

# 2013 NPE Cost Report

High-level Findings

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## Introduction

In 2013, non-practicing entity (NPE) activity was once again a regular cost of business as NPE plaintiffs sued approximately 2,700 unique companies over 4,800 times.

Yet the cost of NPE activity is rarely studied or quantified. This lack of data has unfavorable consequences. First, it increases the difficulty of quantifying risk exposure to NPEs. Second, companies can find themselves without market data on appropriate costs and settlements. Finally, serial NPEs can often leverage this asymmetry into an information advantage in negotiation.

It was with this data deficit in mind that the RPX cost study survey initiative was undertaken. The initial study, performed in 2012, included over 80 companies. In 2013, RPX continued its efforts, and the study has now expanded to include over 130 participating companies with experience in more than 2,500 NPE suits. Participants range from small start-ups to the largest multi-national companies in the world and cover numerous sectors and industries.

At RPX, we have used the survey data to form our own point of view on the cost NPEs impose on the industry. We estimate that in 2013, NPEs cost

operating companies \$12.8 billion in legal fees and settlement or judgment amounts related to NPE assertions and litigations.

The report contains quantitative analysis and statistics related to the NPE risks faced by operating companies. For example, in the majority of NPE assertions, more than half the cost to operating companies is legal cost. In the survey, certain industries reported having markedly higher expenses related to NPEs than other industries, though the cost to resolve “nuisance” suits appears to be very similar across all sectors. Some industries, such as semiconductors, reported a higher number of more sophisticated, long-lasting litigations that often result in costly settlements.

What follows is an extract of a broader report that has been made available only to participants in this study.

## Summary of Key Observations

### Some observations worth highlighting include the following:

- NPEs cost operating companies an estimated \$12.8 billion in 2013.
- Among participating companies, the legal, settlement, and judgment costs from litigation represent nearly 70% of the costs of dealing with NPEs to-date. Non-litigation assertions and other costs comprise the remainder.
- For reported cases with less than \$1.0 million in total resolution costs, legal costs made up more than half of the total cost. Whereas for cases with greater than \$1.0 million in total resolution costs, settlements or judgments made up the majority of total cost.
- Companies reported a wide range of costs to resolve NPE cases, ranging from low five figures to high nine figures. The distribution is highly skewed, characterized by a high quantity of lower-cost cases and a smaller quantity of very high-cost cases. The median combined legal and settlement resolution costs for reported NPE suits is \$520 thousand, but the mean is \$6.0 million. The difference is driven by a small number of very expensive cases; often seven figures, eight figures, or even nine figures. The cost was over \$17.2 million per case for the top 5% of cases ranked by total cost.
- Suits in some technology/market segments appear to be more expensive to resolve than others, with the semiconductor industry exhibiting the highest reported costs. However, this difference appears to be driven by a small number of suits with very high settlements and/or damages. The median cost to resolve NPE suits is similar across technology/market segments.
- Larger companies have higher NPE expenses than smaller companies. They also pay more than smaller companies to resolve NPE suits.

## Charts and Highlights

The following pages feature charts and highlights of key report facts.

## NPEs Cost the Industry \$12.8 Billion in 2013

RPX estimates NPEs cost operating companies \$12.8 billion in 2013. This figure comprises legal and settlement or judgment costs related to NPE assertions and litigations.

NPE costs to operating companies have increased on average 22% per year from 2008 to 2013. This trend can be attributed to a consistent rise in NPE activity as evidenced by the increased number of NPE cases filed: from 626 in 2008 to 3,608 in 2013.

