

## Troll Bridge

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SAN FRANCISCO — When John Amster launched RPX Corp. as the cure-all for patent trolls in September, the industry was skeptical about how it would work.



John Amster, CEO and GC of RPX  
Image: Jason Doiy/The Recorder

Now Amster, an IP lawyer and entrepreneur, is disclosing the inner workings of what he calls the first "third party, independently funded defensive patent aggregator."

The new San Francisco business is catering to the frustration that big tech companies have with what they derogatorily label "patent trolls," or patent holders whose only business is suing for infringement.

Amster claims that RPX will help companies avoid the high price of these lawsuits. His company will charge members an annual fee and in return RPX will buy dangerous patents off the street and give their members a license.

"We are 100-percent focused on patents that could become a risk to our members," Amster said. "We are not interested in finding the Rembrandt in the attic."

So far RPX has signed up two companies to its program: IBM Corp. and Cisco Systems Inc., a company whose distaste for so-called trolls is legendary. Amster wouldn't disclose the details of the deals, but said that the annual cost for members will be between \$35,000 and \$4.9 million depending on the company's size.

Fabio Marino, an IP lawyer with Orrick, Herrington & Sutcliffe, said tech companies will at least take a gander at RPX.

"People would be interested in an entity that goes and buys patents off the street," Marino said. "The question is can they generate enough revenue?"

Amster said the only money will be coming from members. RPX won't be going around trying to enforce patents that it buys. That led industry insiders to question why anyone would sign up, since those who don't would seemingly be getting a free ride.

But Amster emphasized that there will be no free riders. Companies that don't sign up won't get licenses and could get sued by someone else once RPX puts the patent back on the market (with the licenses still intact).

"There are going to be cases where we only buy rights that are going to protect our customers," Amster said. "You do not get the full benefit of our services if you're not a member."

Another question about RPX's business model has been: Why would a patent holder sell instead of rolling the dice on litigation?

Joe Chernesky, president of IP investment bank IPotential in San Mateo, said that if RPX pays higher prices to patent holders, the risks of litigation won't look so good to so-called trolls, and the offers will stick in the trolls' throats.

"It's a good model if they can make it work," Chernesky said. "It's the chicken-bone pricing strategy."

IPotential brokers patent deals and RPX is currently bidding on a portfolio, Chernesky said.

Amster said that RPX will be trying to buy patents before they get into the hands of someone who'll sue. But he said that the company will also buy patents that are being asserted against its members.

RPX isn't the first defensive patent pool. Intellectual Ventures, the giant patent-holding company, started that way. Allied Security Trust is a group of companies that buys patents they consider a threat.

Amster said RPX is different than IV because it won't be aggressively going after companies to try to get them to license its patents. He also said that RPX will be more opportunistic than AST, which historically has required that all its members sign off on any deal.

Much of RPX's success will depend on how many members it can get and in turn how many patents it can buy. So far, RPX has bought more than \$40 million in patent rights — 150 U.S. patents and 50 U.S. patent applications in the mobile, Internet search and RFID markets — and is on track to spend \$100 million in the first year. It's being funded by Kleiner Perkins Caufield & Byers and Charles River Ventures.

Orrick's Marino says that RPX will help big tech companies — at least somewhat.

"I don't think anybody has figured out a foolproof strategy to deal with trolls, and I think this will help. But the question is, will it help enough?"

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