

The draft Java Specification Participation Agreement (JSPA) dated July 9, 2002 and put forward for Public Review differs from the current JSPA (December 18, 2000) in many ways. The following comments are not meant to be comprehensive, but rather to summarize the most significant of these changes.

1. Consistent Treatment of a JSR.

The New JSPA, if approved, will apply to any JSR commenced after the New JSPA goes into effect, and it is expected that anyone participating on an Expert Group for a new JSR would commit to using the New JSPA for that JSR.

2 In-Bound Licenses.

These are the license grants made by Expert Group members, and during Community Review by other Members, concerning their contributions towards the development of a Specification, Reference Implementation (RI) or Technology Compatibility Kit (TCK) under a particular JSR.

- Grants are made to the Specification Lead, and not also to Sun, which will no longer receive a joint copyright interest in Specifications for which it is not the Specification Lead.
- The grants are broken out more clearly by the type of intellectual property involved, i.e. one section specific to copyright and trade secret grants (Section 4.A.I), and another section specific to patent grants (Section 4.A.II).
- Expert Group members for a particular JSR also make limited license grants to each other to facilitate the development work of the Expert Group (Section 4.B).
- For JSRs for which Sun is not the Specification Lead, that status of Sun's in-bound grants to the Specification Lead - just like any other contributor - is more clearly stated (Section 4.C).

3. Out-Bound Licenses.

These are the commitments made by the Specification Lead for how it will license the various forms of Output, i.e. Specification, RI and TCK, developed for a particular JSR.

- As noted above, under the New JSPA only the Specification Lead will own the copyright in the final Specification; Sun will no longer have a joint copyright interest in Specifications for which it is not the Specification Lead.
- The Specification Lead is obligated to publish (through the PMO, at the JCP Web Site) the Specification after Final Approval (Section 5.A), and to authorize the creation of Independent Implementations, i.e. compatible implementations of the Specification that do not include any of the Reference Implementation (Section 5.B). For the rare situations in which code from the RI must be used in the creation of a compatible implementation, this code ("Shared Code") must be licensed on a stand-alone basis at no cost to the licensee (Section 5.F).
- The compatibility requirements which condition the grants made by the Specification Lead authorizing the creation of Independent Implementations are stated more succinctly

than in the current JSPA (section 4.B.(a)-(c), and the requirement that an Independent Implementation be “designed to operate on a java platform which is certified to pass the complete TCK for such java platform” has been removed (former Section 3.B[v]).

- The status of licenses to be granted by the Specification Lead for Specifications that were once available on a “stand-alone” basis but have since been incorporated into an Umbrella or platform JSR, is now addressed separately (in Section 5.C and also by the JCP Process document [see JSR 99]) rather than as part of the Section 5.B provisions addressing compatibility requirements for Independent Implementations.
- A new provision has been added (Section 5.D) to clarify the obligations, and the limits of those obligations, of creators of compatible Independent Implementations with respect to the subsequent use of their implementations by downstream licensees.
- The JSPA’s provisions concerning the Specification Lead’s obligation to license the RI and the TCK are expanded considerably (Section 5.E), although the touchstone requirement that these licenses be non-discriminatory, fair and reasonable, and the discretion given to the Specification Lead to determine those terms and conditions, continue from the current JSPA. Perhaps the two most important new provisions in this area are the requirements for new JSRs that (i) the TCK be made available by the Specification Lead separately from the RI (although also making the TCK available with the RI is not precluded), and (ii) the TCK be made available by the Specification Lead at no charge for qualified not-for-profit entities and individuals.

4. Special Patent Licenses.

Under the current JSPA, except for the limited grants it makes with respect to its own contributions or the broader grants it is required to make if it is the Specification Lead, a JCP member has no obligation to license its patent claims that would necessarily be infringed by any compatible implementation of a JCP-approved Specification (so-called “Blocking Patents”). To increase the confidence of prospective implementers of JCP-approved Specifications, and thus to encourage the use of these specifications, provisions have been added in Section 6 that licenses to these Blocking Patents will be made available on fair, reasonable and non-discriminatory terms. The provisions are similar to ones used by other standard-setting organizations in several key ways:

- the patent owner is only required to grant a license to “necessary” or “essential” claims, i.e. there is no technically feasible alternative that would avoid the infringement;
- the patent owner is only required to offer its license on fair, reasonable and non-discriminatory terms, i.e. the patent owner is not required to grant a free license; and
- the patent owner may condition its license on obtaining a reciprocal license from its licensee.

Section 6(ee) does provide a review window in which a JCP member who is a patent owner can declare, with respect to specific patents it identifies, that it is unwilling to offer even the fair, reasonable and non-discriminatory license described above. This declaration must be accompanied by the disclosure of detailed information about the patent (or patent application) and how it maps to the Specification in question.

5. Government Employees. Provisions have been added (Sections 4.A.I and 14) to facilitate the participation in the JCP of employees of the United States Government.