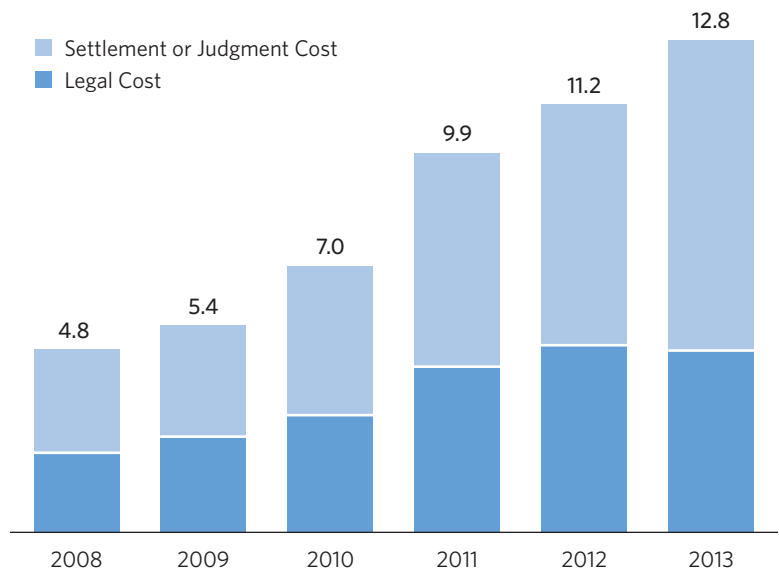
### Methodology Notes

*NPE cost from litigation: The total cost of NPE litigation is a combination of legal cost (incurred during the case) and settlement cost (payment to the plaintiff, if any). Legal costs are calculated as average daily cost multiplied by total days of litigation; a daily average is used to account for varying case lengths. Settlement costs are calculated as average settlement cost per case multiplied by total terminations in each year. This methodology was applied to generate estimates in four separate revenue tiers (\$0 - 100M, \$100M - 1B, \$1B - 10B, \$10B+) to account for differences in cost of litigation between small and large companies.*

*Non-litigation cost was calculated as an incremental percentage of Litigation Cost, assumed to be ~30% of overall costs.*

*N = 908 resolved litigations*

Chart 1: Annual NPE Costs Per Year (\$B)



## Patent Litigation Comprised over Two-thirds of Direct NPE Cost To-date for Participating Companies

Although litigation is the most public evidence of NPE activity, it is not the only NPE-related cost. Chart 2 breaks down the costs of NPEs from litigation and non-litigation activity.

Over two-thirds of the reported NPE costs to-date can be attributed to legal, settlement and judgment costs of patent litigation. Twenty six percent of NPE costs arise from NPE assertions that have not escalated to litigation. Only 5% stem from other NPE-related costs such as patent acquisition, validity challenges (outside of litigation), or clearance searches.

Even if exceptionally expensive litigations and assertions are excluded, the cost distribution remains similar. When litigations and assertions greater than \$10 million are excluded, 69% of the costs are litigation-related.

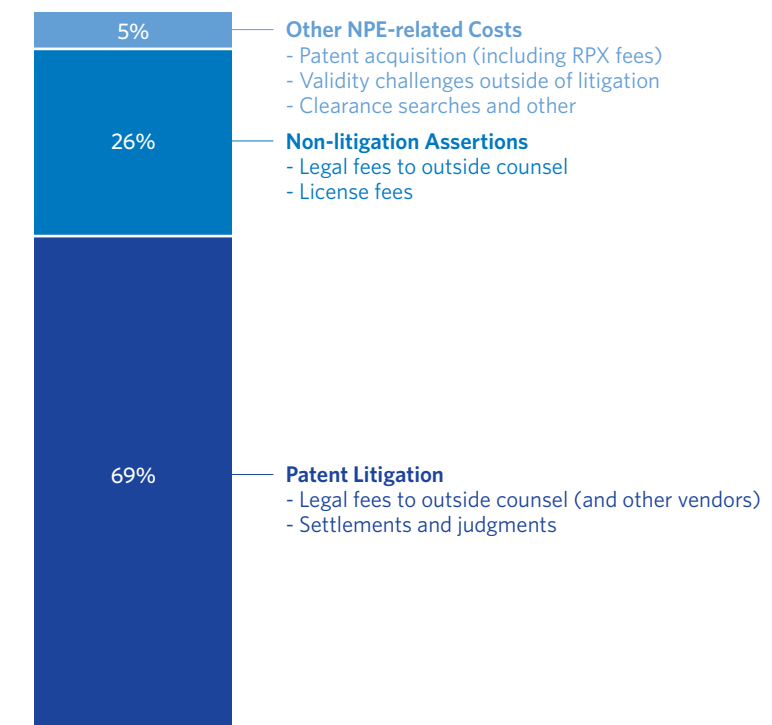
Soft costs such as employee distraction, customer uncertainty, and product workarounds are not quantified in this analysis.

### Methodology Notes

*Includes the costs from both resolved and active litigations and assertions. Excludes companies that did not report non-litigation costs.*

*N = 54 companies*

Chart 2: Components of Direct NPE Cost To-date



## In Most Cases, Legal Costs Exceed Settlements

One of the primary costs of NPE activity for operating companies is the legal cost of defending against NPE suits.

