

# 2014 NPE Cost Report

High-level Findings

## From the Editors

This is the third NPE Cost Report from RPX and it is our most comprehensive to date, with more than 180 participating companies sharing anonymized data on their patent and patent litigation costs. The growing pool of participants in this annual study is a heartening indication that companies increasingly understand what we know to be a central truth: that collaboration—sharing resources, information, and responsibility—is key to changing a patent market driven by costly litigation. While the full cost study report is provided only to participants, we have shared a wealth of information in this public version and welcome inquiries from those interested in participating in future studies.

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### Companies in 2014 spent more than \$12 billion in legal fees, settlements, and judgments to resolve NPE patent disputes.

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As you will read, companies in 2014 spent more than \$12 billion in legal fees, settlements, and judgments to resolve NPE patent disputes. Our study reveals the growing evidence that a major portion of that spending goes to the unnecessary and significant expense of litigating patents as a precursor to a resolution. This expense can be a significant drain on both bottom line and investment in innovation.

Some observers believe the US patent system still needs new regulations and laws to remedy this problem. While we support any well-reasoned effort to advance efficiency and rationality in the legal system, at RPX we focus on the market side of the equation—specifically, the notion that information transparency creates a level playing field where parties can negotiate patent transactions and manage risk based on fair market value, not unpredictable legal costs.

In our pursuit of transparency and in the ongoing public debate, accurate information and meticulous data are crucial. This year's NPE Cost Report is our contribution to the discussion. We offer it as a tool and information resource—the best of its kind available, we believe—for company executives, patent professionals, and policymakers alike. As we proceed with future studies, we expect to continue expanding our data and analyses, promoting a more enlightened patent marketplace.

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## Introduction

In 2014, non-practicing entity (NPE) activity was once again a regular cost of business as NPE plaintiffs sued approximately 2,000 unique companies over 3,600 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. RPX has used the survey data to form a point of view on the cost that NPEs impose on the industry. In 2014, NPEs cost operating companies an estimated \$12.2 billion in legal fees and settlement or judgment amounts related to NPE assertions and litigations.

### **2014 NPE Cost Study Report**

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 remarkably 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.

### **New in the 2014 Report**

The initial study, performed in 2012, included over 80 companies and grew to over 130 participants in 2013. In 2014, RPX continued its efforts, and the study has now expanded to include over 180 participating companies. Participants range from small start-ups to the largest multi-national companies in the world and cover numerous sectors and industries. The 2014 report adds over 700 new litigation cost data points from a combination of new participants and updated data from 2013 participants. In total, over 3,300 litigation cost data points make up the 2014 report.

The 2014 report also adds new analyses and provides more granular statistics. For example, the report includes analysis on NPE costs by case event, showing that litigation progression leads to higher costs.

This expanded effort should provide a clearer picture of the financial impact of NPEs on operating companies. RPX hopes to build upon that picture in future years.

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

## Summary of Key Observations

The 2014 NPE Cost Report presents a quantitative summary of the costs of NPE activity to operating companies. Results are based on data that RPX has collected as part of its cost study survey, which began in 2012 and has grown in participation every year since. Observations within the Cost Report are intended to help quantify for litigators, heads of IP, GCs, CFOs, and CEOs the decisions companies are making about their NPE risk.

As noted in this summary of key findings, NPEs continue to impose significant costs on operating companies. Those costs vary by the size and character of the parties involved. The scope and location of litigation are also clear drivers of overall cost.

### \$12.2B: Overall Cost of NPEs

NPEs cost operating companies an estimated \$12.2 billion in 2014. This figure represents only a slight dip from 2013's \$12.5 billion estimated cost.

#### Cost Breakdown

Among participating companies, the legal, settlement, and judgment costs from litigation represent over 70% of the costs of dealing with NPEs to date. Dealing with non-litigation assertions and other non-litigation costs (e.g. patent acquisition) comprises the remainder.

