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IN-DEPTH PATENT MONETIZATION COVERAGE

RPX explains in filing how cost cuts, executive departures may have hurt its business, reduced its value

The story of **RPX Corp. (RPXC**)'s year long effort to sell itself to **HGGC LLC** for $10.50 a share, or $555 million in cash, as detailed in the patent aggregator's recent 14D securities filing, suggests that the current management and board may now realize former founder and CEO **John Amster** and his team were right about how cost cutting would hurt the company.

That's the assessment of **Henri Linde**, the former senior vice president, who left a week after Amster over a disagreement between Amster and the board about the direction of RPX. Other former executives including Amster, **Robert Heath** and **Steve Swank** declined to comment.

"Finally, a year later the board realized we were right," said Linde in an interview. "That's how I read the story in the 14D. In May 2017, there were prospective buyers willing to pay $16 a share. The board ignored them and then got prospective bids in the $11 to $12 range and eventually had to settle for $10.50."

In early 2017, the board led by representatives of activist investor **Mangrove Partners** had laid out a highly critical view of Amster and his team's management approach. Mangrove, led by **Nathaniel August**, criticized Amster for slowing growth in its membership business, excessive executive compensation and especially for paying too much for Inventus Solutions, an electronic discovery business RPX acquired from **Clearlake Capital Group** for $232 million in 2015.

Mangrove reasoned that given the reduction in litigation by non-practicing entities, RPX needed to do more with less, meaning focus its best efforts on its core membership business while reducing patent spend, headcount and costs and use the savings to return as much as $800 million to shareholders.

Amster, who founded RPX in 2008, argued strongly that Mangrove and the board didn't understand RPX's core membership business and how dependent it was on the long term professional relationships of key executives including Amster, Linde, Heath, Swank, **Mallun Yen** and others.

According to several people familiar with the matter, Amster provided the board with a detailed examination of how every elimination of an executive would effect the relationship of RPX with its clients. The analysis looked at which specific client relationships would be harmed by executive departures and warned that RPX could lose between $15 million and $30 million in revenue in 2018.

The board disagreed and insisted on cost cuts and as a result Amster left on February 5. Linde left soon after.

RPX said in its 14D filing that between Amster's departure in February 2017 and June 2017 it had four to six offers in the range of $13.50 and $16.10 a share, and because it didn't jump at the chance eventually had to settle for a $10.50 offer from HGGC.

Two people familiar with the matter said that as part of their due diligence the prospective bidders contacted RPX clients to find out their views on RPX. The clients expressed some uncertainty about the future of RPX because the executives they used to work with at RPX no longer worked there.

HGGC declined to comment.

"After considering each proposal in good faith based on reasonable inquiry and after careful consideration of all material facts reasonably available, and in a manner reasonably believed to be in the best interests of the company and its stockholders, the company board determined that it was in the best interests of the company and its stockholders for the company to reject such proposals and to continue to pursue the company's long-range plans and realize the company's long-term potential," the company said in the filing.

Moreover, the company noted that after review of its standalone prospects and opportunities, the "board disagreed with Mr. Amster's position and reiterated its confidence in the company's standalone opportunities and belief that the company could maximize stockholder value under new leadership without being acquired by a third party."

One of the people familiar said it was telling that RPX didn't mention in its 14D that it had an offer of $14 to $15 a share at the time the company fired Amster.

"It looks horrible," the person said. "Someone should have been fired, it is just that it should have been the board. Horrible decision makers. Normally I give the shareholder class action lawyers no chance to get more than a few million—here I think they will ring the bell."

Three law firms including RM Law, Johnson Fistel and Rowley Law PLLC have already announced investigations of RPX's sales process.

Scott Heilman, a partner with Johnson Fistel in New York, said the firm was still in the early stages of its investigation. Richard Maniskas, a partner with RM Law, declined to comment. Shane Rowley, of Rowley Law, couldn't be reached for comment.

Meanwhile, in its 14D filing RPX laid out a scenario in which it contends that it had to disavow financial projections prepared by Amster and his team for 2018 based on aggressive assumptions for 2017 and 2018 to entice prospective buyers at a price in the $13.50 to $16.10 range.

"On December 14, 2017, following discussions with company management and Skadden and a review of the company's internal, nonpublic financial forecast for 2018 and beyond (which had been reduced in the second half of 2017 from earlier forecasts following reassessments by company management prompted by management changes) and macro trends in the industries in which the company operates, the company board established by unanimous written consent a special committee....... to examine and provide recommendations regarding strategic alternatives including, but not limited to, a possible merger, business combination or similar transaction involving the company."

