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IN-DEPTH PATENT MONETIZATION COVERAGE

ExRPX executives question patent aggregator's ability to reproduce high profile syndicated deals of the past

RPX Corp. (RPXC), the patent aggregator that agreed to be acquired by private equity firm **HGGC LLC** for \$555 million, may not be able to reproduce the type of high profile syndicated patent acquisitions for which it was once known because of the departure of the key executives who once negotiated those deals and substantial patent market changes.

That's the shared assessment of former executives who spoke on condition of anonymity.

By late 2009, San Francisco-based RPX under former CEO **John Amster** had perfected the process of wholesale litigation clearance, negotiating with plaintiffs to clear existing RPX members out of a litigation at a substantial discount to what was being demanded of each defendant but also including companies that were not yet members. RPX could offer a litigation clearance to these companies as a downpayment on a multi-year membership. This approach brought in more than 100 members.

Some of its highest profile syndicated deals included one worth just under \$100 million with **Altitude Capital Partners**, run by **Rob Kramer**, in 2012, a \$525 million deal for the portfolio of Eastman Kodak patents owned by **Intellectual Ventures** in 2013 and the \$900 million deal for the **Rockstar Consortium's** portfolio of patents acquired from the **Nortel** bankruptcy in 2014.

"Amster did a great job recruiting players with long histories in the patent space into RPX," said a former executive. "Obviously Eran Zur had credibility with plaintiffs useful for negotiating deals."

Amster and **Henri Linde** "both had great contacts in consumer electronics in Asia which provided much of the early client growth," the former executive said.

Besides Zur and Linde, Amster also hired **Thomas Westerlund**, formerly of **Nokia**, **Paul Reidy** formerly of **IV** and **Motorola**, **Eric Olsen**, formerly of **Intertrust**, **Andy Scott**, formerly

of **Pluritas**, **Reza Mashouf**, formerly of **Ocean Tomo**, and several that joined later to manage client relations.

In addition, **Hisao Yamasaki** from **Hitachi** was hired to manage relations and business development in Asia in 2009. **Steve Swank** arrived from **Comdata** in 2010. **Mallun Yen** joined RPX from **Cisco** in 2011. **Robert Heath**, formerly with **Technicolor**, joined in 2011.

"All these folks had built trust and strong relationships within the space," the former executive said.

"Everyone but Eric has moved on and that has hurt the company to a greater extent than what was saved in comp I believe."

Amster's "early recruits were experienced, smart, charismatic and great deal makers," the former executive said. "You cannot put together complex deals like Nortel with commitments exceeding \$1 billion without people well known in the industry and I question if RPX could do a deal like that today. They need more than just Eric."

For its part, RPX would argue that its acquisition team is more than just Olsen and also more than adequate to the task of closing syndicated deals in 2018, an RPX official who asked not to be identified said.

Indeed, RPX's syndicated dealmaking has never been about individuals and has always been more of a team effort, the RPX official said.

Asked to identify some of RPX's talented syndicate dealmakers, the person declined, saying only that they've been at RPX for at least 5 years.

More importantly, RPX works on and closes many more syndicated deals than it announces and only the ones that its members want, the RPX official said.

In the meantime, everyone concedes that the patent market has changed dramatically since the heyday of RPX's high profile syndicated deal making.

The America Invents Act reduced the value of patents by making it easier and cheaper to invalidate patents through the inter partes review process overseen by the Patent Trial and Appeal Board.

With IPRs and the PTAB alleged infringers no longer felt their existence was threatened by litigation from patent trolls. Indeed, the number of infringement suits filed by non-practicing entities which reached a peak of about 4,000 cases in 2015 fell to about 2,000 in 2017 and based on this year's numbers so far is expected to come in somewhere under 1,700 cases.

Under those changed circumstances, RPX is able to close many more deals than it could before for less, the RPX official said.

In 2015, RPX acquired 1.6% more worldwide assets than the year before, the person familiar said. In 2016, RPX acquired 46% more worldwide assets than in 2015, and, in 2017, it acquired 16.3% more assets than in 2016, the RPX official said.

