

The Patent Marketplace — Trends and Perspectives

Advanced Patent Law Institute

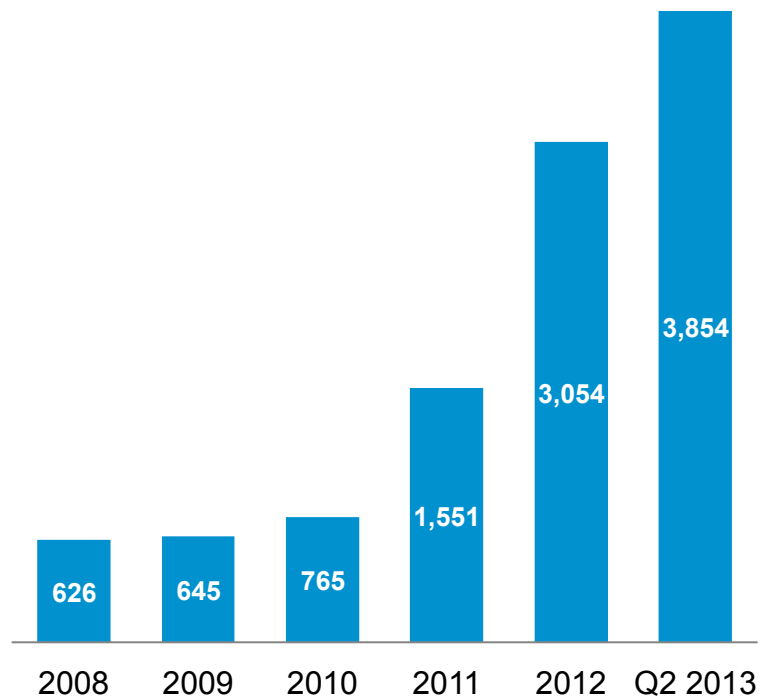
Mallun Yen, Executive Vice President, RPX Corporation

