

The Eclipse Foundation ("Eclipse") Patent Policy for the Development of Specifications

Introduction

This document sets forth the Eclipse policy with respect to the obligations of Participants (as defined below) in Eclipse's Specification Process with respect to their owned or controlled Patents (as defined below). Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in the Eclipse Specification Process [**note: to be developed as an addendum to the Eclipse Development Process.**]

It is in Eclipse's interest, and is therefore Eclipse's goal, to facilitate the development of Specifications which allow implementations to be built free from claims of Patent infringement. While there is no way to assure that an implementation of a Specification will not be subject to such claims, this policy is designed to advance that goal, while providing a framework whereby Participants in the Eclipse Specification Process have control over which rights under owned or controlled Patents they license in connection with their participation in the development of a particular Specification.

1. Key Definitions:
 - a. **"Affiliate"** means any entity that directly or indirectly controls, is controlled by, or is under common control with, another entity, so long as such control exists. In the event that such control ceases to exist, such entity will be deemed to have withdrawn from Project as of the time such control ceased to exist. For purposes of this definition, with respect to a business entity, control means direct or indirect beneficial ownership of or the right to exercise (i) greater than fifty percent (50%) of the voting stock or equity in an entity; or (ii) greater than fifty percent (50%) of the ownership interest representing the right to make the decisions for the subject entity in the event that there is no voting stock or equity.
 - b. **"Committed Essential Claims"** shall have the meaning set forth in Section 2(d) herein.
 - c. **"Essential Claims"** with respect to a particular Specification are those claims from Patents owned or controlled by a Participant (excluding design patents and design registrations), that would necessarily be infringed by implementation of a particular Specification created within the scope of a Project. A claim would necessarily be infringed only when it is not possible to avoid infringing the claim because there is no non-infringing alternative for implementing the Normative Portions (as defined below) of the Specification. Existence of a non-infringing alternative shall be judged based on the state of the art at the time the relevant Final Specification was approved. For purposes of clarity, it is understood Essential Claims shall not include: (i) technology developed elsewhere and merely incorporated by reference in a Specification; or (ii) enabling technologies that may be necessary to make or use any product or portion thereof that complies with the Specification, but that are not themselves expressly set

forth in the Specification (e.g., compiler technology, object-oriented technology, basic operating system technology, and the like).

- d. **"Normative Portions"** of a Specification are those portions that describe what must be implemented in order to comply with the Specification, as contrasted with portions that are merely informative, such as background material, use cases, and examples. If a specification includes components that are optional, to the extent an implementation incorporates such optional components, those portions of the Specification that must be implemented in order to comply with the Specification for such optional components shall be included as Normative Portions of the Specification.
- e. **"Participant"** means a Member (as defined in the By-Laws of Eclipse) who also is party to an applicable committer agreement with Eclipse.
- f. **"Patent"** means all patent rights, including, but not limited to, all provisional and nonprovisional applications for patents, and any patents that are or may be granted therefrom or based thereon, whether in the United States or any other country or jurisdiction, including, without limitation, any continuations, continuations-in-part, divisions, reissues, reexaminations, renewals, provisionals, nonprovisionals, revisions, substitutes and extensions thereof.
- g. **"Patent License"** with respect to a Final Specification means an irrevocable (subject to the defensive actions specified in the next sentence) grant of a non-exclusive, worldwide, royalty-free, transferable patent license under all Committed Essential Claims with respect to that Final Specification to everyone to make, have made, use, sell, offer to sell, and import implementations of the Final Specification, provided however, that this license may be terminated with respect to any entity that institutes patent litigation against any other entity (including a cross-claim or counterclaim in a lawsuit) alleging that an implementation of the Final Specification infringes an Essential Claim with respect to such Final Specification.

2. The Process

- a. **Project Scope.** Pursuant to the Eclipse Specification Process, at the commencement of each Specification Development Project, the Project will have a specified and documented Scope. The Scope may only be changed according to Eclipse Specification Process.
- b. **Termination of Participation.** A Participant may terminate participation in a specific Specification Development Project at any time during the course of such Project. Termination of participation shall be pursuant to the process set forth in the Eclipse Specification Process. A Participant that terminates its involvement in a Project shall have no obligation to disclose any knowledge of any Essential Claims.
- c. **Interim Reviews.** Pursuant to the Eclipse Specification Process, each Specification Development Project will have a series of Interim Reviews prior to the publication of a Final Specification. As

part of each Interim Review, an Interim Review Draft of the Specification shall be published.

- d. **Grant of Committed Essential Claims.** A Participant that terminates participation in a Specification Development Project prior to the release of a Final Specification from that Project shall be deemed to have granted the Patent License for implementations of the Final Specification, but only to the extent of those Essential Claims in the Final Specification that would also have been Essential Claims in the last Interim Review Draft of the Specification that was Published prior to the Participant's termination of participation in the Project, such Essential Claims referred to herein as "**Committed Essential Claims.**" For example, by participating in the full and complete Specification Development Project for a particular Specification, a Participant grants the Patent License with respect to all Essential Claims in the Final Specification from that Project, and all such Essential Claims will be Committed Essential Claims.