To be sure, the number of syndicated deals being closed isn't as relevant as whether the right deals are being closed, the RPX official said.

One very large syndicated deal could make many RPX members happy for a year, the RPX official noted.

While a number of high profile assets remain on the market, the problem is that the sellers and buyers are often still very far apart on price, the RPX official said.

So, what matters most is whether RPX is acquiring the right assets to make its clients renew, the RPX official added.

Meanwhile, large patent portfolios that may be ripe for a syndicated deal include **Altaba Inc. (AABA)'s Excalibur IP** portfolio, **BlackBerry's (BB)** patent portfolio, Intellectual Ventures' patent portfolio and even the Kodak portfolio now owned by **Dominion Harbor Group**.

Altaba, formerly known as Yahoo before it sold its core internet business to Verizon for \$4.6 billion, is a case study in the different expectations of buyers and sellers.

The former Yahoo has written down the value of the portfolio several times in the last year, most recently to \$640 million. At one time, the former Yahoo hoped to sell Excalibur and its real estate portfolio for some \$3 billion.

More than a year ago, Black Stone IP Group, now owned by **Houlihan Lokey**, tried to drum up interest in the portfolio. Yahoo was said to have been looking for a minimum bid of \$500 million, rejected a \$300 million bid and later rejected bids of \$100 million from several groups.

Altaba hired Reidy as president of Excalibur IP last year to lead its efforts to monetize the Excalibur portfolio. Prior to his arrival, the company sold off a small portfolio of patents to a unit of Dominion Harbor Group.

Reidy has said that if Excalibur decides to pursue an aggressive enforcement campaign it may partner with an experienced patent licensing company or it may manage the campaign itself. He also has said his preference would be to negotiate some kind of a syndicated deal with a consortium of companies led perhaps by RPX or Allied Security Trust.

Reidy himself is a former senior vice president at RPX who worked on syndicated semiconductor patent deals. **Ray Strimaitis**, who previously worked at Excalibur, is now at AST.

"I wish RPX nothing but continued success," Reidy said in an email.

Russell Binns, the CEO of AST, declined to comment.

Officials from BlackBerry, Intellectual Ventures and Dominion Harbor didn't return an emailed request for comment.

In any case, the syndicated deals completed in the last three years by RPX certainly have not been as high profile or as large as the deals with Altitude Capital Partners, Rockstar and Kodak.

Moreover, RPX typically has not disclosed the terms of even the syndicated deals it does announce, such as in the deal struck in August 2016 with the **Kudelski Group**, a digital security technology and licensing company.

Under the agreement, RPX received the right to sublicense a limited number of companies to Kudelski Group patents and Kudelski received an upfront payment, mutual patent risk clearance, and a future transfer of patents from RPX. The Kudelski Group also joined the RPX client network.

Most recently, RPX recently agreed to license a portfolio of network management technology patents from Network Managing Solutions LLC, a unit Wi-LAN Inc., the patent licensing unit of **Quarterhill Inc. (QTRH)**.

Ottawa, Ontario-based WiLAN said the terms were confidential and that the licensed patents relate to network management technology.

In 2016, Network Managing Solutions filed infringement actions involving four patents in the U.S. District Court in Wilmington, Delaware against **AT&T Mobility, U.S. Cellular, Cellco Partnership** and **Sprint Corp.**

RPX is hit with two shareholder actions in one week seeking to enjoin sale to HGGC

RPX Corp. (RPXC), the patent aggregator that agreed to be acquired by middle market private equity firm **HGGC LLC** for \$555 million, said its been hit with two shareholder lawsuits alleging improper disclosure of the company's financial condition to shareholders ahead of the announced transaction.

The latest action was filed by **Bob Carmean**, who claims to be a longstanding RPX shareholder, against RPX, HGGC, CEO **Martin Roberts**, and directors **Shelby Bonnie, Sanford Robertson, Frank Dangeard, Gilbert Palter, Mallun Yen, Andrew Africa** and **Magdalena Yesil**.

