

# RPX Takes Step to Add Transparency to Patent Sales

**Scott Graham**

SAN FRANCISCO — RPX Corp. wants to make patent sales more transparent—and maybe in the process acquire a few more itself.

The defensive patent aggregator on Wednesday formally launched RPX OPEN, a network of patent owners who promise to give each other 45 days' notice before selling patents to nonpracticing entities. RPX is encouraging any company to join RPX OPEN for free. Apple Inc., Cisco Systems Inc., IAC InterActive Corp. and RPX itself are among the founding members.

“Companies are selling their patents with increasing frequency,” RPX executive vice president Mallun Yen said Wednesday. “Lots of those patents get sold to NPEs,” who in turn assert them against RPX's member companies.

If companies give notice of intent to sell first, it will give other operating companies an opportunity to buy or license the patents, or for RPX to “intercept” them on behalf of its paid membership. Earlier this year, RPX swung a \$900 million deal to acquire 4,000 patents from the Rockstar patent consortium.

Yen said she's been talking with operating companies for at least five years about creating a platform like RPX OPEN. One of the keys is providing a safe haven, she said. Under the contract, members will agree that offers to sell patents do not constitute notice of infringement, and that receiving an



Mallun Yen, RPX Executive Vice President

Jason Doity

offer will not be met with a declaratory judgment action. With those kinds of safeguards in place, “you can actually have a real discussion” about the value of the patents.

If companies sell to NPEs without honoring the 45-day pledge, then their patents are automatically licensed to all other members of RPX OPEN.

Other defensive patent groups have been running variations of the idea. Last summer Google, Dropbox, Newegg and others formed the License on Transfer network, in which companies pledge to license their patents to each other in the event they're ever sold outside of the network.

Newegg general counsel Lee Cheng said Wednesday he thinks the two models complement each other, since License on Transfer provides immunity, whereas RPX Open is focused on notice.

Yen said RPX OPEN is limited to notice to encourage the broadest possible participation.

Unified Patents has for the last three years been offering free membership to startup companies if they agree to provide 30 days' notice before selling their patents, according to Unified COO Shawn Ambwani. Transparency around small-company patent sales is crucial, Ambwani said, because they're more likely than large companies to come under pressure to sell quickly, before fair market value can be established. “Those are the sales that need to be fixed,” he said.

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