

Rubicon Technology, Inc.  
Form S-3  
June 03, 2010  
Table of Contents

As filed with the Securities and Exchange Commission on June 3, 2010

Registration No. 333-

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM S-3**  
**REGISTRATION STATEMENT**  
*UNDER*  
*THE SECURITIES ACT OF 1933*

**Rubicon Technology, Inc.**

(Exact name of Registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**36-4419301**  
(I.R.S. Employer  
Identification No.)

9931 Franklin Avenue

Edgar Filing: Rubicon Technology, Inc. - Form S-3

**Franklin Park, Illinois**

**(847) 295-7000 60131**

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

**Raja M. Parvez**

**President and Chief Executive Officer**

**9931 Franklin Avenue**

**Franklin Park, Illinois 60131**

**(847) 295-7000**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

*With a copy to:*

**Leland E. Hutchinson**

**Matthew F. Bergmann**

**Winston & Strawn LLP**

**35 West Wacker Drive**

**Chicago, Illinois 60601**

**(312) 558-5600**

*Approximate date of commencement of proposed sale to the public:*

*From time to time after the effective date of this Registration Statement.*

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, check the following box.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this form is a post-effective amendment filed pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant General Instruction I.D. filed in register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act. check the following box.

## Edgar Filing: Rubicon Technology, Inc. - Form S-3

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definitions of large accelerated filer, accelerated filer, and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input type="checkbox"/>

**Table of Contents****CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Unit	Proposed Maximum Aggregate Offering Price	Amount of Registration fee(2)
Common Stock-Secondary Offering	\$40,000,000(1)		\$40,000,000(1)	
Common Stock-Primary Offering				
Preferred Stock				
Debt Securities				
Warrants				
Total	\$100,000,000(1)	100%	\$100,000,000(1)	\$7,130

- (1) An indeterminate principal amount or number of shares of preferred stock, shares of common stock, debt securities, or warrants may be issued from time to time at indeterminate prices, with an aggregate offering price not to exceed \$100,000,000, of which up to \$60,000,000 may be offered by the Company in primary offerings and up to \$40,000,000 may be offered by selling stockholders in secondary offerings. If any securities are issued in a currency or composite currency other than U.S. dollars, such different amount as shall result in an aggregate initial offering price of \$100,000,000. For debt securities issued with an original issue discount, the amount to be registered is calculated as the initial accreted value of such debt securities.
- (2) The proposed maximum aggregate offering price has been estimated solely for purposes of calculating the registration fee pursuant to Rule 457(o) under the Securities Act and reflects the maximum offering price of securities that may be issued, rather than the principal amount of securities that may be issued at a discount. The registrant previously paid a registration fee of \$7,130 in connection with a registration statement on Form S-3 (File No. 333-163904) originally filed with the Commission on December 21, 2009, declared effective on January 25, 2010 and withdrawn on June 3, 2010, with no securities having been sold thereunder. Pursuant to Rule 457(p) of the Securities Act, the previously paid registration fee is offset against the registration fee otherwise due for this registration statement.

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

**Table of Contents**

**The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.**

**Subject to Completion, Dated, June 3, 2010**

**PROSPECTUS**

**\$60,000,000 by Rubicon Technology, Inc.**

**Common Stock**

**Preferred Stock**

**Debt Securities**

**Warrants**

**\$40,000,000 of Common Stock by Selling Stockholders**

This prospectus is part of a shelf registration statement. Under this shelf registration statement, we may offer from time to time up to \$60,000,000 of any of the following securities, either separately or in units:

common stock;

preferred stock;

debt securities; and

warrants.

The Selling Stockholders may offer and sell, from time to time, up to \$40,000,000 of common stock.

When we use the term securities in this prospectus, we mean any of the securities we or the Selling Stockholders may offer with this prospectus, unless we say otherwise.

If any securities are to be listed or quoted on a securities exchange or quotation system, our prospectus supplement will say so. Our common stock is listed on the NASDAQ Global Market and trades under the symbol RBCN.

This prospectus describes some of the general terms that may apply to these securities and the general manner in which they may be offered. The specific terms of any securities to be offered, and the specific manner in which they may be offered, will be described in a supplement to this prospectus or incorporated into this prospectus by reference. You should read this prospectus and any supplement carefully before you invest.

**Investing in the securities involves risks. See the section entitled Risk Factors beginning on page 3 of our Annual Report on Form 10-K for the year ended December 31, 2009 incorporated by reference into this prospectus and, if applicable, any risk factors described in any accompanying prospectus supplement.**

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities, or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

When we issue new securities, we may offer them for sale to or through underwriters, dealers and agents or directly to purchasers. Your prospectus supplement will include any required information about the firms we use and the discounts or commissions we may pay them for their services.