According to the Carmean suit, which is seeking class-action status, the company's recommendation statement about the transaction "discloses some high-level information regarding the company's January 19, 2018, Board approved set of projections prepared by RPX management and downwardly revised April 2018 financial projections for calendar years 2018E through 2022E that were relied upon by GCA in opining on the fairness of the Offer Price.

GCA refers to **GCA Advisors**, which acted as adviser to the RPX board on the sale to HGGC.

The Carmean suit alleges that the recommendation statement "altogether fails to disclose any quantitative information, with respect to the initial forecasts, to allow company stockholders to assess the magnitude of the downward revisions and determine whether these revisions were appropriate or made to fit the offer price into a range of fairness."

Carmean asserts that RPX stockholders must be provided with the initial forecasts in order to gain an accurate view of the company's prospects, and "the failure to disclose such information renders the recommendation statement materially misleading and inadequate."

The Carmean suit alleges that while certain company management members were offered by HGGC an opportunity to contribute or rollover their company shares into new equity interests of an affiliate of the surviving company, RPX shareholders "are being cashed out at an inopportune time."

Indeed, Carmean alleges that RPX's business is cyclical and the proposed transaction "is timed to take advantage of this."

"In short, the proposed transaction will unlawfully divest RPX's public stockholders of the company's valuable assets without fully disclosing all material information concerning the proposed transaction to company stockholders," the Carmean suit alleges. "To remedy

defendants' Exchange Act violations, plaintiff seeks to enjoin the expiration of the offer unless and until such problems are remedied."

The action was filed in U.S. District Court in the Northern District of California.

Carmean is represented in the case by **Joel Elkins** of **Weiss Law** in Beverly Hills, California.

RPX said in a filing with the Securities and Exchange Commission that "Each of the defendants believes that the actions are without merit and intends to defend vigorously against all claims asserted against them."

Earlier this week, **Richard Scarantino**, who also claims to be an RPX shareholder, filed a similar lawsuit also seeking class action status in the U.S. District Court for the District of Delaware against RPX, its board, and HGGC.

According to the Scarantino complaint, the solicitation statement related to the transaction omitted "material information with respect to the proposed transaction, which renders the solicitation statement false and misleading."

For example, the Scarantino alleges that the solicitation statement omitted "material information regarding RPX's financial projections and the valuation analyses performed by the company's financial advisor in connection with the proposed transaction, GCA Advisors, LLC."

The Scarantino complaint alleges that "the disclosure of projected financial information is material because it provides stockholders with a basis to project the future financial performance of a company, and allows stockholders to better understand the financial analyses performed by the company's financial advisor in support of its fairness opinion.

The Scarantino complaint further alleges that "when a banker's endorsement of the fairness of a transaction is touted to stockholders, the valuation methods used to arrive at that opinion as well as the key inputs and range of ultimate values generated by those analyses must also be fairly disclosed."

The complaint alleges that with respect to the company's financial projections, the solicitation statement "fails to disclose: (i) all line items used to calculate EBITDA and Adjusted EBITDA; and (ii) a reconciliation of all non-GAAP to GAAP metrics."

With respect to GCA's discounted cash flow analysis, the complaint alleges that the solicitation statement "fails to disclose: (i) the unlevered free cash flows used by GCA in its analysis; (ii) the range of illustrative terminal values for the Company; and (iii) the specific inputs and assumptions underlying the discount rates ranging from 13% to 15% and the perpetuity growth rates ranging from negative 3.0% to positive 1.0%."

With respect to GCA's negative spot premium comparison, the complaint alleges the solicitation statement "fails to disclose the transactions observed by GCA as well as the premiums paid in such transactions."

"The omission of this material information renders the Solicitation Statement false and misleading, including, inter alia, the following section of the Solicitation Statement: The Solicitation or Recommendation."

The complaint seeks to enjoin the defendants from proceeding with, consummating, or closing the sale, and in the event the sale closes anyway to rescind it or award rescissory damages.