The special committee also was tasked with reengaging with GCA Advisors and third parties regarding any potential transaction given the investment bank's knowledge of RPX and industry from its earlier efforts.

Indeed, the special committed requested that GCA Advisors produce a list of potential counterparties in a potential transaction, assess their interest in pursuing a potential transaction and potentially engage in a strategic process for the potential acquisition of all or a material portion of the company.

That was the same day the company fired Heath and Swank, both former senior vice presidents with valuable relationships with clients.

That seemed to suggest that management changes hurt the business and led to the reassessment of the earlier forecasts.

Asked what management changes RPX was referring to, a company official said "John held a more optimistic forecast for the business. This forecast was reassessed after he left, and subsequent forecasts were more conservative."

Officials from RPX declined to comment further.

In the meantime, also on Dec. 14, 2017, RPX announced that its results for the year would meet the previous forecast for 2017.

The 2017 forecast for patent management revenue was $240 to $250 million and came in at $252 million. Discovery revenue was forecasted to be between $70 million and $79 million and came in at $78.2 million. Total revenue was forecast at between $315 million and $344 million and came in at $330.5 million. Consolidated adjusted earnings before depreciation and amortization was forecasted as between $202 million and $222 million and came in at $219.4 million. Finally, net patent spend was forecasted at $110 million to $115 million and came in at $106 million.

To be sure, the company didn't provide its forecast for 2018 until January 19, 2018.

Indeed, the company noted that at a January 19, 2018 meeting, the board "reviewed such projections with company management, including the assumptions on which such projections were based, and independently determined that updated versions of such projections should be provided to potential bidders as a reliable indicator of the company's estimate of the company's future potential performance."

The company said the new projections were provided to potential bidders beginning on Jan. 23, 2018 via the company's electronic datasite.

"I'm surprised that they're trying to spin that we were wrong or ignorant and putting in numbers that were too aggressive, which was not true," Linde said. "We were worried about the cost cuts – that 10% less patent spend would lead to 10% less clients."

The board argued that because patent reform had made patents less valuable, RPX could spend less money acquiring patents.

Linde said that "when patents are less valuable you have to buy more patents to reach the same savings for clients and in addition to spending less on patents means RPX was saving its clients less money. Instead of spending less money buying patents it should have been buying more patents to keep up the level of savings for its clients."

"The Mangrove led board screwed that up. The Mangrove board members never cared about RPX's business model. Mangrove just played a financial game and got out when the price was still up in July 2017."

"To me, the announcement of the firing of all the executives on Dec. 14, 2017 was just a cost cutting measure," he said.

"If you fire 4 to 6 of the most senior people that's a huge savings on salaries and the accumulation of restricted stock units, or RSUs. Kicking out people who had served the longest provided the most savings. So you save maybe $5 million because you don't have to pay the RSUs which were well deserved."

Not everyone agrees with Linde's assessment of RPX.

The reason RPX is facing difficulties "has nothing to do with the departure of any executives and more to do with macro conditions in the patent market," said a person familiar with RPX.

For example, the person said NPE litigation has dropped off significantly since 2011, the year of the America Invents Act, which created the Patent Trial and Appeal Board to oversee patent challenges in inter partes reviews.

According to RPX's own data, NPEs filed 1,994 cases in 2017, down from 3,621 cases in 2015. Even cases filed by operating companies fell to 1,540 in 2017 from 1,598 in 2015.

RPX's cost structure was arguably "bloated" compared with other companies in the IP space, the person said. "AST has 8 people and RPX had some 160 people when John was there. The scale is different but the bloat is evident."

The person also said "I agree RPX should not be a public company, but that's true of every IP company."

The most recent decline in RPX's stock came after it wrote down the value of its Inventus e-discovery business, the person said.

"Everyone thought John overpaid for Inventus," the person said.

"The big drop in the stock could well mean that the company never was really worth more than $10.50 a share," the person said. "The biggest problem for a company that is trying to sell itself is when it's trading for more than its worth."

"If you look at the current environment with both NPE and operating company litigation way down, the level of anxiety, I've never seen it so low. That's because the patent system has been mutilated.

The person cited problems with Section 101 of the Patent Act, the inability to rely on issued patents, and the skepticism of the courts to large damage awards.

"RPX is caught in the middle of the greatest shift from a pro-patent environment to the worst anti-patent environment in 50 years. This company is trying to find its way. If people are really doing due diligence to find out what their prospects are then more than half a billion dollars is a very healthy bid."