#### The Price of Resolution

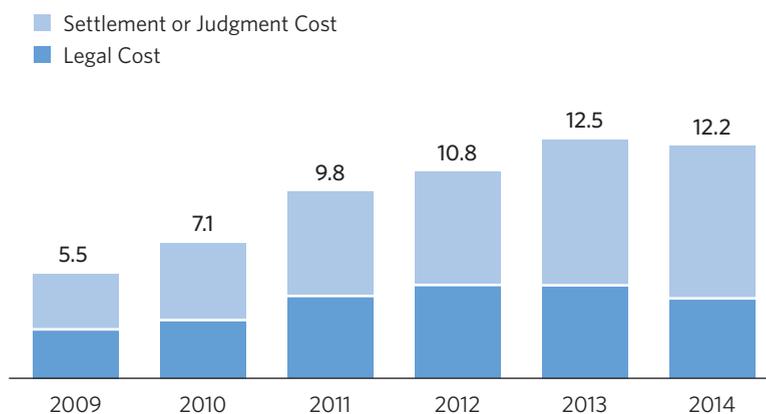
Companies did report a wide range of costs to resolve NPE cases, ranging from the low five figures to high nine figures. The distribution is highly skewed, characterized by a high quantity of lower-cost cases and a low number of high-cost cases.

#### Legal vs. Settlement Costs

The median combined legal and settlement resolution costs for reported NPE suits is \$480,000, but the mean is \$5.6 million. The difference is driven by a small number of exceptionally expensive cases; often seven, eight, or even nine figures.

For reported cases with less than \$10 million in total resolution costs, legal costs made up more than half of the total cost. By contrast, for cases with greater than \$10 million in total resolution costs, settlements or judgments made up the majority of total cost.

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



### Costs Vary by Market Sector and Event Reached

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 in that segment that had unusually high settlements and/or damages assessed. The median cost to resolve NPE suits remains much steadier across technology/market segments.

### By Defendant Size

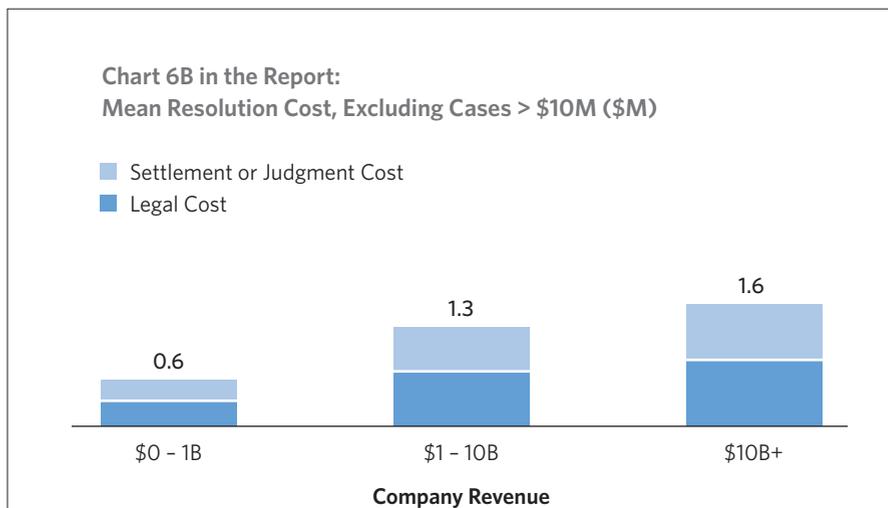
Larger companies have higher NPE-related expenses in comparison to those incurred by smaller companies. They also pay more than smaller companies do to resolve NPE suits, although the differences seen shrink markedly when a small number of exceptionally expensive cases are excluded.

### Expensive Milestones

The Cost Study also confirms what is perhaps equally intuitive: average costs tend to increase as a case reaches key litigation events. For example, litigations that ended after a claim construction order, on average, cost \$6.5M. That number is considerably higher than the \$3.5M average for litigations ending after a Rule 26 Scheduling Conference, the previous key event.