Scarantino also wants the court to direct the defendants to file a solicitation statement that does not contain any untrue statements of material fact and that states all material facts required in it or necessary to make the statements contained therein not misleading. He also is seeking an award of the costs of this action, including reasonable allowance for attorneys' and experts' fees.

RPX said the complaint seeks, among other things, to enjoin the expiration of the offer and/or consummation of the transactions, or if the transactions are consummated, the complaint seeks rescission and unspecified money damages. The company also said the complaint also seeks an award of attorney's fees and costs.

The company added that although the complaint requests injunctive relief, the plaintiff has not filed a motion to enjoin the transactions at this time.

Scarantino is represented by **Brian Long** and **Gina Serra** of the law firm **Rigrodsky & Long PC** in Wilmington, Delaware.

MelRok is seeking patent protection in early stage energy Internet of things technology

MelRok LLC, the energy Internet of things startup developing software to allow utilities and buildings to efficiently monitor, communicate and control multiple energy systems and devices, recently received a new patent focused on solar energy systems, and is looking for a CEO who can lead it to profitability in the next six months to a year.

Santa Ana, California-based MelRok has spent more than \$20 million developing its energy IoT platform. The company spends at least \$1 million a year on research and development including a substantial amount on prosecuting its patents.

Much of MelRok's R&D work was conducted with the assistance of the **Lawrence Livermore Berkeley National Labs**. The company also has worked with the **Advanced Power & Energy Program** at the **University of California in Irvine, California**, the **U.S. Green Building Council**, **Sempra Energy**, **LVR Energy and Mechanical** and **Federated Services Solutions**.

In addition, MelRok is participating in a joint collaboration on energy demand response protocols between the Department of Energy and its counterpart in China.

The University of California at Irvine and **Pomona College** have tested and still use MelRok's energy IoT platform. Most recently, MelRok said signed up its first utility client Sempra Energy's **San Diego Gas and Electric**.

Wesley Jones, a spokesman for **San Diego Gas & Electric**, said the utility has contracted with MelRok on an over generation pilot project. "We cannot comment on the services at this time."

Energy IoT provides real time, secure and robust communication, analysis and control network of all energy devices with control and response times of less than 1 second. Such energy devices include air condition units, pumps, fans, compressors, lighting, solar panels, batteries, etc.

MelRok's patented energy IoT technology and platform as a service (PaaS) are designed for commercial and industrial enterprises, energy service companies (ESCOs), OEMs and utilities. The company has had venture backing from **Alan Boyce's Energy Transformation Investors** and other high net worth individuals.

Boyce, who sits on MelRok's board, is co-founder and a director of **Adcoagro (AGRO)**, a food and renewable energy-producing company in Argentina, Brazil and Uruguay.

He also is executive chairman and co-founder of **Materra**, a California and Arizona based agricultural production company. In addition, he also was the co-founder and CEO of **Westlands Solar Farms**, which developed and built a 23MW solarPV facility in western Fresno County.

Previously, Boyce served as director of special situations at **Soros Fund Management**. Before joining Soros, he served as managing director at **Bankers Trust**, in charge of fixed income arbitrage, the bank's mortgage portfolio and compliance with the Community Reinvestment Act.

Prior to that, he worked for the **Federal Reserve Board in Washington, D.C.** He holds an MBA degree from **Stanford University** and a Bachelor of Arts degree in Economics from **Pomona College**, where he graduated magna cum laude.

Until recently, MelRok was led as CEO by Dr. Michel Kamel, though he is transitioning to become chief technology officer after a new CEO is named.

Previously, Dr. Kamel helped found and was chief operating officer and chief financial officer of **Space Launch Corp.**, a defense contractor focused on the development of micro satellite launch vehicles. Prior to that he was a senior propulsion engineer at **Rotary Rocket Co.**

He helped found MelRok in January 2009 as a software company focused on the energy IoT business and has become an expert in energy systems and analytics.

MelRok offers two different energy IoT systems, the Touch and the Touch Pro.