The date of this prospectus is June 3, 2010.

**Table of Contents**

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
<u>CAUTIONARY STATEMENT PURSUANT TO THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995</u>	1
<u>ABOUT THIS PROSPECTUS</u>	1
<u>ABOUT RUBICON TECHNOLOGY, INC.</u>	2
<u>CONSOLIDATED RATIO OF EARNINGS TO FIXED CHARGES</u>	3
<u>RISK FACTORS</u>	3
<u>USE OF PROCEEDS</u>	4
<u>DESCRIPTION OF SECURITIES WE MAY OFFER</u>	4
<u>DESCRIPTION OF CAPITAL STOCK</u>	4
<u>DESCRIPTION OF DEBT SECURITIES</u>	8
<u>DESCRIPTION OF WARRANTS</u>	11
<u>SELLING STOCKHOLDERS</u>	13
<u>PLAN OF DISTRIBUTION</u>	13
<u>LEGAL MATTERS</u>	15
<u>EXPERTS</u>	16
<u>WHERE YOU CAN FIND MORE INFORMATION</u>	16
<u>PART II INFORMATION NOT REQUIRED IN PROSPECTUS</u>	II-1
<u>SIGNATURES</u>	S-1
<u>EXHIBIT INDEX</u>	E-1

You should rely only on the information contained in this prospectus or any prospectus supplement, and in other offering material, if any, or information contained in documents which you are referred to by this prospectus or any prospectus supplement, or in other offering material, if any. We have not authorized anyone to provide you with different information. We are offering to sell the securities only in jurisdictions where offers and sales are permitted. The information contained or incorporated by reference in this prospectus or any prospectus supplement or other offering material is accurate only as of the date on the front of those documents, regardless of the time of delivery of the documents or any sale of the securities.

---

**Table of Contents**

**CAUTIONARY STATEMENT PURSUANT TO THE PRIVATE**

**SECURITIES LITIGATION REFORM ACT OF 1995**

From time to time, we and our representatives may provide information, whether orally or in writing which are deemed to be forward-looking within the meaning of the Private Securities Litigation Reform Act of 1995 (the Litigation Reform Act ). These forward-looking statements and other information are based on our beliefs as well as assumptions made by us using information currently available. In accordance with the provisions of the Litigation Reform Act, we are making investors aware that such forward-looking statements, because they relate to future events, are by their very nature subject to many important factors that could cause actual results to differ materially from those contemplated by the forward-looking statements contained in this prospectus or any prospectus supplement.

Information regarding important factors that could cause actual results to differ, perhaps materially, from those in the Company s forward-looking statements is contained in the Company s Annual Report on Form 10-K for the year ended December 31, 2009, which is incorporated into this prospectus by reference. See Where You Can Find More Information below for information about how to obtain a copy of this annual report.

**No dealer, salesperson or other person is authorized to give any information or to represent anything not contained in this prospectus. You must not rely on any unauthorized information or representations. This prospectus is an offer to sell only the securities it describes, but only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this prospectus is current only as of its date.**

**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement on Form S-3 that we filed with the Securities and Exchange Commission (the SEC ) using a shelf registration process. Under this shelf process, we may sell any combination of the securities described in this prospectus in one or more offerings. This prospectus provides you with a general description of the securities we or any selling security holders may offer.

Each time we or any selling security holders sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. In addition, selling security holders may sell securities under our shelf registration statement. We and any underwriter or agent that we may from time to time retain may also provide other information relating to an offering, which we refer to as other offering material. The prospectus supplement as well as the other offering material may also add, update or change information contained in this prospectus. You should read this prospectus, any prospectus supplement, any applicable pricing supplement, together with additional information described in the section entitled Where You Can Find More Information and any other offering material. Throughout this prospectus, where we indicate that information may be supplemented in an applicable prospectus supplement or supplements, that information may also be supplemented in other offering material provided.

To see more detail, you should read our registration statement and the exhibits filed with our registration statement.

Unless we state otherwise or the context otherwise requires, references to Rubicon, Company, us, we or our in this prospectus mean Rubicon Technology, Inc., and do not include the consolidated subsidiaries of Rubicon Technology, Inc. When we refer to you in this section, we mean all purchasers of the securities being offered by this prospectus, whether they are the holders or only indirect owners of those securities.