December 13, 2013

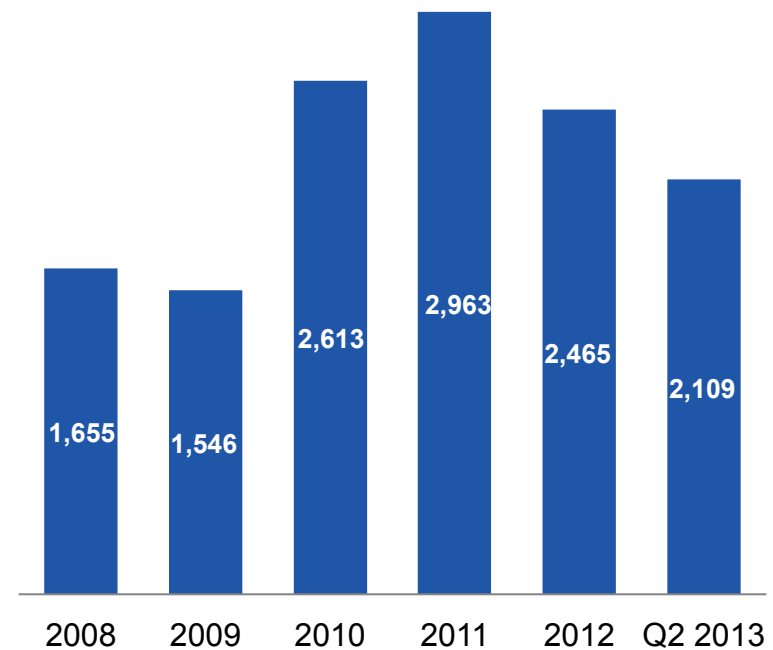
A Growing Problem

More Litigation; More Defendants

NPE Suits Filed



Unique Defendants

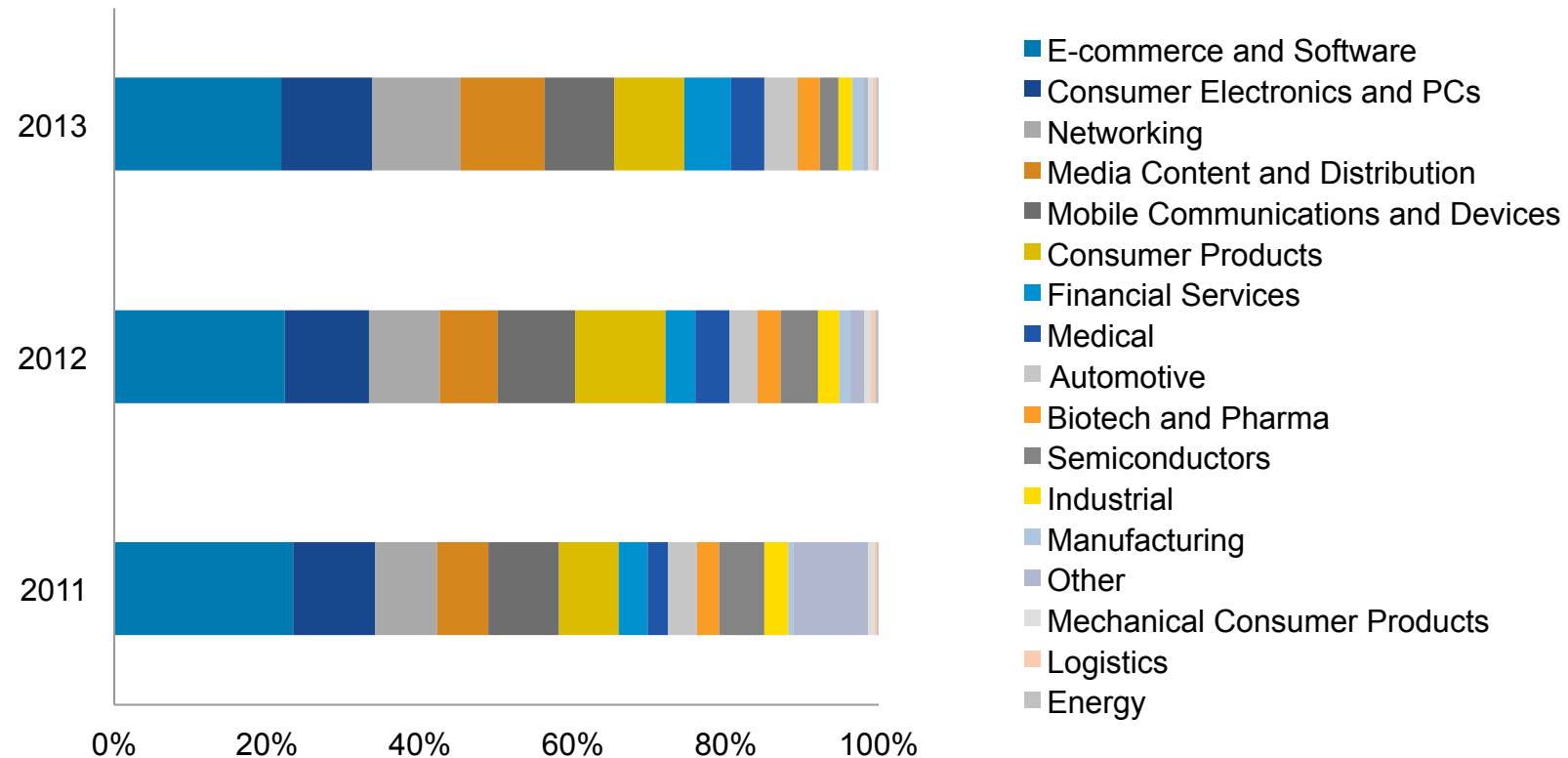


Source: RPX Research and PACER

A Growing Problem

Targeted Market Sectors