The Touch allows communication with Energy Management Systems, Building Management Systems, Utility smart meters, Energy meters, Lighting control systems, Direct load controllers and SCADA historians.

MelRok describes the Touch as a universal energy IoT router that communicates simultaneously with more than 100 energy devices over multiple physical interfaces and via multiple protocols.

MelRok describes the Touch Pro as a platform as service that simultaneously collects data from multiple IP-based energy meters, IP-based sensors, three voltage lines and 24 current transformer sensors (CTs). All the data collected by the Touch Pro is streamed to the cloud. The company also offers energy cloud services to provide a robust, scalable, secure and real time fast cloud storage and search infrastructure, to built-in real time analytics, reporting and alert engines.

MelRok's earliest patents were about a device or system that would allow various energy systems to communicate with each other.

"It was like the Tower of Babel," Dr. Kamel said. "The different devices and systems couldn't communicate with each other because they didn't use the same method of communication. We designed a platform to speak every device's language."

The platform can communicate with each of the devices and send various control messages back and forth.

All this was made possible by cloud computing, which offered unlimited bandwidth and storage capacity.

MelRok currently has four U.S. patents and one each in China, Canada and Japan. The U.S. patents are U.S. Patent Nos. 9,052,216, 9,014,996, 9,909,901 and 9,727,068. It also owns Canadian Patent No. 2833781, Chinese Patent No. ZL20128006839.1 and Japanese Patent No. 6,258,861.

MelRok also has 3 patents pending in the U.S. and 3 pending in international jurisdictions.

Perry Oldham, a partner with **Knobbe Martens**, who has helped MelRok through the patent application process, describes MelRok's patents as breaking new ground in what appears to be a growth sector of the economy: more efficiently managing energy usage.

"The energy industry is going through a major transition" with states such as California requiring solar panels to be installed in new construction, Oldham said.

Oldham said that the energy IoT industry still is in its infancy and that MelRok is leading the way.

"In a few years there may be companies that try to duplicate what MelRok is doing," he said.

In the meantime, he said the company is filing patents mainly to protect its freedom to operate as well as its innovations.

The company's latest '901 patent, was invented by Dr. Kamel and Paul Donahue, and is entitled "Systems and methods to manage and control renewable distributed energy resources."

The renewable distributed energy resources means solar energy generation and storage. "Our patent covers the use of our platform to manage solar storage and shedding and generation," Dr. Kamel said.

According to the abstract, the '901 patent describes a system for analyzing energy usage measures by monitoring one or more parameters indicative of energy usage for a plurality of sub-circuits.

The system is designed for situations where the sampling rate for the measuring is substantially continuous. The system automatically transmits information related to at least one of the measured parameters at a rate that enables monitoring of current energy usage.

It further detects a significant change in a measured parameter, determines whether the significant change in the measured parameter is caused by a change in energy usage, and automatically transmits information related to the significant change in the measured parameter caused by the change in energy usage after detecting the significant change.

The '901 patent has been cited 70 times in patent applications by such companies as **Schneider Electric USA Inc., Infineon Technologies Austria Ag, Siemens Industry Inc., LG Electronics Inc.** and **International Business Machines Corp.**

The '901 patent also may be a solution to the problem of over generation of solar power in California created by the state's decision to require solar panels be installed on all new construction by 2020.

The unintended consequences of the requirement may be that the existing grid is unable to handle the increase in electricity generated by solar. In 2017, California paid Arizona to take the excess electricity.

MelRok says its energy IoT solution will allow utilities to better manage utility and building energy needs to meet the different loads required throughout the day by turning on or off devices when usage is lowest and highest.

MelRok has already pitched its new enhanced platform to such household industrial companies as Siemens, **Honeywell**, Schneider and **Mitsubishi**, which Dr. Kamel and Boyce described as the capillaries that lead to the utilities.

"Utilities are big slow moving beasts," Boyce said. "We prefer working with their contractors. It's better for us to use the capillaries."