---

**Table of Contents**

**ABOUT RUBICON TECHNOLOGY, INC.**

**OUR BUSINESS**

We are an advanced electronic materials provider that develops, manufactures and sells monocrystalline sapphire and other innovative crystalline products for Light-Emitting Diodes ( LEDs ), radio frequency integrated circuits ( RFICs ), blue laser diodes, optoelectronics and other optical applications. The emergence of sapphire in commercial volumes at competitive prices has enabled the development of new technologies such as high brightness ( HB ) white, blue and green LEDs and highly-integrated RFICs. We apply our proprietary crystal growth technology to produce high-quality sapphire products efficiently to supply a large and growing end-market demand, and we work closely with our customers to meet their quality and delivery needs. We believe we are the leading supplier of sapphire products to the LED industry.

We are a vertically integrated manufacturer of high-quality sapphire substrates and optical windows that are used in a variety of high-growth, high-volume end-market applications. Our largest product line is two to four inch sapphire cores and wafers for use in LEDs and blue laser diodes for solid state lighting and electronic applications. In addition, we sell six inch sapphire wafers that are used for Silicon-on-Sapphire ( SOS ) RFICs, as well as products for military, aerospace, sensor and other applications. We have also extended our technology to manufacture six and eight inch products to support next-generation LED, eight inch products to support next generation RFIC and twelve plus inch products for optical window applications. We believe that LED and SOS RFIC production will follow a similar path to that of production of integrated circuits on silicon substrates, which gradually migrated to production on larger and larger substrates in order to reduce manufacturing costs. We feel that our ability to produce large diameter sapphire substrates in high volume will enable the continued advancement of the LED and RFIC markets by enabling our customers to reduce costs.

Advancements in solid state lighting utilizing HB white, blue and green LEDs over the past decade represent a disruptive technology in the lighting industry, providing significant performance, environmental and economic improvements compared to traditional incandescent or fluorescent lighting. These factors, along with LEDs' durability, small form factor, excellent color performance and decreasing costs, have led to a rapidly growing demand for LEDs in consumer electronic and general and specialty lighting applications. Applications using LEDs have unit volumes in the billions and are expected to grow significantly. The majority of HB LEDs are produced on sapphire substrates. Therefore, as the HB LED market grows, we believe the sapphire substrate market will grow as well.

As a leading producer of sapphire and other crystals, we believe that the following are our principal competitive advantages:

***Proprietary technology for crystal growth.*** Due to our in-depth understanding of sapphire crystal growth seeding and crystal growth furnace operational parameters, we have developed a full in-house capability to design, build and maintain crystal growth furnaces with proprietary features. We believe that our enhanced proprietary methodology significantly outperforms other methods of sapphire production with respect to capital costs, operating costs, throughput, quality and diameter size.

***High quality sapphire products.*** Through our operational expertise in crystal growth, post-growth processing and in-process manufacturing controls of sapphire wafer production, we are able to meet or exceed our customers' key product specifications, such as crystalline quality, dimensional tolerances and crystal orientation, while maintaining high production yields.

***Vertical integration.*** We grow sapphire crystals and have extensive capabilities to process sapphire into products that meet our customers' needs from cores to wafer and window blanks to large diameter epi-polished wafers. By vertically integrating, we are able to achieve significant operating efficiencies and produce high-quality, high-precision products that offer cost and quality benefits to our customers.

***High volume and flexible manufacturing capability.*** We have developed automated manufacturing and metrology platforms at each stage of our production process that enable us to readily increase

## **Table of Contents**

capacity and to easily switch products in manufacturing easily so that we can meet our customers' specific product demands.

***Lowest total cost for customers.*** We believe our high sustained yields, our dedication to consistent production and performance and our commitment to lasting customer relationships help assure our customers of a reliable source of high-quality sapphire products at stable prices. Our in-process quality control practices lead to predictable customer process yields, reduced inspection costs and overall high customer satisfaction.

### **OUR STRATEGY**

Our goal is to be the leading global provider of advanced monocrystalline substrate and window materials to the solid state lighting, SOS RFIC, aerospace and optical markets. Our strategy includes the following key elements:

***Extend our technology and manufacturing leadership position.*** We intend to continue to develop advanced technology platforms to further increase the size of crystals produced and offer market-leading product specifications, while maintaining product quality and manufacturing efficiencies.

***Capitalize on opportunities in high-growth markets.*** We intend to continue to expand our opportunities by adding new categories and sizes of products with the goal of providing our customers in multiple high-growth end markets with a robust set of sapphire solutions.

***Enhance operational excellence.*** We plan to further refine our proprietary crystal growth techniques, sapphire processing platforms and process controls to produce even higher throughput capabilities. Our objective is to continue to achieve operational excellence through lowering cycle times, raising yields and reducing overhead costs.

***Expand our sales and marketing efforts.*** We intend to increase the scale and geographical coverage of our sales efforts globally. In addition, we plan to enhance our brand recognition by increasing our marketing and communications programs and resources.

