paying members. The firm will vest any member that has kept its membership active (by paying membership fees for three years) by offering that member perpetual licenses for all patents acquired by RPX during that three-year span—even if a member opts not to

renew its membership.

According to Amster, RPX has plans to add to the more than \$70 million worth of patents it has already bought. "The goal of the business," he says, "is to buy at least \$100 million worth of patents a year."