MelRok's strategy is to make its mark as the leading innovator in the field of energy IoT. To do that, it plans to continue to develop innovative solutions to its clients problems. As it does, the company hopes to develop a war chest of patents that can be licensed to clients who want and need those solutions.

"There are people who don't offer any solutions and they're called trolls," Boyce said. "I don't ever want to be called a patent troll."

"We have elegant solution. It's like chocolate and peanut butter. We're making Reese's Peanut Butter cups!"

MelRok has a small sales team in place. Expanding the sales team for its new CEO to establish.

Boyce and Kamel agree that the best outcome for MelRok and its investors is a sale of its business and technology to a larger industrial company or the establishment of a rigorous technology and patent licensing business.

Activists outline plan to overhaul Acacia in latest letter to shareholders ahead of annual meeting proxy vote

Activists **Sidus Investment Management**, run by **Al Tobia Jr.**, and **BLR Partners LP**, run by **Bradley Radoff**, said they have a “sensible value creation platform” to overhaul **Acacia Research Corp. (ACTG)** and make it more accountable to shareholders.

In a June 7 letter to shareholders, urging them to support Tobia’s and hedge fund manager **Clifford Press**’s nomination as directors at the upcoming Acacia annual meeting, the activist said their plan would first involve the recruitment of a new CEO.

Newport Beach, California-based Acacia has been without a CEO since December 2015 when former CEO **Matt Vella** was ousted by the board led by **G. Louis Graziadio III**. Graziadio later took on the role of executive chairman and has acted as a defacto CEO.

Sidus and BLR said they also would declassify the Acacia board to give shareholders a say in electing directors more often and also would restructure the nominating and governance committees to make them more independent from Graziadio.

In addition, Sidus and BLR said they would seek to reconstitute the board with qualified and independent directors and seek to improve the newly formed Strategic Review Committee, by establishing appropriate investment guidelines, a commitment to process, risk controls, and investment monitoring procedures and disclose this to Acacia stockholders.

The activists’ plan also calls for a review all external consultants and board advisors including disclosed and undisclosed advisors.

They also said they would seek to improve communication with stockholders by resuming the question and answer portion of quarterly earnings calls.

Other changes involve restructuring executive and director compensation for the benefit of Acacia stockholders and restructuring the compensation committee.

They also would reverse and end the AIP Operations Inc. profit interest plan, which involved placing 40% of a warrant from the investment in Veritone into AIP, and returning the warrant to Acacia.

They also would seek to recoup Veritone board fees and options for benefit of Acacia, cancel past performance options granted to directors.

In addition they would terminate Acacia's business relationship with Second Southern, which is owned by Graziadio, saving hundreds of thousands of dollars a year in unnecessary expenses.

"Based on Acacia's track record, Sidus believes there is overwhelming evidence this board is incapable of acting in stockholders' best interests unless both of our nominees are elected to the board and Louis Graziadio's influence is permanently removed," the letter said.

The letter adds that the only way Sidus and BLR's plan will be implemented is if shareholders support their nominees at the upcoming annual meeting.

"Only through continued stockholder pressure and the election of our two nominees, Clifford Press and Alfred V. Tobia Jr., will Acacia's stockholders' investments be protected."

The letter notes that contrary to Acacia's assertion that they have no understanding of the patent licensing business, Tobia and Press "have done diligence on Acacia's patent portfolio and believe there is potential value in certain patents."

Moreover, the letter also notes that "neither Mr. Graziadio nor Mr. [Frank] Walsh, nor the three other recent appointees, have any educational background or operational experience in the field of patent law."

Finally, the letter calls on Acacia to de-risk its investment in Veritone by taking advantage of the recent registration of its shelf offering.

ISS joins proxy advisor Glass Lewis in calling for ouster of Acacia's Graziadio and Walsh

Institutional Shareholder Services, the proxy advisory firm, said it recommends that shareholders of **Acacia Research Corp. (ACTG)** replace its Executive Chairman **G. Louis Graziadio III** and director **Frank Walsh** by voting instead for **Al Tobia Jr.**, the managing member of **Sidus Investment Management**, and hedge fund manager **Clifford Press**.