***Penetrate new market segments.*** We intend to use our proprietary manufacturing technology to produce additional single-crystal materials that can be used in optical applications as well as alternative substrates for certain electronic materials applications.

### **OUR CORPORATE INFORMATION**

We were incorporated under the laws of the State of Delaware in 2001. Our principal executive offices are located at 9931 Franklin Avenue, Franklin Park, Illinois 60131. The telephone number at our principal executive offices is (847) 295-7000. Our website address is [www.rubicon-es2.com](http://www.rubicon-es2.com). Information contained on our website is not incorporated by reference into this prospectus, and you should not consider information contained on our website to form any part of this prospectus.

### **CONSOLIDATED RATIO OF EARNINGS TO FIXED CHARGES**

Our ratio of earnings to fixed charges for each of the five most recently completed fiscal years and any required interim periods will each be specified in a prospectus supplement or in a document that we file with the SEC and incorporate by reference pertaining to the issuance, if any, by us of debt securities in the future.

### **RISK FACTORS**

Investing in our securities involves risk. Please carefully consider the risk factors described in our periodic reports filed with the SEC, which are incorporated by reference in this prospectus, as well as any prospectus



**Table of Contents**

supplement relating to a specific security. Before making any investment decision, you should carefully consider these risks as well as other information we include or incorporate by reference in this prospectus or in any applicable prospectus supplement. These risks could materially affect our business, results of operation or financial condition and affect the value of our securities. You could lose all or part of your investment. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also affect our business, results of operation or financial condition.

**USE OF PROCEEDS**

Unless otherwise indicated in any prospectus supplement, we intend to use the net proceeds from the sale of securities from the primary offering for general corporate purposes. General corporate purposes may include repayment of debt, investments in or extensions of credit to our subsidiaries, repurchases of common stock, capital expenditures and the financing of possible acquisitions or business expansions. The net proceeds from the sale of securities from the primary offering may be invested temporarily or applied to repay short-term obligations until they are used for their stated purpose.

We will not receive any proceeds from any sale of shares by the Selling Stockholders.

**DESCRIPTION OF SECURITIES WE MAY OFFER**

This prospectus is part of a shelf registration statement. Under this shelf registration statement, we may offer from time to time up to \$60,000,000 of any of the following securities, either separately or in units:

common stock;

preferred stock;

debt securities; and

warrants.

Under this shelf registration statement, the Selling Stockholders may offer and sell, from time to time, up to \$40,000,000 of common stock.

**DESCRIPTION OF CAPITAL STOCK**

**GENERAL**

As of the date hereof, our authorized capital stock consists of 85.0 million shares of common stock, par value \$0.001 per share, and 5.0 million shares of undesignated preferred stock, par value \$0.001 per share. The following description of our capital stock is intended as a summary only and is qualified in its entirety by reference to our amended and restated certificate of incorporation and amended and restated bylaws, which are filed as exhibits to the registration statement of which this prospectus is a part. We refer in this section to our amended and restated certificate of incorporation as our certificate of incorporation, and we refer to our amended and restated bylaws as our bylaws.

As of March 31, 2010, we had 21,521,146 shares of our common stock outstanding, of which 1,249,975 shares are held as treasury shares, options to purchase 640,969 shares of our common stock under our 2001 Equity Plan, 459,741 of which were vested, options to purchase 1,536,088 shares of our common stock under our 2007 Stock Incentive Plan, 395,847 of which were vested, and warrants to purchase 281,561 shares of common stock, all of which are exercisable.

**Table of Contents****COMMON STOCK**

As of March 31, 2010, there were 21,521,146 shares of our common stock outstanding, of which 1,249,975 shares are held as treasury shares. As of March 31, 2010, there were 34 holders of our common stock.

Holders of our common stock are entitled to one vote for each share of common stock held of record for the election of directors and on all matters submitted to a vote of stockholders. Holders of our common stock are entitled to receive dividends ratably, if any, as may be declared by our board of directors from time to time, subject to any preferential dividend rights of any preferred stock then outstanding. Upon our liquidation, dissolution, distribution of assets or winding up, holders of our common stock are entitled to share ratably in our remaining assets legally available after the payment of all our debts and other liabilities, subject to the preferential rights of any preferred stock then outstanding. Holders of our common stock have no preemptive, subscription, redemption or conversion rights. The rights, preferences and privileges of holders of common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock that we may designate and issue in the future. Except as described below in Anti-takeover effects of Delaware law and provisions of our certificate of incorporation and bylaws, a majority vote of common stockholders is generally required to take action under our certificate of incorporation and bylaws.