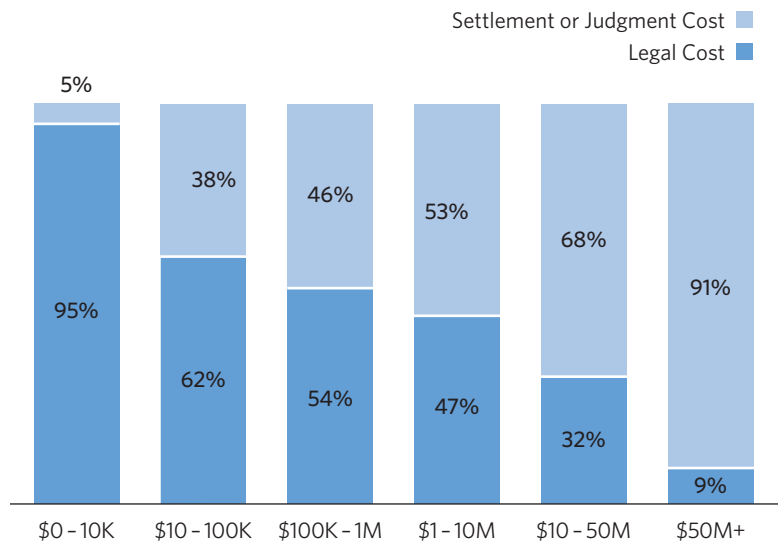
Chart 3 illustrates the distribution of total resolution costs between legal costs and settlement or judgment costs. For example, for suits costing between \$100 thousand and \$1 million to resolve, 54% of that cost was legal and 46% was settlement or judgment payments to NPEs.

### Methodology Notes

Based on resolution costs of reported NPE litigations. Excludes litigations with substantial indemnification or RPX involvement. Legal cost includes outside counsel (lead, local, and re-exam), experts, discovery, prior art searching, jury consultants, graphics, and other related costs. Excludes in-house legal costs. Settlement and judgment costs include the estimated present value of running royalties.

N = 123 companies, 1,410 resolved litigations

Chart 3: Distribution of Legal and Settlement or Judgment Resolution Costs





## Wide Variance of Reported Costs to Resolve NPE Suits

Companies reported a wide range of costs to resolve NPE suits, ranging from low five figures to high nine figures.

Chart 4 illustrates total resolution cost (legal and settlement or judgment combined) for each of approximately 1,340 completed NPE suits, ordered from least expensive to most expensive.

The distribution is skewed in that most reported cases cost under \$1 million to resolve, while a minority of reported cases cost millions to resolve. In particular, the median resolution cost for reported NPE suits is \$520 thousand, while the 95th percentile cost is \$17.2 million. The mean resolution cost of reported NPE suits is \$6.0 million.

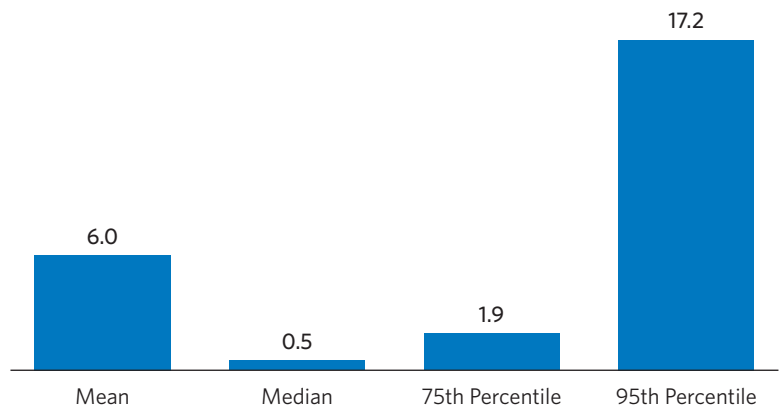
The wide variance in resolution costs can be primarily attributed to two factors. First, individual companies reported a wide range of costs. This wide range likely underpins the uncertainty companies face when evaluating their financial risk from NPEs. Second, the data represent a wide range of companies of different sizes and market sectors.

### Methodology Notes

*Based on resolution costs of reported NPE litigations. Excludes litigations with substantial indemnification, RPX involvement, or that were resolved at zero direct cost. Legal cost includes outside counsel (lead, local, and re-exam), experts, discovery, prior art searching, jury consultants, graphics, and other related costs. Excludes in-house legal costs. Settlement and judgment costs include the estimated present value of running royalties.*

*N = 122 companies, 1,340 resolved litigations*

Chart 4: Total Resolution Cost for Completed NPE Suits (\$M)



## Certain Technology Areas Reported More Expensive Suits

NPE suits in some market sectors appear to result in higher total costs than in other sectors; however, the difference can be largely attributed to a few high-cost suits in those market sectors.