*The complete 2014 NPE Cost Report can be found at <http://www.rpxcorp.com/reports/>.*

*For further information, e-mail [reports@rpxcorp.com](mailto:reports@rpxcorp.com).*



## Charts and Highlights

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

## NPEs Cost the Industry \$12.2 Billion in 2014

RPX estimates NPEs cost operating companies \$12.2 billion in 2014. This figure comprises legal and settlement or judgment costs related to NPE assertions and litigations.

NPE costs in 2014 were down slightly from 2013, driven by lower legal costs due to a reduction in new lawsuits. However, NPE costs to operating companies have increased on average 18% per year from 2009 to 2014. This trend can be attributed to a consistent rise in NPE activity as evidenced by the increased number of NPE cases filed: from 640 in 2009 to 2,791 in 2014, which is only partly explained by new rules on joinder established in 2011.

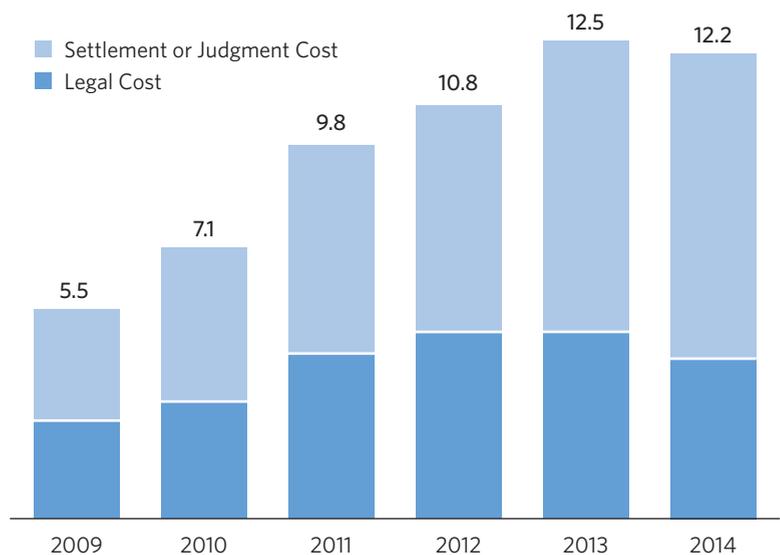
### Methodology Note:

*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 scale 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 Nearly Three-fourths 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 percent of NPE costs arise from NPE assertions that have not escalated to litigation. Only 7% 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, 64% of the costs are litigation related.

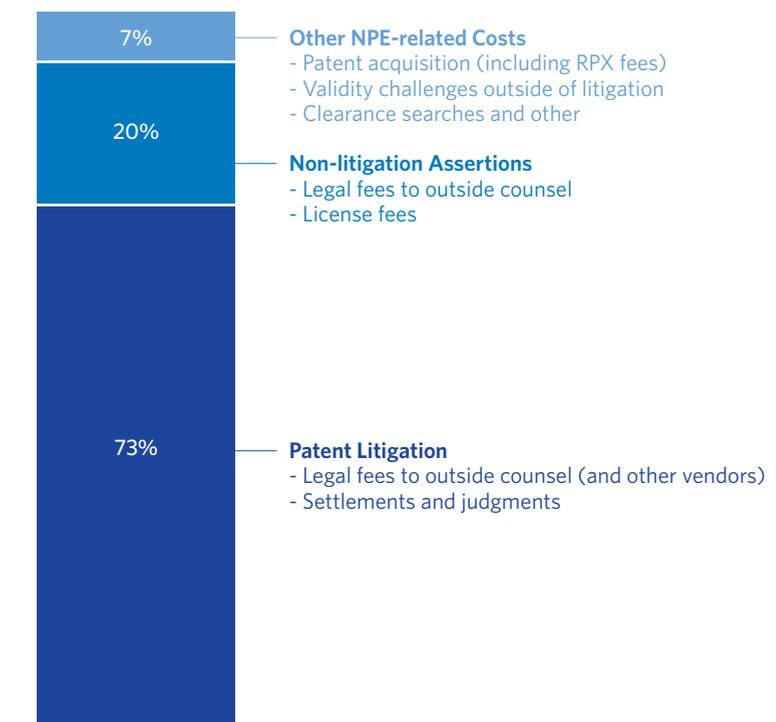
Soft costs such as employee distraction, customer uncertainty, and product workarounds are not quantified in this analysis.