All outstanding shares of common stock are fully paid and nonassessable.

**PREFERRED STOCK**

Our board of directors is authorized, without action by the stockholders, to designate and issue up to 5.0 million shares of preferred stock in one or more series. Our board of directors can fix the rights, preferences and privileges of the shares of each series and any of its qualifications, limitations or restrictions. The issuance of preferred stock with voting or conversion rights may adversely affect the voting power or other rights of the holders of common stock. The issuance of preferred stock, while providing flexibility in connection with possible future financings and acquisitions and other corporate purposes could, under certain circumstances, have the effect of delaying, deferring or preventing a change in control and could harm the market price of our common stock.

Our board of directors will make any determination to issue such shares based on its judgment as to our best interests and the best interests of our stockholders. We have no current plans to issue any shares of preferred stock.

**OPTIONS**

As of March 31, 2010, we had outstanding options to purchase 640,969 shares of common stock under our 2001 Equity Plan, 459,741 of which were vested. These options have an average exercise price of \$6.07. As of March 31, 2010, we had outstanding options to purchase 1,536,088 shares of common stock under our 2007 Stock Incentive Plan, 395,847 of which were vested. These options have an average exercise price of \$11.16.

**WARRANTS**

As of March 31, 2010, the following warrants were outstanding:

Type of warrant	Number of shares of common stock issuable upon exercise of warrant	Exercise price per share of common stock	Expiration
Common Stock	243,446	\$3.65	12/15/2015
Common Stock	24,380	\$3.65	1/27/2016
Common Stock	13,735	\$7.28	11/21/2012

---

**Table of Contents**

**REGISTRATION RIGHTS**

The holders of an aggregate of 5,949,116 shares of our common stock, or approximately 29.3% of our common stock outstanding, are entitled to certain rights with respect to registration of such shares under the Securities Act. These shares are referred to as registrable securities. The holders of registrable securities possess registration rights pursuant to the terms of our fourth amended and restated registration rights agreement, as amended through November 30, 2005, entered into by us and such holders of registrable securities. In addition, the holders of warrants representing the right to purchase an aggregate of 267,826 shares of our common stock have registration rights comparable to those provided under such agreement. The following description of the terms of the fourth amended and restated registration rights agreement is intended as a summary only and is qualified in its entirety by reference to the fourth amended and restated registration rights agreement, which is filed as Exhibit 4.2 to our Registration Statement on Form S-1, filed on October 11, 2007.

*Demand registration rights.* Subject to certain exceptions, the holders of not less than 25% of the then outstanding registrable shares of common stock, have the right to demand that we file a registration statement covering the offering and sale of their shares of our common stock that are subject to the registration rights agreement. We are not obligated to file such a registration statement on more than two occasions.

*Piggyback registration rights.* If we propose to register shares of our common stock in connection with a public offering of such shares solely for cash (other than in connection with employee benefit plans or a merger or certain similar transactions), the holders of registrable securities may request to include their registrable shares in such registration.

*Form S-3 registration rights.* If we are eligible to file a registration statement on Form S-3, holders of registrable securities anticipated to have an aggregate offering price (net of underwriting discounts and commissions, if any) of more than \$500,000 have the right, on one or more occasions, to request registration of such securities on Form S-3.

We have the ability to delay the filing of a registration statement for not more than 90 days under specified conditions, such as for a period of time following the effective date of a prior registration statement or if our board of directors deems it seriously detrimental to us and our stockholders to file a registration statement. Such postponements cannot occur more than once during any twelve month period.

*Expenses of registration.* We will pay all registration expenses, other than underwriting discounts and commissions and stock transfer taxes of holders, related to any demand or piggyback registration.

*Indemnification.* The registration rights agreement contains customary cross-indemnification provisions, under which we are obligated to indemnify the selling stockholders in the event of untrue statements or omissions of material facts in the registration statement or violations of securities laws attributable to us, and they are obligated to indemnify us for untrue statements, omissions of material facts or violations of securities laws attributable to them.

*Termination of registration rights.* The registration rights terminate at such time as the earlier of (i) all registrable securities may be sold during any three month period without registration under the Securities Act; (ii) no registrable securities remain outstanding; or (iii) November 21, 2012.

**ANTI-TAKEOVER EFFECTS OF DELAWARE LAW AND PROVISIONS OF OUR CERTIFICATE OF INCORPORATION AND BYLAWS**

*Certificate of incorporation and bylaw provisions*

Our certificate of incorporation and bylaws include a number of provisions that may have the effect of delaying, deferring or preventing another party from acquiring control of us and encouraging persons considering

## **Table of Contents**

unsolicited tender offers or other unilateral takeover proposals to negotiate with our board of directors rather than pursue non-negotiated takeover attempts. These provisions include the items described below.