Chart 5A illustrates the mean total cost of resolution for reported NPE suits segmented by market sector. The product categories refer to the accused product, not necessarily the company's primary market sector.

Because of the large variance of reported costs, a small number of very expensive suits skew the mean total costs upward.

To adjust for this skewedness, Chart 5B illustrates the mean cost of resolution for reported NPE suits, excluding those cases having total costs greater than \$10 million. Similarly, Chart 5C shows the median cost of resolution for reported NPE suits.

### Methodology Notes

Based on reported cost of resolution for resolved NPE litigations. Excludes litigations with substantial indemnification, RPX involvement, or were resolved at zero direct cost. Legal cost includes outside counsel (lead, local, and re-exam), experts, discovery, prior art searching, jury consultants, graphics, and other related costs. Excludes in-house legal costs. Settlement and judgment costs include the estimated present value of running royalties. Median costs cannot be split between legal and settlement.

N = 122 companies, 1,340 resolved litigations

Chart 5A: Mean Resolution Cost for Reported NPE Suits (\$M)

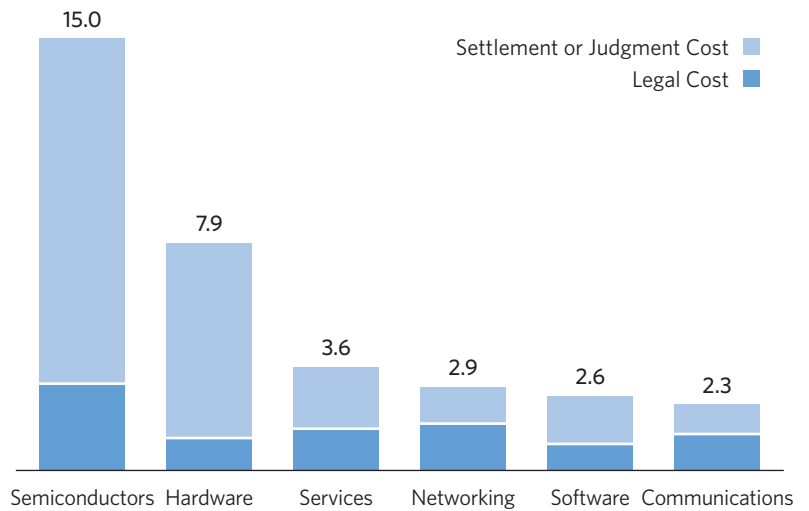


Chart 5B: Mean Resolution Cost for Reported NPE Suits, Excluding Cases > \$10M (\$M)

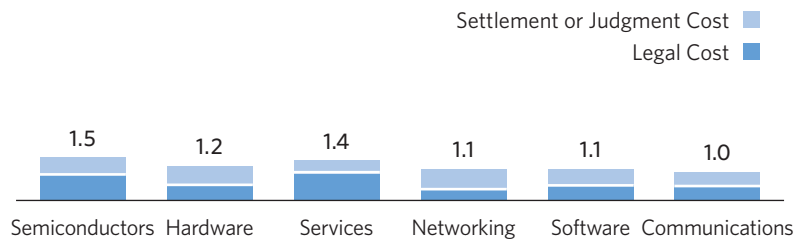
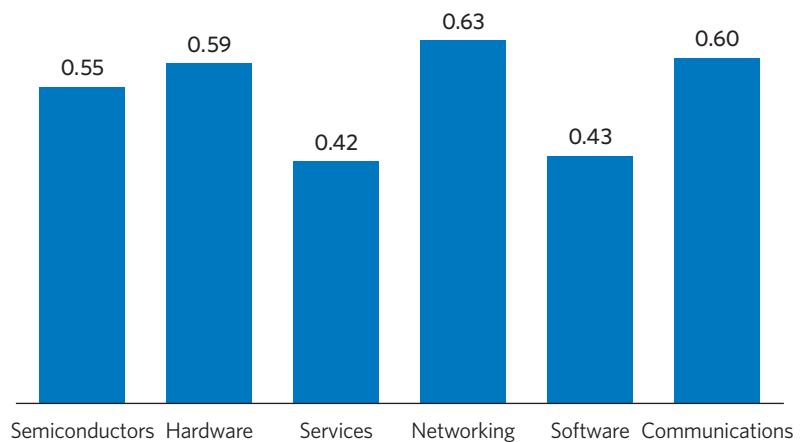


Chart 5C: Median Resolution Costs for Reported NPE Suits (\$M)



## Larger Companies Pay More to Resolve Suits

Participating companies with larger revenues reported paying more to resolve NPE suits than smaller companies.