### Methodology Note:

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

*N = 67 companies*

Chart 2: Components of Direct NPE Cost To-date



## Wide Variability 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 3 illustrates total resolution cost (legal and settlement or judgment combined) for each of approximately 1,776 completed NPE suits.

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 \$482 thousand, while the 95th percentile cost is \$16.3 million. The mean resolution cost of reported NPE suits is \$5.6 million.

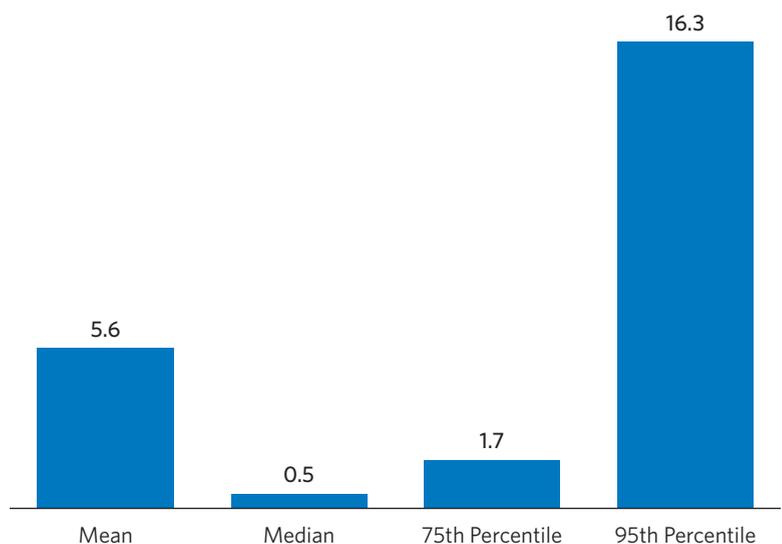
The wide variability in resolution costs can be primarily attributed to two factors. First, each company reported a wide range of costs among its suits. This broad range likely underpins the uncertainty that companies face when evaluating their financial risk from NPEs. Second, the data represent a wide spectrum of companies of different sizes and market sectors.

### Methodology Note:

*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 = 162 companies, 1,776 resolved litigations*

Chart 3: Total Resolution Cost for Completed NPE Suits (\$M)



## In All but the Most Expensive 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. Cost ratios vary significantly among the suits reported, but generally, the legal cost is a more significant portion of the total cost in smaller suits.

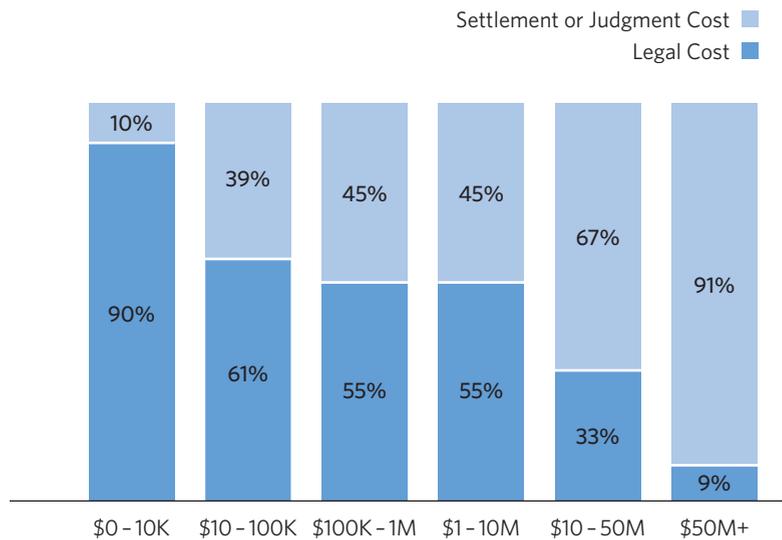
Chart 4 illustrates the distribution of total resolution costs between legal costs and settlement or judgment costs. For example, for suits costing between \$100 thousand and \$1 million to resolve, 55% of that cost was legal and 45% was settlement or judgment payments to NPEs.