*Board composition and filling vacancies.* Our board is divided into three classes serving staggered three-year terms, with one class being elected each year. Directors may be removed only for cause and then only by the affirmative vote of the holders of 75% or more of the shares then entitled to vote at an election of directors. Furthermore, any vacancy on our board of directors, however occurring, including a vacancy resulting from an increase in the size of our board, may only be filled by the affirmative vote of a majority of our directors then in office even if less than a quorum. The classification of our board of directors and the limitations on the removal of directors and filling of vacancies could make it more difficult for a third party to acquire, or discourage a third party from seeking to acquire, control of our company.

*No written consent of stockholders.* All stockholder actions must be taken by a vote of the stockholders at an annual or special meeting, and stockholders may not take any action by written consent in lieu of a meeting. This limit may lengthen the amount of time required to take stockholder actions and would prevent the amendment of our bylaws or removal of directors by our stockholders without holding a meeting of stockholders.

*Meetings of stockholders.* Only a majority of the members of our board of directors then in office may call special meetings of stockholders and only those matters set forth in the notice of the special meeting may be considered or acted upon at a special meeting of stockholders. Our bylaws limit the business that may be conducted at an annual meeting of stockholders to those matters properly brought before the meeting.

*Advance notice requirements.* Our bylaws establish advance notice procedures with regard to stockholder proposals relating to the nomination of candidates for election as directors or new business to be brought before meetings of our stockholders. These provisions may have the effect of precluding the conduct of certain business at a meeting if proper procedures are not followed.

*Amendment to certificate of incorporation and bylaws.* As required by the Delaware General Corporation Law, any amendment of our certificate of incorporation must first be approved by a majority of our board of directors, and if required by law or our certificate of incorporation, must thereafter be approved by a majority of the outstanding shares entitled to vote on the amendment and a majority of the outstanding shares of each class entitled to vote thereon as a class, except that the amendment of the provisions relating to stockholder action, board composition and the filling of vacancies, limitation of liability and the amendment of our certificate of incorporation must be approved by not less than 75% of the outstanding shares entitled to vote on the amendment, and not less than 75% of the outstanding shares of each class entitled to vote thereon as a class. Our bylaws may be amended by the affirmative vote of a majority of the directors then in office, subject to any limitations set forth in the bylaws; and may also be amended by the affirmative vote of at least 75% of the outstanding shares entitled to vote on the amendment, or, if our board of directors recommends that the stockholders approve the amendment, by the affirmative vote of the majority of the outstanding shares entitled to vote on the amendment, in each case voting together as a single class.

*Undesignated preferred stock.* Our certificate of incorporation provides for 5.0 million authorized shares of preferred stock. The existence of authorized but unissued shares of preferred stock may enable our board of directors to impede an attempt to obtain control of us by means of a merger, tender offer, proxy contest or otherwise. Our certificate of incorporation grants our board of directors broad power to establish the rights and preferences of authorized and unissued shares of preferred stock. The issuance of shares of preferred stock could decrease the amount of earnings and assets available for distribution to holders of shares of common stock. The issuance may also adversely affect the rights and powers, including voting rights, of these holders and may have the effect of delaying, deterring or preventing a change in control of us.

### ***Delaware law***

We are subject to Section 203 of the Delaware General Corporation Law, an anti-takeover provision. In general, the provision prohibits a publicly-held Delaware corporation from engaging in a business combination

## **Table of Contents**

with an interested stockholder for a period of three years after the date of the transaction in which the person became an interested stockholder. A business combination includes a merger, sale of 10% or more of our assets and certain other transactions resulting in a financial benefit to the stockholder. For purposes of Section 203, an interested stockholder is defined to include any person that is:

the owner of 15% or more of the outstanding voting stock of the corporation;

an affiliate or associate of the corporation and was the owner of 15% or more of the voting stock outstanding of the corporation, at any time within three years immediately prior to the relevant date; or

an affiliate or associate of the persons described above.

However, the above provisions of Section 203 do not apply if:

our board of directors approves the transaction that made the stockholder an interested stockholder before the date of that transaction; or

after the completion of the transaction that resulted in the stockholder becoming an interested stockholder, that stockholder owned at least 85% of our voting stock outstanding at the time the transaction commenced, excluding shares owned by our officers and directors; or

on or subsequent to the date of the transaction, the business combination is approved by our board of directors and authorized at a meeting of our stockholders by an affirmative vote of at least two-thirds of the outstanding voting stock not owned by the interested stockholder.