New York-based ISS went even farther in its recommendation than rival proxy advisory firm **Glass Lewis**, which had recommended a vote for Tobia, though not for Press due to his lack of relevant experience with Acacia's patent licensing business.

Shareholders of Newport Beach, California-based Acacia will have their say on June 14 at the company's annual meeting.

Officials from Acacia couldn't be reached immediately for comment. Acacia has previously announced that it offered to put Tobia on its board in an effort to end the proxy battle, only to be rebuffed.

For his part, Tobia has said that a single board seat would not be enough to drive the significant management and corporate governance changes necessary to make Acacia accountable to shareholders.

Sidus Investment Management and **BLR Partners LP**, run by **Bradley Radoff**, launched their proxy battle to unseat Graziadio and Walsh in April after being rebuffed in their effort to make Acacia's management and board address the company's underperformance and inadequate corporate governance.

Sidus and BLR have asserted 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.

The dissidents also assert that under Graziadio Acacia has not named a CEO to replace **Matt Vella**, who was fired following a decision of no infringement in a major enforcement action against **Alcatel-Lucent** in December 2015. In Vella's absence, Acacia created an office of the chairman overseen by Graziadio and named **Marvin Key** as interim CEO. Key later left the company and Graziadio now serves as defacto CEO.

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.

Moreover, they assert that Acacia's patent acquisition and assert strategy is no longer profitable because of patent reforms that have made it easier to invalidate patents, changes to the rules governing injunctions in patent infringement cases and the skepticism of the Court of Appeals for the Federal Circuit and the U.S. Supreme Court to large damages awards in patent infringement cases.

In a statement issued by Sidus and BLR, ISS said "the dissidents have presented a compelling case that change is warranted."

The statement went on to say that although "the company has offered to add dissident nominee Tobia to the board, in light of the magnitude of the company's strategic shift, along

with the severity of governance concerns and the experience gap on the board, one new director will likely not be sufficient to drive change..."

ISS also added in the statement that Press "has prior experience as a dissident designee. This may prove useful in breaking the CEO impasse, which should be the immediate priority."

With regard to Acacia's significant underperformance, ISS noted it is "concerning that the company underperformed peers by nearly 20 percent over the one-year period ended on the unaffected date (by 12.5 percent when the analysis is extended through May 31, 2018)..."

ISS also criticized the limited transparency Acacia's management and board have provided on its profit interest program, which involved the creation of an indirect subsidiary called AIP Operations LLC.

AIP was set up to receive contributions of corporate assets such as a Veritone warrant without providing any consideration to the company. Acacia later used AIP to set up a profits interest plan under which the appreciation of those assets would provide compensation to certain directors and officers.

The creation of AIP and the profit interest plan "is particularly concerning given the units do not require the achievement of pre-set performance conditions and have already vested."

ISS also criticized Acacia's board composition and lack of independence, noting that "refreshment over the past two years has appeared reactionary, rather than targeted specifically at complementing or supporting a revised long-term strategy that was clearly communicated to the market."

The proxy advisory firm also asserted that "recent director appointments do not inspire confidence in the board's ability to execute on the revised business model."

In addition, the firm also noted that the lack of independent new directors runs counter to the need for unassailable independence in evaluating the merits of a dramatic repositioning of the company. The recent appointment also "did not sufficiently address the board's lack of early-stage technology investment experience."

ISS sharply criticizes Acacia's irregular executive structure, saying:

"This arrangement, which obfuscates the chain of command and demonstrates a lack of effective succession planning, is consistent with the general tone of the company's corporate governance, which appears to be more reactionary than proactive, and which appears to be out of touch with the concerns of shareholders."

In the statement, Sidus and BLR welcomed the support of ISS and Glass Lewis.

"Acacia's stockholders have suffered years of severe underperformance and abysmal corporate governance practices, and incumbent directors G. Louis Graziadio III and Frank Walsh III must be held accountable for their role in destroying stockholder value and as the architects of the company's misaligned compensation schemes," Tobia said.