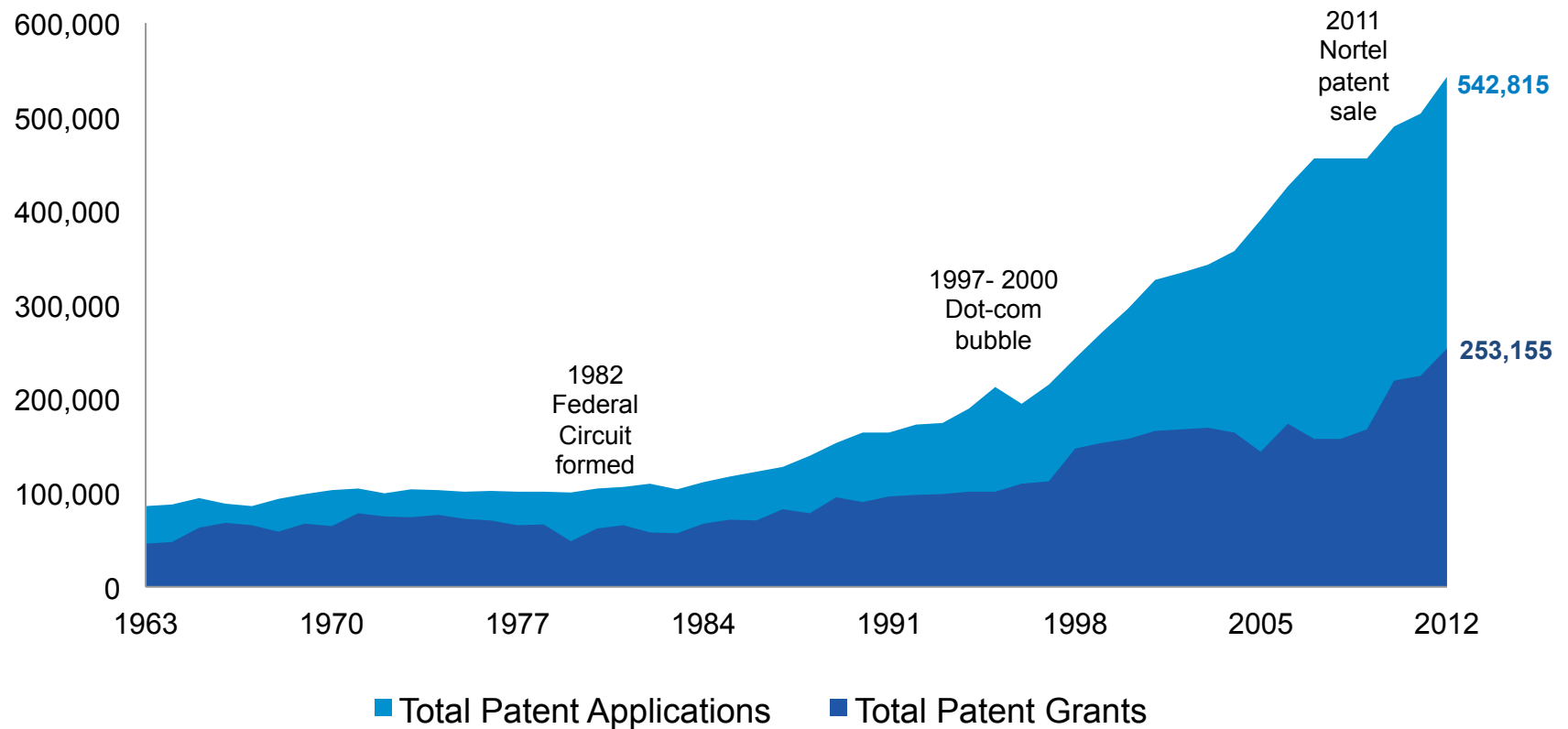
No Sector Immune



A Growing Problem

More – and Overlapping – Patents

Over 3.4 Million Active Patents Today



Active utility patents based on assumption of 17-year lifespan of patents granted
USPTO Yearly Patent Applications and Grants

