JSR 358 IP-flow Document

Version 11 (March 19 2015)

CONTENTS

1. 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.)

2. RATIONALE AND USE-CASES

The current JSPA was developed in an environment very different from today's, before the widespread adoption of collaborative development models and open-source licensing. Our IPR policy is complex, and the *hub-and-spoke* IP-flow model is alien to recent generations of developers who have grown up in an *open-source world*. A simpler, flatter IP-flow is likely to be more appealing to younger developers and more compatible with modern collaborative development methods.

In addition, however, we expect a flat IP-flow model to bring some specific benefits. For example:

- It will greatly simplify the transfer of Spec Lead responsibilities from one organization to another while a JSR is in progress or after it has been completed. (Because IP flows directly from contributors to implementers there will be no need to negotiate the transfer of IP from the old to the new Spec Lead.)

- It will enable a JCP member who is not the Spec Lead to apply defensive termination against someone who initiates litigation alleging patent infringement. (There will be no need to involve the Spec Lead in this action.)

3. DEFINITIONS

Contribution: any comments, specifications, code, other materials, or ideas concerning the subject matter of the JSR that are made or disclosed by any means to an Expert Group or to those developing the Output of a JSR.

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, Reference Implementation, and Technology Compatibility Kit associated with a particular JSR.

Process: the version of the Process Document under which a particular JSR is being run.

4. IP-FLOW

4.1 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 during and after JSR development.

(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 it is 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.)

<mark>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?</mark>

IP grants with respect to Contributions are absolute, and may not be withdrawn.

4.2 Essential Patent grants from EG members with respect to material contributed by others

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.

4.3 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 on FRAND terms their Essential Patents that bear on that JSR.

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 (see section 6 below).

4.4 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 for that JSR granted to the initiator 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.)

5. OTHER CHANGES AND REQUIREMENTS

- Since Oracle is not the "You" specified in the JSPA we must include language stating that Oracle makes similar commitments.
- All references to *Confidential Information* will be removed.
- IP must vest immediately it is granted (subject to the specified patent disclosure procedures) rather than when the JSR is completed.
- Nothing in the new JSPA should inhibit or prohibit the development of RIs through open, collaborative processes.
- Nothing in the new JSPA should inhibit or prohibit the incorporation of externally-developed standards into the JCP.
- Copyright in the "collective work" of the Spec will vest in the Spec Lead.
- No member will be 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.

6. QUESTIONS

1. Should we replace explicit Royalty-Free patent grants (as described in sections 4.1 and 4.2 above) with a non-assert covenant?

2. Should we remove the obligation to license Essential Patents on FRAND terms for JSRs where the patent-holder does not serve on the EG (as described in section 4.3 above)?