### Methodology Note:

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 = 164 companies, 1,964 resolved litigations

**Chart 4: Distribution of Legal and Settlement or Judgment Resolution Costs**



## 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 variability of reported costs, a small number of exceptionally expensive suits skew the mean total costs upward.

To adjust for this skew, 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 Note:

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 = 162 companies, 1,776 resolved litigations

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

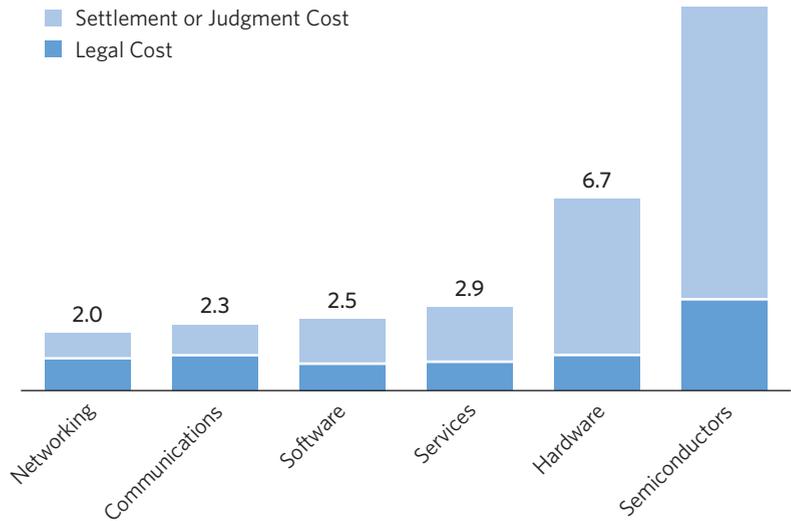


Chart 5B: Mean Resolution Cost for Reported NPE Suits, Excluding Cases > \$10M (\$M)

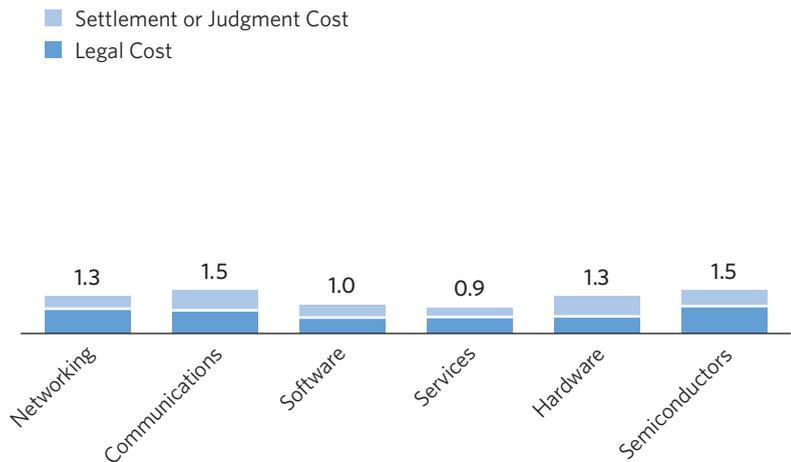
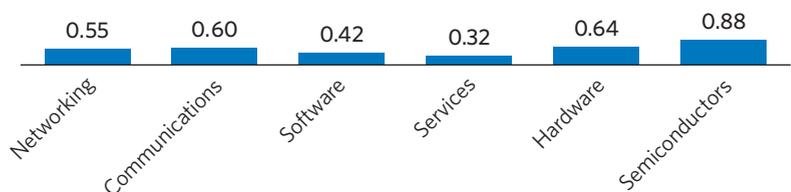


Chart 5C: Median Resolution Costs for Reported NPE Suits (\$M)



## 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 variability in reported costs, a small number of exceptionally expensive suits skew the mean total costs upward.

