Warning: I Am Not A Lawyer

Any interpretation of the current JSPA implied by this document may be completely incorrect!

Inbound and outbound IP flow

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.
    - The current version of the JSPA has a weird distinction between contributions that are disclosed in "recorded form" and those that are not. This should be eliminated.
    - This definition must be broad enough to cover direct contributions to the RI and/or the TCK. (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 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.

Inbound IP flow

With respect to your copyrights, trade secrets, and Essential Patent Rights in your Contributions you grant a perpetual, non-exclusive, worldwide, royalty-free, fully paid-up, and irrevocable <mark>(except under circumstances TBD – see notes below)</mark> license permitting your 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.
- to be modified and incorporated into the Output and into future versions of the Output as it is evolved through the Process.
- to be modified and incorporated into Compatible implementations of the current and any future revisions of the Spec.
    - It would be good to remove the current distinction between implementations derived from the RI and Independent Implementations.

Copyright in the Spec, RI, and TCK will vest in the Spec Lead. <mark>(This is therefore not flat. When the RI or TCK is developed collaboratively - eg at Eclipse or Apache - the copyright in these artifacts will be determined by the CLA of the development organization.)</mark>

Notes

- What about the right to sub-license? It is the Spec Lead who will be the licensor for the Spec, RI, and TCK so the Spec Lead must have the right to sub-license these artifacts. However, the JSPA should not grant sub-licensing rights to all (the rights of downstream licensees will be covered by the license for the relevant artifact). So – we are not "flat."
- This language only covers IP that is actively contributed, whether or not the contributor is a member of the Expert Group. Essential Patents not related to contributions (currently covered by section 6) must be dealt with separately. (We seem to be leaning towards relaxing the current requirement that non-contributors must license all their Essential Patents on RAND terms.)
- Oracle is not the "You" specified in the JSPA, so there must be language stating that Oracle makes similar commitments.
- This language makes grants only to the collaborating developers of the Spec, RI, and TCK and to implementers (with the Spec Lead being a special case of an implementer). We've talked about the need to make grants to distributors and end-users

but I believe that those categories of "consumers" are fundamentally different from developers and implementers (they will have much more restricted rights) and they will be covered by the appropriate outbound licenses.

- IP grants may be revocable under certain circumstances. For example, the current version of the JSPA permits copyright grants to be withdrawn if the terms under with the JSR will be licensed are substantially changed after the grant is made.
- Similarly, we should probably insert *reciprocity* language into the Essential Patent grants. (The current version of the JSPA states that there is no obligation to grant essential patent rights to those who will not reciprocate. Similarly it states that essential patent grants are terminated if a licensee initiates litigation against the granter of such rights.)
- Should we use non-assertion language as an alternative to the specific granting of patent licenses? (Oracle Legal prefers this approach.)

Outbound IP flow

TBD, but much simpler than inbound since we only need to specify the requirements for the Spec License and the Commercial RI and TCK Licenses.

For reference (from IBM's original presentation)

Proposed "Flat" IP Grants
JSR XYZ approved through JCP Process

Entity	Flat Grants
Uninvolved JCP Member	RAND (or RF?) commitment to its patent claims necessary for the Spec., RI, and TCK direct to users and implementers, unless opted out prior to appropriate milestone.
EG Member	RF license to all IP in Contributions direct to users and implementers under standard terms. RF to patent claims necessary for the Spec., RI, and TCK direct to users and implementers, unless opted out prior to appropriate milestone. Includes special grant to Oracle to continue TLDA and similar agreements.
Spec Lead	Treated the same as any EG Member for IP flow purposes. However, Spec Lead would hold copyright in the whole of the Spec, RI, and TCK.
Oracle	Treated the same as any EG Member for IP flow purposes.
Java Users	Receives IP rights from all JCP members who did not opt out for necessary patent claims, direct from relevant IP owner under standard terms. Standard terms can include $ payments, reciprocity, etc..
Specification Implementer	Same as Java Users.