The NPE Business Model

Monetizing Patent Assets

▶ **NPE = Non-practicing Entity**

- Use patents exclusively for revenue, licensing is primary business
- Unfair leverage over operating companies; no operations to countersue

▶ **NPEs acquire patents from multiple sources**

- Failed start-ups and operating companies
- Universities and research institutions
- Healthy companies with excess patents

▶ **NPEs are the product of outside investment**

- Extremely lucrative business model; 5-10X returns
- \$8B+ in outside investment

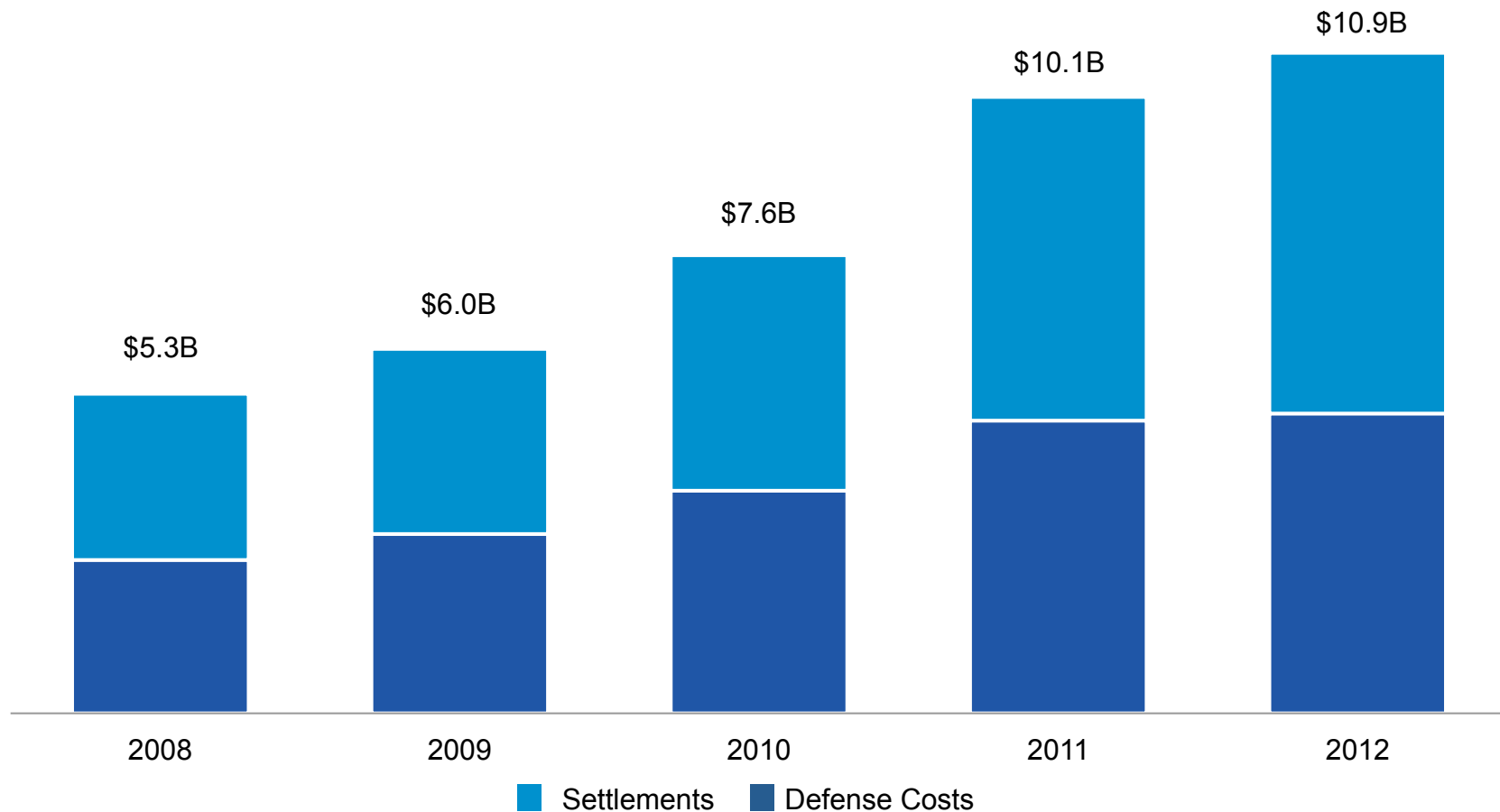
The NPE Business Model

Multiple Forms

Single Portfolio	<ul style="list-style-type: none">• Exists only to assert that portfolio• Often tries to purchase more portfolios
Large multi-portfolio	<ul style="list-style-type: none">• Ongoing acquisitions and assertions• Often placed into shell companies
Former operating companies	<ul style="list-style-type: none">• Pre-existing patent portfolio• Often have large portfolios
