

June 22, 2007

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Jonathan,

We write to ask for your direct involvement to resolve an outstanding concern of the Java community, namely the compatibility testing of the Apache Software Foundation's (ASF) open source version of Java SE. As you are aware, since August, 2006 the ASF has been requesting from Sun an acceptable license for a Java Compatibility Kit (JCK) for use by the Apache Harmony project. The current license offered by Sun has restrictions that effectively prevent Apache from using the JCK, and that do not reflect the principles on which the Java Community Process (JCP) was formed and on which all of this technology is being shared in the JCP. In short, we seek the release of a JCK license to ASF and any other implementer of the Java SE spec that is unencumbered by any field-of-use constraints and which is consistent with use by an open-source project.

Offering an unencumbered license is simply the right thing to do, and is consistent with your belief that by embracing openness (open standards and open source), businesses can create "opportunity wherever the network can reach". Critically, we also believe that by precluding ASF from compatibility testing its Java SE implementation, Sun will drive the open-source community away from the Java community. Direct inclusion of the widest possible open-source community in a non-discriminatory way is required so that developers embrace, and not reject, compatible Java technologies. Such inclusion is essential to the future of Java compatibility, and all of our investments.

An unencumbered license is required by Sun's obligations under the Java Specification Participation Agreement (JSPA). Under that agreement, all of the JCP participants contribute IP for the benefit of the community under certain conditions. One such condition is that the Spec Lead must not impose any contractual conditions (other than compatibility and patent reciprocity) on the creation and distribution of independent implementations. No Spec Lead, Sun included, can impose field-of-use restrictions and thereby reserve to itself the exclusive right to produce compatible implementations of a specification.

Imposing field-of-use restrictions on ASF's output or on any implementation of the Java SE specification is contrary to the interests of the Java community at large, and such restrictions appear to benefit only one party. The Apache open letter and FAQ assert that as a condition of gaining access to the JCP required test suite they would be forced to

HIGHLY CONFIDENTIAL – ATTORNEY'S EYES ONLY

Oracle America v. Google, 3:10-cv-03561-WHA

GOOGLE-14-00042922

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**TRIAL EXHIBIT 2347**

CASE NO. 10-03561 WHA  
DATE ENTERED \_\_\_\_\_

BY \_\_\_\_\_  
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limit how their implementation could be used. The JCP compatibility requirements are intended to ensure compatibility; they must not be used instead to prevent competing, compatible implementations of a JCP specification. By trying to impose restrictions Sun makes it clear that the JCP is not the collegial community that to date has accepted Sun's stewardship.

By contradicting the notion that the JCP is an open process, Sun has placed the JCP in a precarious position. Sun, like all JCP participants, must allow implementations of JCP specifications without commercially-based restrictions on how competing implementations can be used. By imposing such restrictions, Sun is dividing the Java community – an end result contrary to the interests of all JCP members.

In the interest of a timely resolution we look forward to your response within 30 days.

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