

DIGITAL TOOLS



PATENT PROTECTION FOR SALE

KLEINER PERKINS CAUFIELD & BYERS IS WELL KNOWN for the venture capital it brought to great innovations involving computers, health and energy. One of its latest startups is based on an entrepreneurial idea that may or may not be great but is very interesting: helping companies hand over money for mostly bogus legal claims involving patents.

This particular startup, RPX, doesn't describe itself that way. In fact, it makes a good case that its goal is to help companies, many of them in the tech industry, make the best of the bad situation that is the U.S. patent system. The fact that patent holders and lawyers will end up with money they don't deserve reflects nothing about RPX but a lot about a system filled with rot.

If you think patents protect plucky innovators and their groundbreaking inventions, you haven't been paying attention. Patents have evolved into an extortion scheme that hurts real inventors far more than it helps them.

It works like this: Patents can be bought or sold as property. Patent shoppers usually want them not to make a product but to create an infringement lawsuit. A huge percentage of these suits end up in eastern Texas, where plaintiff attorneys have the reputation for playing off the regional and class prejudices of undereducated jurors leading hardscrabble lives.

It's hardly surprising that many companies would rather pay to settle a patent claim than risk the exposure and expense of a trial. So patent claims have soared in recent years. Roughly 80% are entirely without merit.

That figure is a guess provided by John Amster, the 41-year-old chief executive of RPX. The entrepreneurial insight at the heart of the company is simplicity itself. Start a for-profit company that buys up patents and then charge other companies a yearly fee for being a client. In return for a set annual payment, which tops at \$4.9 million for the biggest outfit, you're protected from being sued

for any of the patents RPX holds.

Like most tech-business plans that attract venture capitalists, it's all a matter of scale. Given enough clients, RPX can have the resources to take all problematic patents off the market. Twenty companies have already signed up, including IBM, Cisco, HP and Samsung—though RPX admits some of them got a break for getting on board early.

Amster's message is that rather than get angry about the decline of the American patent system, RPX is doing something about it via a system that demonstrably reduces patent-litigation-related expenses for companies. The fact that undeserving patent owners might get rich as a result can't be helped.

RPX wants to be seen as a trusted partner by its clients. But one of the publicity problems it faces is a history of enterprises that start by making high-minded claims about patents and end up making life even more miserable for real inventors and entrepreneurs.

The example many would cite is Intellectual Ventures, best known for its association with former Microsoft executive Nathan Myhrvold. Intellectual Ventures raises hundreds of millions of dollars, uses it to buy up patents and then asks for license fees. The company's Web site says its goal is to create financial rewards for inventors. The firm's many critics say it's just a glorified patent troll that has helped make patent shakedowns even more lucrative.

Many employees at RPX are veterans of Intellectual Ventures, and, as a result, RPX watchers wonder if it's just an Intellectual Ventures clone. Joseph Siino, who runs Ovidian Group, a Berkeley, Calif.

intellectual property consulting firm, says that while some of his clients are interested in being RPX clients, "the vast majority seem very worried about RPX and see it as yet another problem to deal with." Among the questions they ask, says Siino, is whether RPX, by providing a ready payout for aspiring patent litigants, won't end up adding heads to the patent Hydra.

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Amster says everything RPX might do or not do with its clients is spelled out in contracts. It won't ever sue any of them. It's the anti-Intellectual Ventures, because it isn't looking for royalties. And since the patent market has had a steady value of roughly \$500 million a year in recent years, despite the presence of big check-writers like Intellectual Ventures, it's doubtful that it could grow to be a bigger threat to legitimate companies than it already is.

It might all work out, and it would be great if it did. Still, wouldn't it be nice if the brainpower involved in an operation like this had been used for a real invention? **F**

Forbes Senior editor Lee Gomes, in our Silicon Valley bureau, is at lgomes@forbes.com. Visit him at www.forbes.com/gomes.