Pure R&D firms	<ul style="list-style-type: none">• No products/sales but develops own patents
Individual inventors	<ul style="list-style-type: none">• Often contracts with contingency counsel
Universities and research Institutions	<ul style="list-style-type: none">• Can include non-profit, research and quasi-government entities
Non-competing entities (NCE)	<ul style="list-style-type: none">• Operating company that acts like an NPE• Asserts patents in areas unrelated to business

The NPE Business Model

Litigation Costs Increasingly Expensive for Defendants



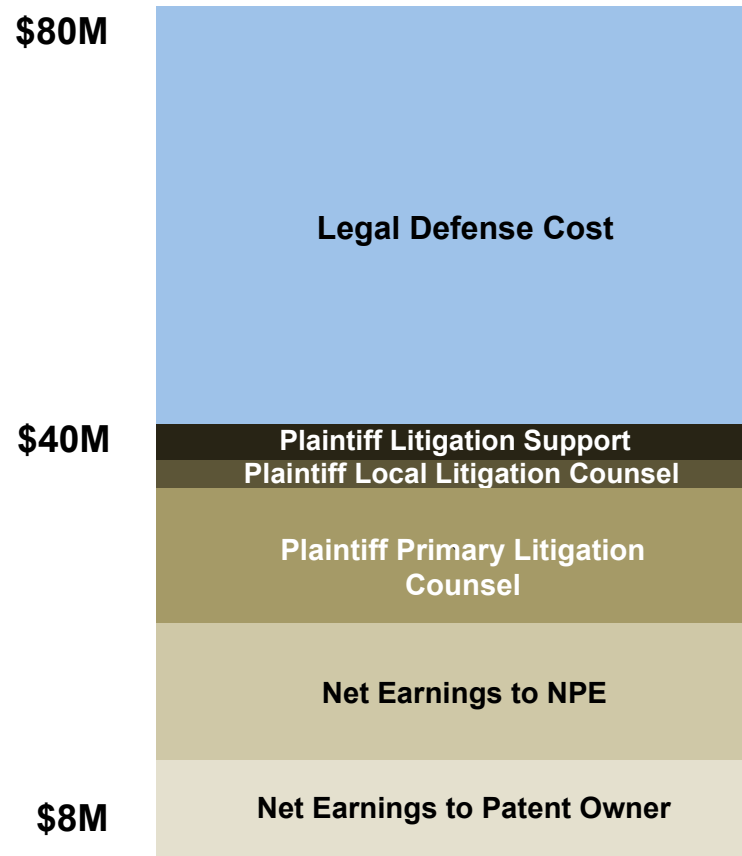
Source: RPX Research

Costs above are estimates of what was spent by all defendants in a given year. Settlements have only been allocated into the actual year of settlement

The NPE Business Model

Highly Inefficient Business Model

Example: An NPE's Plan to Extract Settlements from 40 Operating Companies



- ▶ NPE monetization is inefficient
- ▶ Industry transaction costs up to 900%
- ▶ Real example: \$72M of friction to net the patent owner \$8M