Acacia says activists have spurned offer to put one of their nominees on the board with Graziadio and Walsh

Acacia Research Corp. (ACTG), the patent licensing company run by Executive Chairman **G. Louis Graziadio III**, said the two activist investors seeking to oust Graziadio and another director **Frank Walsh** in a proxy battle, have rejected the Acacia board's offer to put one of the activist nominees on the board as long as Graziadio and Walsh remain on the board.

Newport Beach, California-based Acacia is facing a proxy battle by **Sidus Investment Management**, run by **Al Tobia Jr.**, and **BLR Partners LP**, run by **Bradley Radoff.** They have nominated Tobia and another hedge fund manager, **Clifford Press**, to run against Graziadio and Walsh.

Sidus and BLR argue that under Graziadio's leadership Acacia has lost 93% of its value, pursued risky investments into artificial intelligence, robotics and blockchain technology and not paid attention to normal corporate governance practices for public companies.

They also assert that under Graziadio Acacia has pursued investments in at least one company **Veritone Inc. (VERI)**, a radio advertising platform that uses artificial intelligence features, that Graziadio was previously invested in and on which Graziadio sits on the board.

The board announced that if both Graziadio and Walsh are re-elected to the board at the company's 2018 Annual Meeting of Stockholders, it would be willing to expand the Acacia board by one seat and fill the vacancy created with Tobia.

"Mr. Tobia has not indicated whether he would accept such an appointment," the company said.

Graziadio said in a statement that the board is convinced that a costly and protracted contested election is not in the interest of our stockholders.

"We have offered to put Mr. Tobia on the board now in an effort to end the election contest," Graziadio said. "Unfortunately, Sidus and BLR have rejected our offer."

Graziadio added that the board wants "our stockholders to know that we are happy to accept Mr. Tobia onto the board and that it is our intention, if our candidates are elected at the annual meeting, to offer Mr. Tobia a seat on our board. We hope Mr. Tobia will join the board as we welcome stockholder input."

In an interview, Tobia rejected Acacia's assertion that he rejected the board's offer.

"I didn't ask to be put on the board. I sat down for a meeting with Louis because I'm a shareholder and I have a fiduciary duty to my investors and I've never understood their plan since [former interim CEO] Marvin [Key] left. At the end he offered to put me on the board."

Key was named interim CEO after the firing of former CEO **Matt Vella**, who was ousted after a district court reached a finding of non-infringement in a case against **Alcatel-Lucent** in December 2015.

"To say we rejected their offer is not true. We told them both of us would have to be on the board and any settlement would have to include significant governance changes."

More importantly, he said "subtraction is as important as addition." Graziadio and Walsh need to be removed, he added.

"The board has rubberstamped a lot self-dealing practices. There's no one standing up for shareholders. Louis runs unchecked."

Tobia said the board also never stopped Vella from wasting shareholder money on a scattershot approach to acquiring and asserting patents even after the patent market had turned against Acacia and other monetizers.

"The same board that failed to properly oversee Vella is somehow qualified to oversee investments in new technology startups with no experience on the board in those technologies? I don't understand how that works. It defies logic. There was no oversight while Vella was pursuing his failed strategy, why would shareholders expect it to be different this time?"

"That's why we're here. I've never seen such contempt for shareholders."

Finally, Tobia also address Acacia's contention that Sidus and BLR have no strategy for Acacia. He said their intention is to better represent the interests of shareholders and make sure management is pursuing strategies that increase shareholder value. He said that may include returning some cash to investors in the form of a dividend or buyback.

"We will need to be in the boardroom to accurately judge the best path forward. Certainly, excessive compensation schemes, which we believe are hurting shareholder value will need to be addressed."

Acacia backed Veritone replaces auditor after it identified material weakness

Veritone Inc. (VERI), the radio advertising platform that uses artificial intelligence features and is backed by **Acacia Research Corp. (ACTG)**, said it named **Grant Thornton** as its new auditor replacing **Marcum LLP**, after Marcum identified a material weakness related to management's failure to perform and review reconciliations of certain significant accounts.

The company said in an 8K filing on May 24 that on May 18, the audit committee of the board approved the dismissal of Marcum. The company said the decision to change auditors was the result of a comprehensive process conducted by the audit committee to evaluate and select an independent registered public accounting firm for the audit of the company's financial statements for the year ending December 31, 2018.

"….in connection with Marcum's audit of the company's consolidated financial statements as of and for the fiscal year ended December 31, 2016, Marcum identified certain deficiencies that rose to the level of a material weakness related to a failure by the company's management to perform and review reconciliations of certain significant accounts, which resulted in the company making material corrections to its expenditures billable to clients and accrued liabilities balances in its consolidated balance sheet as of December 31, 2016.