Chart 6A illustrates the mean resolution costs for NPE suits, segmented by the defendants' total revenues.

Because of the large variance in reported costs, a small number of very expensive suits skew the mean total costs upward.

To adjust for this skewedness, Chart 6B illustrates the mean resolution cost for reported NPE suits, excluding those cases having total costs greater than \$10 million. Similarly, Chart 6C illustrates the median resolution cost of reported NPE suits.

### Methodology Notes

Based on reported cost for resolved NPE litigations. Excludes litigations with substantial indemnification or RPX involvement. Legal cost includes outside counsel (lead, local, and re-exam), experts, discovery, prior art searching, jury consultants, graphics, and other related costs. Excludes in-house legal costs. Settlement and judgment costs include the estimated present value of running royalties. Median costs cannot be split between legal and settlement.

N = 122 companies, 1,340 resolved litigations

Chart 6A: Mean Resolution Cost for Reported NPE Suits (\$M)

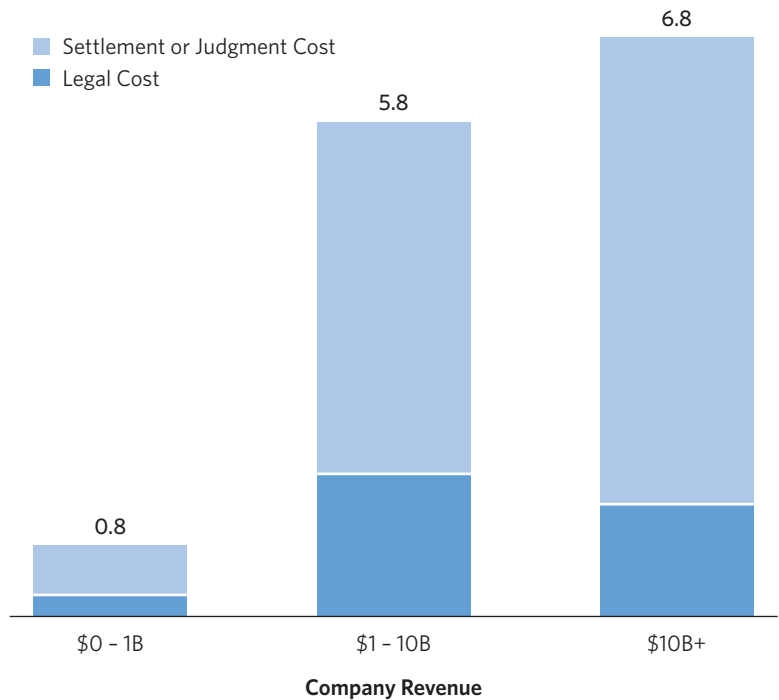


Chart 6B: Mean Resolution Cost, Excluding Cases > \$10M (\$M)

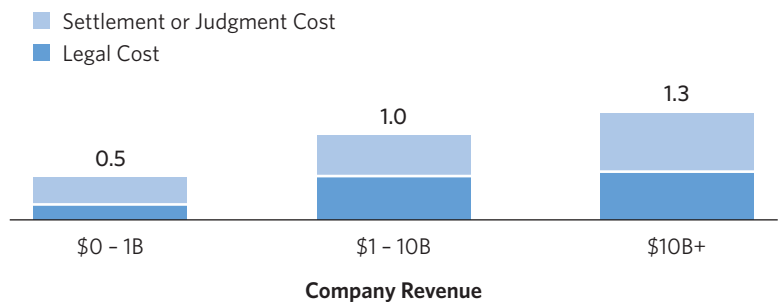
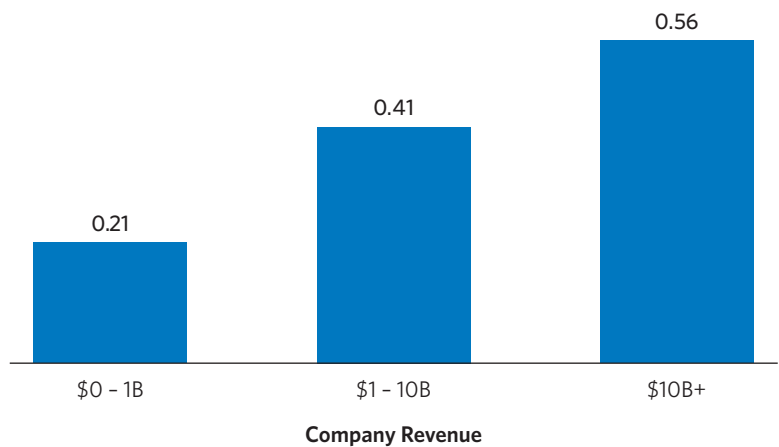