To adjust for this skew, 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 Note:

Based on reported cost 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 = 162 companies, 1,776 resolved litigations

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

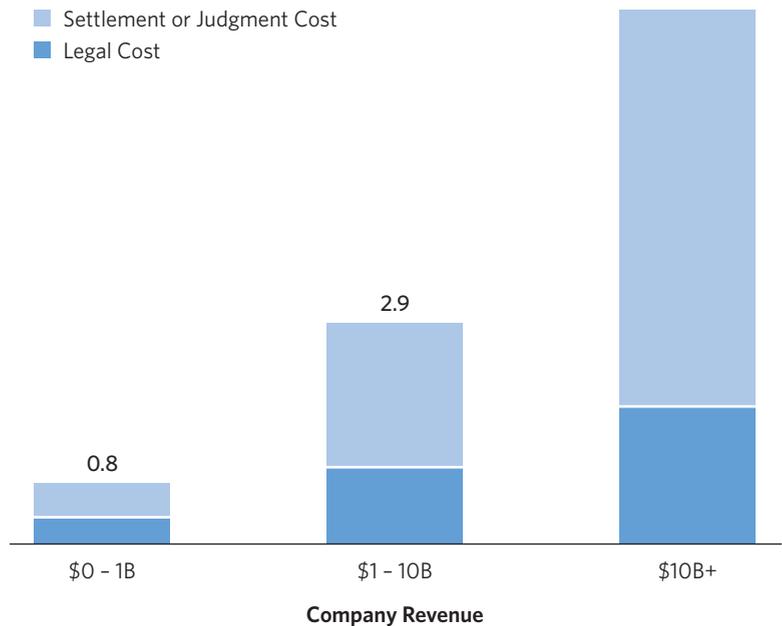


Chart 6B: Mean Resolution Cost, Excluding Cases > \$10M (\$M)

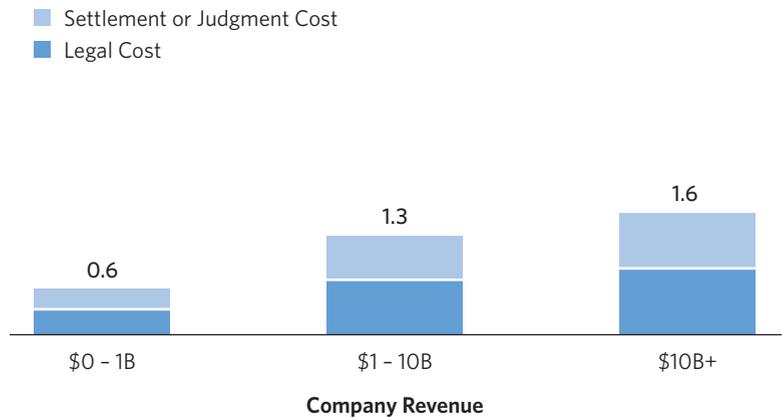
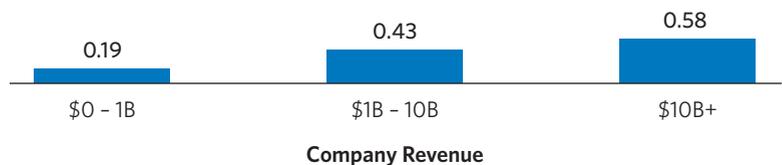


Chart 6C: Median Resolution Cost of Reported NPE Suits (\$M)



## Litigation Progression Leads to Higher Costs

Average legal and settlement costs increase as a case reaches key events in the litigation sequence.

Chart 7A illustrates the average costs when litigation ends at a given event. For example, litigations that ended after a claim construction order, on average, cost \$6.5 million. That number is considerably higher than the \$3.5 million average for litigations ending after a Rule 26 conference, the previous key event.