Veritone noted that management implemented remedial measures to address this material weakness, and Marcum did not identify this material weakness in connection with its audit of the company's consolidated financial statements as of and for the fiscal year ended Dec. 31, 2017.

"The audit committee discussed this material weakness with Marcum. The company provided Marcum with a copy of the disclosures in this report prior to filing with the Securities and Exchange Commission and requested that Marcum provide a letter addressed to the SEC stating whether it agrees with the foregoing statements."

The letter from Marcum to the SEC said: "We have read the statements made by Veritone, Inc. under Item 4.01 of its Form 8-K dated May 18, 2018. We agree with the statements concerning our firm in such Form 8-K; we are not in a position to agree or disagree with other statements of Veritone, Inc. contained therein."

Veritone noted that aside from the material weakness identified by Marcum, the audit reports for fiscal 2017 and fiscal 2016 "did not contain an adverse opinion or a disclaimer of opinion and were not qualified or modified as to uncertainty, audit scope or accounting principles.

The company conceded, however, that Marcum's report on the company's consolidated financial statements as of and for the fiscal year ended Dec. 31, 2016 included an explanatory paragraph indicating that there was substantial doubt about the company's ability to continue as a going concern as of March 15, 2017, the date of such report.

In August 2016, Veritone received $50 million in loans from Acacia, which were converted into stock and warrants issued concurrently with the company's initial public offering in May 2017. Veritone raised $37.5 million in its IPO.

"As a result of the company's financing transactions during 2017, this explanatory paragraph was not included in Marcum's report on the company's consolidated financial statements as of and for the fiscal year ended December 31, 2017."

Veritone also noted that during fiscal years ended Dec. 31, 2017 and Dec. 31, 2016 and during the subsequent interim period from Jan. 1, 2018 through May 18, 2018, there were no disagreements with Marcum on any matter other than the identification of the material weakness.

Allied Security Trust launches third annual industry patent purchase program

Allied Security Trust, the patent aggregator run by CEO **Russell Binns Jr.**, said its third annual industry patent purchase program (IP3 2018) will focus on a narrower set of patented technologies owned by operating companies and be expanded beyond AST members.

The Princeton, New Jersey-based company said this year's program will focus on soliciting patents from the following technology areas: Artificial Intelligence / Machine Learning; Augmented Reality / Virtual Reality; Automotive / Transportation Services; Blockchain; Internet of Things / Connected Devices; Smart Home; Software / Web Services; and Wireless.

AST launched IP3 in 2016, a first of its kind industry program, to give sellers an easy way to access the secondary market through a streamlined process using a fixed price, rapid response model. Based on the success of the 2016 and 2017 installments, AST decided in late 2017 to do a 2018 iteration of IP3 with some updated changes.

In an interview, Binns said AST expects IP3 2018 to come in somewhere between IP3 2017 and IP3 2016 in terms of the money spent on patents. While IP3 2016 spent about $5.5 million on patent purchases, the 2017 program spent only $2.5 million.

Binns attributed the decline in part to lower valuations caused by changes in the patent market including recent Supreme Court rulings and the America Invents Act, which set up the inter partes review process to invalidate the weakest patents.

AST's current members span multiple industries, such as information technology, software, semiconductors, communications, automotive, health tech, and social media and include prominent companies such as **Ford, Google, Honda, IBM, Microsoft, Oracle, Philips, SAP, Sony** and **Uber.**

Because of the enthusiasm for the popular program from across the patent marketplace, whereas IP3 2017 was only open to AST membership, AST is opening IP3 2018 to participation from non-member companies with the payment of a fixed management fee to cover costs based on the size of the participant.

"The continued success of our IP3 programs has proven that both patent sellers and buyers, which include dozens of the top companies in the world, want the opportunity to participate in collaborative, short duration, streamlined buying programs," Binns said in a statement. Binns said IP3 presents patent owners with an efficient and hassle-free way to sell their patents quickly.

"We have found the fixed price concept to be very beneficial to both buyers and sellers," said **Kurt Brasch**, patent transactions lead at Uber. "The process is extremely efficient and the transaction cycle time is dramatically reduced. That is why Uber has participated in both previous iterations of IP3 and we are excited about the 2018 version."

Binns said IP3 2018 will focus on patent submissions from a discrete though slightly broader number of technology areas.

"We have also shortened the submission window to better accommodate the sellers' exclusivity time periods. Because of these key adjustments to the program, we are looking forward to a larger program than last year with more patents and more buyers participating in a focused and efficient selection process for patent acquisitions."