Chart 6C: Median Resolution Cost of Reported NPE Suits (\$M)



## Methodology Notes

### Timeline

Between May and December 2013, RPX invited companies to participate in a survey of NPE-related costs. Approximately 130 companies participated and submitted data in time for publication of this report. Participants include both RPX members and non-members.

### NPE Definition

For the purposes of this report the following are considered NPEs:

1. Patent assertion entities (PAEs)— entities believed to earn revenue predominantly through asserting patents
2. Individual inventors
3. Universities and research institutions
4. Non-competing entities (NCEs)— operating companies asserting patents outside their areas of products or services

This broad definition covers the class of asserting entities from which operating companies have asymmetrical risk (i.e. the asserting company is generally immune to counter claims). The vast majority of reported costs concerned assertions by PAEs.

### Technology Area Definition

For the purposes of this report NPE costs are grouped in the following technology areas:

1. Communications: Communications service between endpoints based on standards and protocols using software and/or hardware products and systems.
2. Hardware: Hardware products and technologies.
3. Networking: Networking-related products and technologies.
4. Semiconductors: Semiconductor-related products and technologies including equipment and manufacturing processes.

5. Services: Platforms, content, information, or experiences delivered to the consumer using software and/or hardware products and systems.

6. Software: Software products and technologies.

### Cost Characterization

In this report, all direct costs of resolving NPE disputes are referred to as “costs”. We recognize that license fees to NPEs may be characterized as “transfers”, particularly when examined from a public policy perspective. But companies managing risk tend to view both NPE-induced legal fees and settlements as the costs of NPEs for their business. For this reason, and for the sake of simplicity, we use the “cost” label in this report.

### Cost Statistics

To preserve anonymity, statistics were collected and presented in ways that avoided identifying specific companies or plaintiffs.

### “Clean” Resolved Litigations

To provide a more accurate picture of NPE costs, most statistics on litigation resolution cost are limited to “clean” resolved litigations. “Clean” resolved litigations exclude active litigations, litigations with indemnification, or litigations in which RPX was involved.

## About RPX

RPX Corporation (NASDAQ: RPXC) provides patent risk solutions, helping corporations reduce and manage the costs of patent risk. We provide a more rational and efficient alternative to the traditional litigation approach to patent assertion defense, offering defensive buying, acquisition syndication, patent intelligence, insurance services, and advisory services.

Defensive buying and acquisition syndication leverages the combined strength of companies facing NPE assertion. RPX acquires high-risk patents and rights in the open market and out of litigation—patents and rights that would otherwise be used against our members. For a set annual fee, each member in our network receives a license to all patents we have aggregated in the growing RPX portfolio. RPX also organizes syndicated acquisitions in which members cooperate to acquire high-value portfolios and rights at an attractive price.

In addition to risk reduction through patent acquisitions, RPX provides industry-leading market intelligence covering NPEs, litigation, and the patent marketplace. Through our intelligence, members gain visibility into company-specific patent risk, enabling them to make informed, strategic decisions on patent matters.

By year-end 2013, the RPX network had grown to 168 companies in under five years. The RPX membership consists of companies across a broad range of industries including consumer electronics and personal computing, E-commerce and software, media content and distribution, mobile communications and handsets, networking, semiconductors, and financial services. Our buying power, capacity for gathering and disseminating market intelligence, and expertise in valuing and acquiring patent assets continues to grow as our client network expands.

RPX is transforming how operating companies mitigate and manage NPE patent risk. Because we will never assert or litigate patents, our interests are 100% aligned with those of our clients. Our success depends entirely on our ability to provide our clients with high-value service that reduces their cost and risk of patent assertion.

As of year-end 2013, RPX had:

- Reviewed more than 5,800 patent portfolios
- Completed 167 acquisitions, deploying over \$750 million in capital, of which approximately \$530 million was RPX capital
- Achieved more than 430 dismissals from over 60 litigations for members
- Mitigated an estimated \$1.5 billion in patent assertion defense cost for members
- Acquired or sub-licensed rights to over 4,200 patents

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