"The removal of these two incumbents, and the election of truly independent directors who have the best interests of all stockholders at heart, is imperative. We are committed to driving necessary change at Acacia and ensuring that stockholders' interests remain paramount in the boardroom.

Tobia added that "Acacia stockholders deserve a board that is free of conflict and focused on proper governance, management accountability, selecting the right leader for Acacia as its new CEO, and driving value through the execution of a coherent strategy clearly articulated to its stockholders."

In a letter to shareholders issued today, the company said "since 2016, Acacia has undertaken an extensive operational and organization restructuring to reduce costs, efficiently monetize existing IP assets and diversify into investing in growth technology companies."

The company said its "major accomplishments" include generating more than \$280 million in revenue and \$108 million in cash from operations, substantially reduced fixed general and administrative run-rate expense by 56% and lowering headcount by 70%.

The company also touted its investments in Veritone and Miso Robotics, which it said have generated 90%+ and 44% + unrealized returns for Acacia stockholders.

The company also said it has attracted world-class technology investors to a substantially refreshed board to help execute the company's next phase of profitable growth.

Dominion Harbor's Monument Patent Ventures enforces five Eastman Kodak patents against GE Healthcare

Monument Peak Ventures, a unit of **Dominion Harbor Group**, the patent licensing firm run by CEO **David Pridham**, filed a patent infringement action involving five patents it acquired from Kodak against **GE Healthcare**.

The actions was filed in U.S. District Court in Los Angeles, California, on Monday June 4.

The complaint filed by MPV alleges GE Healthcare has infringed and continues to infringe, has induced and continues to induce infringement of, and has contributed to and continues to contribute to the infringement of, one or more claims of the patents.

The patents in suit are U.S. Patent Nos. 7,062,085, entitled "Method for detecting subject matter regions in images," 7,092,573, entitled "Method and system for selectively applying enhancement to an image," 7,212,668, entitled "Digital image processing system and method for emphasizing a main subject of an image," 6,509,910, entitled "Method and system for interfacing with a digital media frame network," and 8,984,419, entitled "Digital media frame."

The complaint alleges that GE Healthcare has known about the infringement at least since July 26, 2017, when MPV contacted GE Healthcare with a list of all patents owned by MPV and a presentation introducing the Kodak portfolio and its application to GE Healthcare's products.

In August 2017, MPV further informed GE Healthcare of its infringement through a data room that included a full list of all patents owned by MPV and evidence of use presentations detailing GE Healthcare's infringement of sixteen MPV Patents, including the asserted patents. The data room has been accessible to GE Healthcare for nine months and remains accessible to GE Healthcare as of the filing of the complaint.

In the complaint, MPV notes that while innovating in the digital imaging space, Kodak developed an immense patent portfolio and extensively licensed its technology in the space. Indeed, the complaint notes that in 2010, Kodak received \$838 million in patent licensing revenue.

The complaint further notes that as part of a reorganization, Kodak sold many of its patents to companies including Google, Facebook, Amazon, Microsoft, Samsung, Adobe Systems, HTC and others for \$525 million.

"While scores of digital imaging companies have paid to license the Kodak patent portfolio owned by MPV, GE Healthcare has refused to do so without justification," the complaint says.

MPV is seeking a finding that GE Healthcare has willfully infringed the five patents in suit and an award of damages adequate to compensate it for GE Healthcare's past infringement and any continuing or future infringement of the patents in suit, including pre-judgment and post-judgment interest, costs and disbursements as justified under 35 U.S.C. Section 284 and an accounting.

In addition, MPV is asking for an award of enhanced damages up to treble damages for willful infringement as provided by 35 U.S.C. Section 284.

Finally, MPV is seeking a determination that the case is exceptional under 35 U.S.C. Section 285 and an award of its reasonable attorneys' fees in this action.

MPV is represented by **Amar Thakur** and **Bruce Zisser** of **Quinn Emanuel Urquhart & Sullivan LLP** in Los Angeles.

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.

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