U.S. ITC judge sides with Samsung against Xperi, terminating complaint due to arbitration clause

An administrative law judge from the **U.S. International Trade Commission** sided with **Samsung Electronics** in an initial determination terminating the complaint filed by **Xperi Corp. (XPER)**.

San Jose, California-based Xperi said the initial determination was subject to a reversal by the full ITC and that it planned to appeal the decision.

The ITC investigation involves two of the twenty-four patents at issue in Xperi's legal proceedings against Samsung for patent infringement.

Samsung claims it is licensed to the two patents at issue in the ITC investigation through an agreement that it had previously entered into with the original owner of the patents, **Matsushita Electric Industrial Co. Ltd.**

Indeed, Samsung moved to terminate the investigation on the basis that, due to the existence of an arbitration clause in that agreement, its license defense first has to be decided in arbitration rather than in the ITC.

The administrative law judge granted Samsung's motion.

Xperi said it believes it should not be subject to the arbitration clause because, among other things, it is not a party to the Samsung-Matsushita agreement.

"This appears to be a procedural ruling on venue, and not a decision on the merits of Samsung's license defense," said Jon Kirchner, the Company's CEO. "While this may put off our ITC trial unless it is reversed, our other cases against Samsung are proceeding on schedule and will be heard beginning in the first quarter of 2019. Importantly, this decision has no impact on our 2018 billings guidance as our current guidance assumed no resolution of the outstanding Samsung legal matters."

The company said the ITC docket entry includes only a brief summary of the initial determination and that the parties and their counsel have not yet received the decision, which is subject to confidentiality restrictions.

Xperi also noted that the ITC investigation is one of multiple legal proceedings that remain pending between the company and Samsung.

InterDigital expects $63M to $67M in second quarter revenue, primarily recurring revenue

InterDigital Inc. (IDCC), the mobile technology research and development and licensing company run by CEO **William Merritt**, said it expects its second quarter 2018 revenue to be between $63 million and $67 million.

The Wilmington, Delaware-based company said this range is comprised primarily of recurring revenue and includes less than $1 million of non-recurring revenue.

InterDigital also noted that the range is provided under the new accounting standard ASC 606, and would have been between $85 million and $88 million, again with less than $1 million in non-recurring revenue, under the old accounting standard ASC 605.

The company also said the revenue guidance does not include the potential impact of any new patent license, technology solutions or patent sale agreements that may be signed, or any arbitration or dispute resolutions that may occur, during the balance of second quarter 2018.

Universal Display receives BOE Technology award for its approach to innovation and client needs

Universal Display Corp. (OLED), the organic light emitting diode (OLED) technology and licensing company, said it has received the 2018 Supplier Award for Outstanding Strategic Partner from **BOE Technology Group Co. Ltd**., in recognition of its innovation and attention to client needs.

The Ewing, New Jersey-based company said the BOE award recognizes the supplier for outstanding performance, technology innovation, collaboration and supply chain excellence. The award was presented during BOE's Supplier Partners Conference, held May 11, in Hefei, China.

In 2016 and 2017, BOE recognized Universal Display with the Collaborative Innovation Supplier award.

"Since inception, Universal Display's innovation strategy has centered on building a robust foundation of best-in-class OLED technologies," said **Steve Abramson**, Universal Display's

CEO in a statement. "We are proud of the strong and growing partnership with BOE, the global leader in the semiconductor display industry that is pioneering the commercialization of high-volume OLED production in China, with one fab in mass production and another under construction.

Abramson added that the award "illustrates our commitment to developing and delivering solutions that help enable our customers' technology roadmaps for cutting-edge, bright, beautiful, highly efficient OLED displays."

Founded in 1994, Universal Display currently owns or has exclusive, co-exclusive or sole license rights with respect to more than 4,500 issued and pending patents worldwide. Universal Display licenses its proprietary technologies, including its breakthrough high-efficiency UniversalPHOLED® phosphorescent OLED technology that can enable the development of low power and eco-friendly displays and solid-state lighting.

The company also develops and offers high-quality, state-of-the-art UniversalPHOLED materials that are recognized as key ingredients in the fabrication of OLEDs with peak performance. In addition, Universal Display delivers innovative and customized solutions to its clients and partners through technology transfer, collaborative technology development and on-site training.

Editor and Publisher Dan Lonkevich is available for public commentary and speaking engagements. Connect with him on LinkedIn.

Tips, suggestions and criticisms should be sent to Dan Lonkevich at dan@thepatentinvestor.com. Thank you.

Our mailing address is:
The Patent Investor
40 Fourth Street #230
Petaluma, CA 94952

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