

# Inbound and outbound 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 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.
  - 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 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.

## Inbound IP flow

### 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.
- modified and incorporated into the Output and into future versions of the Output as these are evolved through the Process.
  - The Spec Lead has the right to create derivative works but other implementers do not. Can we word this in such a way that the Spec Lead is not called out as “special”? Do we need to use the term *derivative works* at all?
- incorporated into Compatible implementations of the current and any future revisions of the Spec.
  - We should remove the current distinction between implementations derived from the RI and Independent Implementations.

IP grants with respect to Contributions are absolute, and may not be withdrawn.

Should we replace explicit RF Essential Patent grants with a non-assert covenant?

### 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 they disclose the relevant patents and withdraw from the Expert Group prior to publication of the spec for a JCP milestone (eg, 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.

Should we replace explicit RF Essential Patent grants with a non-assert covenant?

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 EG or have made any Contributions – to license their Essential Patents on FRAND terms. We want to replace this language with a defensive patent license termination clause.

We want to insert this new 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 anyone who initiates legal action against a conforming implementation of a JSR on the grounds of infringement of Essential Patents will trigger a termination of all patent licenses granted 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 will have the option to disclose Essential Patents prior to Public Review as in the existing section 6(ee). For any patents so disclosed the member 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.

## *Outbound IP Flow*

Will be covered by the Spec License (which will grant all necessary IP rights to Compatible implementations of the spec) by the approved Open Source RI and TCK licenses, and the approved Commercial RI and TCK licenses.