Chart 7B illustrates that the average cost of a litigation reaching a particular event, but not necessarily ending there, also rises as a litigation progresses. Litigations that went at least as far as claim construction order cost an average of \$6.7 million as compared to an average of \$3.3 million for litigations with an answer filed. This analysis should interest a defendant that has reached an event but does not know when a litigation might resolve. That defendant can look to these data for guidance about average future costs based on what past defendants have incurred.

Chart 7C illustrates that reaching a claim construction order markedly increased average cost when compared to litigations that did not reach a claim construction order. Costs were nearly three times as much in litigations with claim construction orders (\$6.7 million vs. \$2.1 million).

### Methodology Note:

Analysis 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.

N = 110 companies, 955 resolved litigations

Chart 7A: Mean Costs When Litigation Ends at a Given Event (\$M)

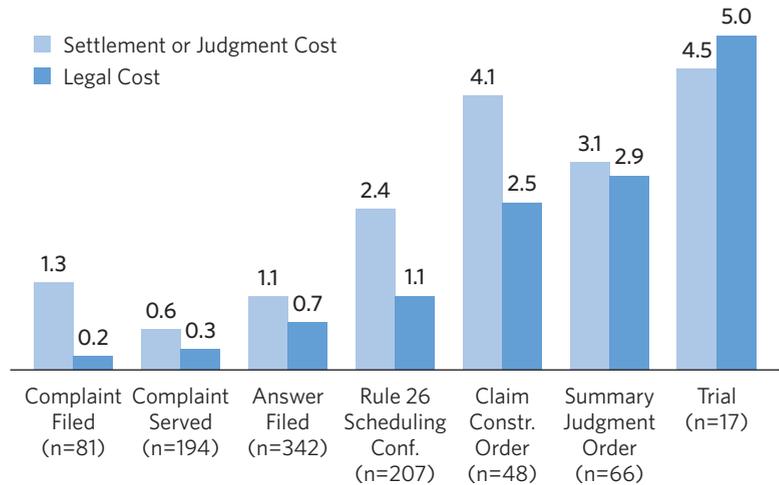


Chart 7B: Mean Costs When Litigation Reaches a Given Event (\$M)

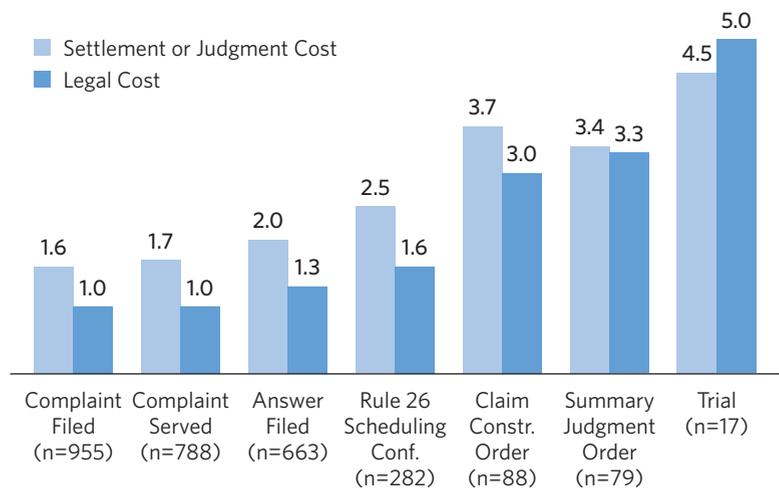
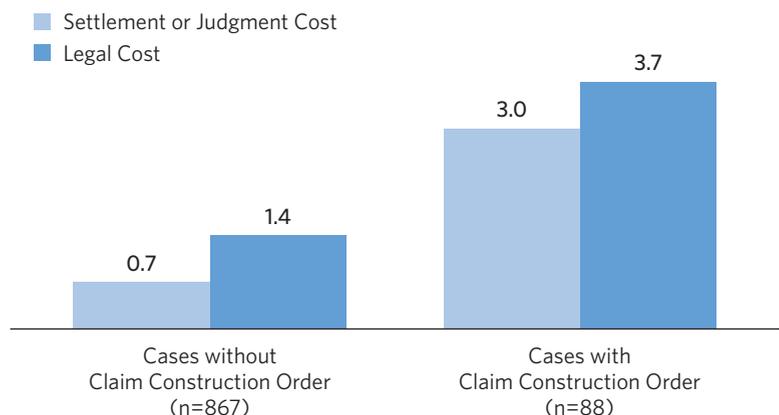