Stockholders may, by adopting an amendment to the corporation's certificate of incorporation or bylaws, elect for the corporation not to be governed by Section 203, effective 12 months after adoption. Neither our certificate of incorporation nor our bylaws exempt us from the restrictions imposed under Section 203. It is anticipated that the provisions of Section 203 may encourage companies interested in acquiring us to negotiate in advance with our board of directors.

## **NASDAQ GLOBAL MARKET LISTING**

Our common stock is listed on the NASDAQ Global Market under the trading symbol RBCN.

## **TRANSFER AGENT AND REGISTRAR**

The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company.

## **LIMITATION OF LIABILITY OF DIRECTORS**

Our restated certificate of incorporation contains a provision that limits the liability of our directors for monetary damages for breach of fiduciary duty as a director to the fullest extent permitted by the Delaware General Corporation Law. Such limitation does not, however, affect the liability of a director (1) for any breach of the director's duty of loyalty to us or our stockholders, (2) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (3) in respect of certain unlawful dividend payments or stock redemptions or purchases and (4) for any transaction from which the director derives an improper personal benefit. The effect of this provision is to eliminate our rights and the rights of our stockholders (through stockholders' derivative suits) to recover monetary damages against a director for breach of the fiduciary duty of care as a director (including breaches resulting from negligent or grossly negligent behavior) except in the situations described in clauses (1) through (4) above. This provision does not limit or eliminate our rights or the rights of our stockholders to seek non-monetary relief such as an injunction or rescission in the event of a breach of a director's duty of care. In addition, our directors and officers



have indemnification protection.

---

**Table of Contents**

**DESCRIPTION OF DEBT SECURITIES**

The following description, together with the additional information we may include in any applicable prospectus supplements and in any related free writing prospectuses, summarizes the material terms and provisions of the debt securities that we may offer under this prospectus. While the terms summarized below will apply generally to any debt securities that we may offer, we will describe the particular terms of any debt securities in more detail in the applicable prospectus supplement. The terms of any debt securities offered under a prospectus supplement may differ from the terms described below.

We may issue debt securities from time to time in one or more distinct series under the indenture that is filed as an exhibit to the registration statement of which this prospectus forms a part. The terms of the debt securities will include those stated in the indenture and those made part of the indenture by reference to the Trust Indenture Act of 1939, as amended, or the Trust Indenture Act. If we issue debt securities pursuant to an indenture, in the applicable prospectus supplement we will specify the trustee under such indenture. We will include in a supplement to this prospectus the specific terms of debt securities being offered, including the terms, if any, on which debt securities may be convertible into or exchangeable for common stock or other debt securities. The statements and descriptions in this prospectus or in any prospectus supplement regarding provisions of debt securities and any indentures are summaries of these provisions, do not purport to be complete and are subject to, and are qualified in their entirety by reference to, all of the provisions of the debt securities and the indentures (including any amendments or supplements we may enter into from time to time which are permitted under the debt securities or any indenture).

Unless otherwise specified in a prospectus supplement, the debt securities will be direct unsecured obligations of the Company. Any debt securities designated as senior will rank equally with any of our other senior and unsubordinated debt. Any debt securities designated as subordinated will be subordinate and junior in right of payment to any senior indebtedness. There may be subordinated debt securities that are senior or junior to other series of subordinated debt securities.

The applicable prospectus supplement will set forth the terms of the debt securities or any series thereof, including, if applicable:

the title of the debt securities and whether the debt securities will be senior debt securities or subordinated debt securities;

any limit upon the aggregate principal amount of the debt securities;

whether the debt securities will be issued as registered securities, bearer securities or both, and any restrictions on the exchange of one form of debt securities for another and on the offer, sale and delivery of the debt securities in either form;

the date or dates on which the principal amount of the debt securities will mature;

if the debt securities bear interest, the rate or rates at which the debt securities bear interest and the date or dates from which interest will accrue;

if the debt securities bear interest, the dates on which interest will be payable and the regular record dates for interest payments;

the place or places where the payment of principal, any premium and interest will be made, where the debt securities may be surrendered for transfer or exchange and where notices or demands to or upon us may be served;

the price at which we originally issue the debt security, expressed as a percentage of the principal amount, and the original issue date;

any optional redemption provisions, which would allow us to redeem the debt securities in whole or in part;

