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# New Patent Exchange Hopes to Be Nasdaq for IP

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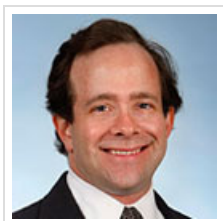
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Michael Markman, Covington & Burling partner  
Image: courtesy photo

SAN FRANCISCO — Are companies ready to buy and sell patent rights the way investors buy shares of stock?

That's the idea behind a new financial exchange, Intellectual Property Exchange International Inc., that launched Wednesday with the aim of creating a standard marketplace for patent licenses.

The Chicago-based IPXI is structuring the licensing process like a public equity offering, bringing familiar financial principles and standards to the murkier world of patent licensing by assigning values that are market-driven and transparent.

"I don't know that it will be a disruptive technology," said Michael Markman, a partner in the San Francisco office of **Covington & Burling**. "This is a potentially important addition to the playbook for patent portfolio strategy. It's definitely something to watch."

Patent owners will offer up nonexclusive licenses for purchase via what the exchange is calling a Unit License Right contract.

The initial offering — a portfolio of Philips OLED technology patents used in display screens — comes on the heels of the completion of an eight-month-long Department of Justice review initiated by the exchange. The DOJ declined to state its enforcement intentions, noting that it would remain unclear whether anti-competitive dynamics might emerge until after the platform began operating.

The IP market has never been a liquid one, and achieving a dynamic secondary market for patent assets will require significant industry participation. IPXI has signed on 18 founding members, including Hewlett-Packard Co. and Sony Corp., which have committed to list IP on the exchange. It also features a roster of law firms, including **DLA Piper** and **Sullivan & Cromwell**, as "associate members," who are eligible for committee membership and have access to offering information.

"I think it's the perfect timing for IPXI," said company director Ian McClure, nodding to the patent proposals announced by the White House on Tuesday, "because it's a market-based solution to some of the issues that have been identified recently, rather than simply resorting to things like litigating."

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Yet it's unlikely the new model will unseat patent assertion entities, who use the threat of costly litigation in negotiating settlements. "These patent exchanges are just like the stock market — they're purely voluntary," said Fabio Marino, a partner in the Menlo Park office of **McDermott Will & Emery**. "If I were a patent troll, I would never agree to list."

Attorneys noted that the marketplace could be a potential complement to the strategies of companies like RPX Corp., which gives clients access to a defensive pool of patents. "We are supporters of any market-based solution that provides transparency," said Kevin Barhydt, senior vice president and head of acquisitions at RPX. He expressed skepticism, however, that an electronic system was necessary to handle the volume of transactions associated with a patent portfolio.

IPXI was co-founded by James Malackowski, the CEO of Ocean Tomo, a merchant bank established in 2003 that introduced the first public auctions of IP. "If anybody can pull it off, it's this group of people," Marino said, "but it's still a long shot."

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