Chart 7C: Mean Cost without vs. with Claim Construction Order (\$M)



# Methodology Notes

## Timeline

Between May and December 2014, RPX invited companies to participate in a survey of NPE-related costs. Approximately 184 companies participated and submitted data in time for publication of this report. Participants include both RPX members and non-members.

## Type of Data Collected

Participants provided various statistics pertaining to NPE-related costs from 2005 through at least 2014. RPX required companies to provide comprehensive statistics on all NPE litigation costs (with a few minor exceptions).

## 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 licensing of patents
2. Universities and research institutions
3. Individual inventors
4. Non-competing entity (NCE)—operating companies asserting patents well outside their area of product 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.

Serial NPEs are NPEs that RPX has identified as having initiated three or more assertion campaigns, including campaigns before 2014.

## Litigations Ending at a Given Event

RPX defines a litigation as ending at a given event if the litigation does not reach a subsequent event. For the purposes of this analysis, RPX considered only a subset of events and considered those events in the order that a litigation generally (although not always) progresses: complaint filed, complaint served, answer filed, Rule 26 scheduling conference, claim construction order, summary judgment order, and trial. For example, a litigation that reaches a Rule 26 scheduling conference but that does not reach a claim construction order, summary judgment order, or trial, is counted as ending at a Rule 26 scheduling conference.

## Litigations Reaching a Given Event

RPX defines a litigation as reaching a given event if the given event has occurred, regardless of what other events have also occurred. For example, a litigation that reached a Rule 26 scheduling conference, claim construction order, and summary judgment order counts as having reached each of those events.

## Anonymous Participation

To ensure the anonymity of participant companies and their data, we do not provide a list of participants nor report most statistics according to company sectors.

As a substitute for company sectors, NPE litigations were tagged according to the accused product and patents-in-suit. Litigations can have more than one tag. Various statistics were then aggregated based on these tags. Statistics are not shared for segments having fewer than four companies or nine litigations.

## “Clean” Resolved Litigations

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

## Descriptive Statistics

Note that tables reporting median or percentile costs are not additive. For example, the median value of the medians of each of two or more equal-sized groups is not equal to the median for the combined groups.

## About RPX

RPX Corporation (NASDAQ: RPXC) helps operating companies reduce the cost and risk associated with NPE (non-practicing entity) patent litigation. Members of the RPX client network pay an annual fee that reflects their particular NPE risk. We then use this aggregated capital to acquire potentially problematic patents and rights in the pre-litigation market and out of active litigations before they can become a costly problem for our clients. RPX promises never to litigate or assert the patents it purchases.

In addition to our core defensive patent acquisition service, RPX also negotiates syndicates to purchase and clear significant portfolios from the market on behalf of our clients. We offer unique NPE liability insurance, written on A rated paper backed by a Lloyd's syndicate, which provides comprehensive coverage against the costs of patent assertion. We also provide our clients with in-depth industry data, market intelligence, and patent advisory services.

RPX has invested nearly \$2 billion to acquire 10,000+ US and international patent assets and rights, achieved nearly 700 litigation dismissals, and prevented more than 2,500 NPE litigations from occurring. Since our founding in 2008, we have saved our clients more than \$2.5 billion in avoided NPE legal and settlement costs.

The RPX network comprises more than 200 clients in sectors including automotive, consumer electronics and personal computing, E-commerce and software, financial services, media content and distribution, mobile communications, networking, and semiconductors.

### Contact

If you have questions about this report, please e-mail [reports@rpxcorp.com](mailto:reports@rpxcorp.com) or contact your Client Relations or Client Development professional at RPX.



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