

Patent Litigation Weekly: RPX Fattens Up on Saxon Portfolio

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February 26, 2010

A novel International Trade Commission case that [expanded the limits](#) of what the agency would consider a "domestic industry" has ended with the holding-company plaintiff that initiated that suit, Saxon Innovations, selling the lion's share of its patents to patent-defense aggregator [RPX Corporation](#).

Under the deal, RPX acquires all but ten of Saxon's 180 patents, which originated with chipmaker AMD Corporation, for an undisclosed sum. The remaining 10 patents go to a patent-enforcement company called Norman IP Holding, which is managed by the same people who managed Saxon. Saxon has ended its innovative ITC litigation against Palm Inc., Nokia, Panasonic, Samsung, HTC, and Research in Motion, as well as two related federal lawsuits in the Eastern District of Texas.

Saxon is owned by Altitude Capital Partners, a New York private equity firm that invests in patent litigation. In a [statement](#) announcing the RPX deal, Altitude's managing partner, Rob Kramer, said he is proud of the profits Saxon's litigation has produced for the investment firm and especially proud that it was a Saxon suit that persuaded the ITC—the federal agency tasked with protecting the U.S. market from unfair trade practices—that a holding company with two full-time employees is indeed a "domestic industry" worthy of protection.

"I want to especially thank Saxon Chief Executive Officer, Bill Marino, for conceiving of and executing the novel approach of demonstrating domestic industry in the International Trade Commission," Kramer said. "His entire management team and all of our strategic partners made great contributions to accelerate our realization of such outstanding returns."

For San Francisco-based RPX, meanwhile, the deal may prompt a fresh growth spurt. So far in its 15-month lifespan, RPX has persuaded 35 companies—including such tech-sector stalwarts as Symantec, IBM, and Hewlett-Packard—to [join](#) its ranks.

The Saxon settlement resembles some [previous RPX deals](#) in that it essentially involves the patent aggregator buying into existing suits and asking defendants to pay up as a way of settling those suits while also joining RPX. Given the high cost of patent litigation, defendant companies are usually open to entertaining RPX's sales pitch, and comparing what RPX has to offer to what they'll get by paying law firms to defend them in court. And unlike giant patent-aggregating behemoth Intellectual

Ventures, RPX has pledged publicly never to enforce patents it buys.

"We can lower their costs dramatically and do quite well," explains RPX co-CEO John Amster. "We're not a licensing company. We're a purely defensive service company."

RPX member companies pay an annual fee based on their size. For current members, that fee ranges from \$35,000 to \$4.1 million; the average is just over \$2 million. In terms of its purchases, RPX sometimes buys patents and keeps them off the market for the benefit of everyone, including those that aren't members. Amster says he hasn't ruled out selling patents already licensed to his members on the open market as a reminder of the value of RPX's services. "It's about making people understand you can't get the benefit we provide without paying for it." Some RPX deals are wholesale patent purchases; about a third involve just buying patent rights for RPX members.

In making his pitch to potential members, Amster uses defendant-friendly language, referring, for instance, to how RPX can help solve the "NPE problem." He also provides potential customers (and reporters) with no-nonsense talk about how patent attacks on operating companies can be expected to grow. To help make his case, Amster points to RPX data showing that holding companies, often derided as "patent trolls," are now the plaintiffs in a solid majority of technology-sector lawsuits.

Despite such talk, Amster has managed to maintain good relationships with patent-holders and the contingency law firms they employ. That, he says, allows RPX to enter a negotiation as "an independent buyer participating in the market," as opposed to a potential target. This, he adds, differentiates RPX from other patent-defense groups, such as the nonprofit [Allied Security Trust](#). Another difference: Amster's desire to reach a huge scale. "They don't have the ambition of having 1,000 member companies," he says. "That's why we think can change the market."

RPX is positioned to grow, and has funding from such well-known venture capital firms as Kleiner Perkins Caufield & Byers and Charles Rivers Venture. Ultimately, Amster would like to see it go public.

Amster expects that NPEs are here to stay. (As we've written elsewhere, the [NPE business model isn't just surviving, it's thriving](#).) Money—more than \$6 billion, by Amster's calculations—is pouring into holding companies for offensive use, and many established "patent-trolling" organizations are launching second and even third rounds of litigation after enjoying success with initial lawsuits.

Asked whether RPX's controversial strategy of buying an interest in existing lawsuits, then extricating its members from that litigation, has produced any resistance, Amster says, "Honestly, the only people we get pushback from are defense lawyers."

The question now is whether RPX can bite into those lawyers' hourly bills further by creating a functioning market for asserted or about-to-be-asserted patents. It may be a long shot, but given the continuing proliferation of NPE suits, more and more companies appear willing to give Amster's approach a chance.