IP flow

Goals

We want a "flat" IP-flow policy, whereby the right to use contributions to the Spec (and to the RI and TCK where applicable) are granted directly to implementers and end-users rather than flowing through the Spec Lead. (The Spec Lead should be treated as just another implementer.)

Definitions

- *Contribution:* any comments, specifications, code or other materials, or ideas made or disclosed to an Expert Group by any means concerning the subject matter of the JSR for which that Expert Group is formed.
    - NOTE: the current version of the JSPA distinguishes between contributions that are disclosed in "recorded form" and those that are not. This definition eliminates that distinction.
    - NOTE: this definition must be broad enough to cover direct contributions to the RI and/or the TCK, so "made or disclosed to an Expert Group" is probably insufficient. (Non-JSPA signatories who contribute to the RI or TCK must be covered separately by some other kind of CLA.)
- *Compatible:* an implementation of a Java technology is Compatible if it meets the requirements specified in the language equivalent to (a) – (c) of Section 5.B in the current version of the JSPA.
- *Essential Patent:* a patent for which a Compatible implementation of a Specification cannot be created in a technically feasible manner without violation.
- *Output:* the Specification and associated Reference Implementation and Technology Compatibility Kit generated by an Expert Group with respect to the JSR for which that Expert Group is formed.
- *Process:* the version of the Process Document under which a particular JSR is being run.

IP Grants from Contributors

Everyone who contributes to a JSR (whether or not they are members of the Expert Group), with respect to their copyrights, trade secrets, and Essential Patent Rights in their Contributions, grants a perpetual, non-exclusive, worldwide, royalty-free, fully paid-up license permitting those Contributions to be:

- Disclosed, distributed, reviewed, and publicly discussed as necessary to meet the transparency requirements of the Process before and after the JSR is completed.
    - (This grant is to the Expert Group and other interested participants.)
- Modified and incorporated into the Output and into future versions of the Output as evolved through the Process.
    - (This grant is to those who develop the JSR.)
- Incorporated into Compatible implementations of the current and any future revisions of the Spec.
    - (This grant is to those who create compatible implementations of the JSR.)
- Do we need to add a fourth bullet addressing grants to users/consumers of compatible implementations or will that be sufficiently covered by the outbound license associated with the implementation?

IP grants with respect to Contributions are absolute, and may not be withdrawn.

Essential Patent grants from EG members with respect to material they did not contribute

Expert Group members make royalty-free grants with respect to their Essential Patents even as these relate to material contributed by others. Grants with respect to material that they did not Contribute may be revoked if the owner discloses the relevant patents and withdraws from the Expert Group prior to publication of the spec for the next JCP milestone (eg, Early Draft, Public Review, Proposed Final Draft…) If a milestone passes without disclosure and withdrawal then the EG member is obligated to license Essential Patents that bear on the spec as it was at that milestone.

Section 6B of the current JSPA obligates EG members to disclose Essential Patents at any time they acquire knowledge of them. We want to keep this language.

Essential Patent grants from non-EG members

Section 6 of the current JSPA obliges all JCP members – whether or not they are members of the Expert Group for or have made any Contributions to a JSR – to license their Essential Patents that bear on that JSR on FRAND terms.

We are considering removing this obligation, so that members are obligated to license Essential Patents only with respect to their own Contributions to any JSR and with respect to Contributions by others for JSRs where they serve on the Expert Group.

Defensive Termination

We want to insert defensive patent-license termination language into both the JSPA (to cover signatories) and the Spec License (to provide protection for the entire Java community).

The new language will state that initiation of legal action against a conforming implementation of a JSR on the grounds of infringement of Essential Patents will trigger a reciprocal termination of all patent licenses granted to the initiator for that JSR and in addition – if the JSR is included in an umbrella JSR – a termination of all patent licenses granted for the umbrella JSR and for all other JSRs included in the umbrella JSR.

JCP members who disclose Essential Patents as described elsewhere in the JSPA (before any JCP milestone if they are a member of the EG or before Public Review if they are not) may take any action with respect to those patents without triggering the termination clause. (That is, they will be free to license the patents on RF, FRAND, or any other terms, and will also be free not to license them at all.)

Notes

Since Oracle is not the "You" specified in the JSPA we must include language stating that Oracle makes similar commitments.

Copyright in the "collective work" of the Spec will vest in the Spec Lead.

No member is obliged to grant patent rights to those who are unwilling to make a reciprocal grant.

We should remove the current distinction between implementations derived from the RI and Independent Implementations.

Questions

1. Should we replace explicit patent grants with a non-assert covenant?

If we do, isn't this equivalent to a mandate to license Royalty-Free? If so, doesn't this imply that we should abolish the obligation to license Essential Patents for JSRs where the patent-holder is not on the EG, since today that obligation is FRAND rather than RF?

2. Should we remove the obligation to license Essential Patents for JRSs where the patent-holder does not serve on the EG?