

2/19/15 REUTERS LEGAL 22:27:06

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February 19, 2015

Q&A: Mallun Yen on RPX's new bid to keep patents away from 'trolls'

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(Reuters) - RPX Corp, which bills itself as a patent risk management firm, launched a new service on Wednesday that it predicts will further reduce patent litigation in federal courts.

Currently RPX seeks to buy up patents that pose a litigation risk for its clients, before they can be acquired by companies whose primary money-making venture is to file patent infringement lawsuits instead of making products, sometimes known as nonpracticing entities (NPEs) or patent "trolls."

The new network, which the San Francisco-based company calls the Open Patent Exchange Network, requires a commitment from companies that join to give notice to all others in the group 45 days before agreeing to sell a patent to an NPE.

This gives other operating companies - those that do make products - and RPX a chance to buy the patent first, potentially stopping patent lawsuits before they start, RPX says. Any breach of this commitment would result in an automatic license to the patent for network members.

Initial members include Apple Inc, Cisco Systems, Inc and 13 other companies. It is free and available to both RPX members and non-members.

Reuters spoke to RPX executive vice president Mallun Yen Wednesday about the network. Questions and answers have been edited for brevity and clarity.

REUTERS: What hole in the patent landscape did you seek to fill here?

YEN: We saw a problem where operating companies were selling their patents to NPEs, the NPEs were then suing other operating companies (with the patents), and so we said, wait, how do we stop this? So if we had notice of these sales before they happen we could offer an alternative to this cycle, (members) can engage in business level discussions before the patents are sold to NPEs and potentially avoid litigation and save costs.

REUTERS: How much do you predict could be saved?

YEN: Our data show that in a typical case, transaction costs - in the form of attorneys' fees and other costs incurred by both sides - comprise an estimated 90 percent of the overall costs to the system when patents are transacted through litigation rather than through a business transaction.

REUTERS: So if the problem is NPEs litigating patents against operating companies, why do operating companies sell their patents to NPEs in the first place?

YEN: Patents are assets with value. These companies sometimes spend millions, even hundreds of millions, getting these patents. When they're in a tough financial situation or are looking to balance the budget ... often they trim the (patent) portfolio because patent maintenance costs do add up - or they sell for real dollars to offset expenses.

Here we have a way for companies to commit to not doing any "secret sales" to NPEs, and with better transparency it's better for everyone.

REUTERS: What is the criteria for being an NPE, according to RPX?

YEN: For the purposes of this program it's an entity that primarily derives its revenue from assertion-based licensing.

REUTERS: But what is the line for "primarily derives"?

YEN: We don't have a bright line because frankly there is a gray area and where there is a gray area people will err on the side of giving notice. The program doesn't say you can't sell to an NPE, only that 45 days before you do so you let us know. Then RPX and other participants may review the patent and decide to buy it. We think most companies will provide notice when they want to sell a patent.

REUTERS: Your literature says the program is also a safe way to review others' patent assets. What do you mean?

YEN: Participants must agree they won't file declaratory judgment actions or use the fact that I put my patent in this program to accuse a defendant of willful infringement (because they had notice of the patent).

---- Index References ----

Company: APPLE INC; CISCO SYSTEMS INC

News Subject: (Legal (1LE33); Information Technology Crime (1IN42); Patents (1PA79); Intellectual Property (1IN75))

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Language: EN

Other Indexing: (Mallun Yen; Gil Cohen Magen)

Keywords: ip (MCC:f); (N2:US); (N2:AMERS); (N2:USA); (MCCL:OVR); (MCCL:OEC)

Word Count: 671