**Table of Contents**

any sinking fund or other provisions that would obligate us to redeem, repay or purchase the debt securities;

if the currency in which the debt securities will be issuable is U.S. dollars, the denominations in which any registered securities will be issuable, if other than denominations of \$1,000 and any integral multiple thereof, and the denominations in which any bearer securities will be issuable, if other than the denomination of \$5,000;

if other than the entire principal amount, the portion of the principal amount of debt securities which will be payable upon a declaration of acceleration of the maturity of the debt securities;

the events of default and covenants relevant to the debt securities, including, the inapplicability of any event of default or covenant set forth in the indenture relating to the debt securities, or the applicability of any other events of defaults or covenants in addition to the events of default or covenants set forth in the indenture relating to the debt securities;

the name and location of the corporate trust office of the applicable trustee under the indenture for such series of notes;

if other than U.S. dollars, the currency in which the debt securities will be paid or denominated;

if the debt securities are to be payable, at our election or the election of a holder of the debt securities, in a currency other than that in which the debt securities are denominated or stated to be payable, the terms and conditions upon which that election may be made, and the time and manner of determining the exchange rate between the currency in which the debt securities are denominated or stated to be payable and the currency in which the debt securities are to be so payable;

the designation of the original currency determination agent, if any;

if the debt securities do not bear interest, the dates on which we will furnish to the applicable trustee the names and addresses of the holders of the debt securities;

if the debt security is also an original issue discount debt security, the yield to maturity;

if other than as set forth in an indenture, provisions for the satisfaction and discharge or defeasance or covenant defeasance of that indenture with respect to the debt securities issued under that indenture;

the date as of which any bearer securities and any global security will be dated if other than the date of original issuance of the first debt security of a particular series to be issued;

whether and under what circumstances we will pay additional amounts to non-U.S. holders in respect of any tax assessment or government charge;

whether the debt securities will be issued in whole or in part in the form of a global security or securities and, in that case, any depository and global exchange agent for the global security or securities, whether the global form shall be permanent or temporary

## Edgar Filing: Rubicon Technology, Inc. - Form S-3

and, if applicable, the exchange date;

if debt securities are to be issuable initially in the form of a temporary global security, the circumstances under which the temporary global security can be exchanged for definitive debt securities and whether the definitive debt securities will be registered securities, bearer securities or will be in global form and provisions relating to the payment of interest in respect of any portion of a global security payable in respect of an interest payment date prior to the exchange date;

the extent and manner to which payment on or in respect of debt securities will be subordinated to the prior payment of our other liabilities and obligations;

the assets, if any, that will be pledged as security for the payment of the debt security;

whether payment of any amount due under the debt securities will be guaranteed by one or more guarantors, including one or more of our subsidiaries;

## **Table of Contents**

whether the debt securities will be convertible and the terms of any conversion provisions;

the forms of the debt securities; and

any other terms of the debt securities, which terms shall not be inconsistent with the requirements of the Trust Indenture Act.

This prospectus is part of a registration statement that does not limit the aggregate principal amount of debt securities that we may issue and provides that we may issue debt securities from time to time in one or more series under one or more indentures, in each case with the same or various maturities, at par or at a discount. Unless indicated in a prospectus supplement, we may issue additional debt securities of a particular series without the consent of the holders of the debt securities of such series outstanding at the time of the issuance. Any such additional debt securities, together with all other outstanding debt securities of that series, will constitute a single series of debt securities under the applicable indenture.

We intend to disclose any restrictive covenants for any issuance or series of debt securities in the applicable prospectus supplement.

## **DESCRIPTION OF WARRANTS**

### **General**

We may issue debt warrants for the purchase of debt securities or stock warrants for the purchase of preferred stock or common stock.

The warrants will be issued under warrant agreements to be entered into between us and a bank or trust company, as warrant agent, all to be set forth in the applicable prospectus supplement relating to any or all warrants in respect of which this prospectus is being delivered. Copies of the form of agreement for each warrant, including the forms of certificates representing the warrants reflecting the provisions to be included in such agreements that will be entered into with respect to the particular offerings of each type of warrant are filed as exhibits to the registration statement of which this prospectus forms a part.

The following description sets forth certain general terms and provisions of the warrants to which any prospectus supplement may relate. The particular terms of the warrants to which any prospectus supplement may relate and the extent, if any, to which such general provisions may apply to the warrants so offered will be described in the applicable prospectus supplement. The following summary of certain provisions of the warrants, warrant agreements and warrant certificates does not purport to be complete and is subject to, and is qualified in its entirety by express reference to, all the provisions of the warrant agreements and warrant certificates, including the definitions therein of certain terms.

### ***Debt Warrants***

*General.* Reference is made to the applicable prospectus supplement for the terms of debt warrants in respect of which this prospectus is being delivered, the debt securities warrant agreement relating to such debt warrants and the debt warrant certificates representing such debt warrants, including the following:

the designation, aggregate principal amount and terms of the debt securities purchasable upon exercise of such debt warrants and the procedures and conditions relating to the exercise of such debt warrants;