

~~DRAFT~~
AMENDMENTS TO
CA/BROWSER FORUM
Intellectual Property Rights Policy
V.1.01.03

DEFINITIONS

1. Overview

This Intellectual Property Rights Policy describes:

- a. licensing goals for CA/Browser Forum (“CAB Forum”);
- b. the patent licensing obligations that CAB Forum Members will undertake as a condition of ~~CAB Forum~~ participation (as defined below) in a CAB Forum technical work group, along with means of excluding specific patents from those obligations;
- c. the definitions of a “CAB Forum Royalty-Free License”;
- d. an exception handling process for situations in which the Royalty-Free status of a Guideline comes under question;
- e. the copyright licensing obligations that CAB Forum Members will undertake as a condition of ~~CAB Forum~~ participation (as defined below) in a CAB Forum technical work group; and
- f. the definitions of “Essential ~~Claim~~Claims” and other key terms

2. Licensing and Disclosure Goals for CAB Forum Guidelines

In order to promote the widest adoption of CAB Forum Guidelines, CAB Forum seeks to issue Guidelines that can be implemented on a Royalty-Free (RF) basis. Subject to the conditions of this policy, CAB Forum will ordinarily not approve a Guideline if it is aware that Essential Claims exist which are not available on RF terms. CAB Forum Members are encouraged to bring to the attention of the CAB Forum any known patent or pending patent application of other organizations that might contain Essential Claims.

3. Patent Licensing Obligations of CAB Forum Participants

As a condition of participation in a technical work group of CAB Forum (which participation includes the right to vote for or against the adoption of the Draft Guideline being developed by the technical work group), each CAB Forum Member that participates in a technical work group

("Participant"), as described below, shall agree, subject to the provisions of Section 4 hereof, to make available under a CAB Forum Royalty-Free ("RF") License, any Essential Claims to Final Guidelines produced by a technical work group in which the Member participates. Subject to section 4 below, a CAB Forum RF License obligation made concerning the work of the particular technical working group and described in this policy are binding on participants for the life of the patents in question and encumber the patents containing Essential Claims, regardless of changes in participation status with respect to the technical work group or membership in CAB Forum. This requirement includes Essential Claims that the CAB Forum Participant or its Affiliates owns and any that the Participant or its Affiliates has the right to license without obligation of payment or other consideration to an unrelated third party. Notwithstanding any other provision of this Intellectual Property Rights Policy, only the affirmative act of joining a technical working group pursuant to processes to be adopted by the CAB Forum, or otherwise agreeing to the licensing terms described here, will obligate a CAB Forum Member to the CAB Forum RF License. Mere Membership in CAB Forum alone, without other factors, does not give rise to the CAB Forum RF License obligation under this policy.

4. Review of Draft Guidelines and Licensing Exclusions

4.1 Review of Draft Specifications.

Prior to the approval of a CAB Forum Draft Guideline as a CAB Forum Final Guideline there shall be a review period during which Participants may exclude certain Essential Claims from CAB Forum RF Licenses. The CAB Forum Chair shall initiate the Review Period by distributing to each CAB Forum Participant a notice of review period and a complete draft of the Draft Guideline that is the subject of such notice ("Review Notice"). Each Participant on behalf of itself and its Affiliates shall have sixty (60) days following the date of the receipt of such Review Notice ("Review Period") to review such Draft Guideline and consider any licensing obligations with respect to any Essential Claims that may be encompassed by such Draft Guideline ~~or~~.

4.2 Excluding Patents and/or Patent Applications From Royalty Free Licensing Obligations During Review Period.

Except for Essential Claims infringed by a Participant's Contributions that are actually incorporated into a Final Guideline approved in accordance with the CAB Forum Guideline approval process, Participants may within the Review Period exclude Essential Claims from the CAB Forum RF License. In such case, Participant shall be permitted to either make an election, (i) not to grant a license or (ii) to provide a license with all of the requirements of Section 5.1 with the exception of subsection 5.1 f.

4.3 Conditions and Procedure for Excluding Patents and/or Patent Applications From CAB Forum RF License.

A Participant seeking to exclude Essential Claims from the CAB Forum RF License in accordance with Section 4.2 must provide written notice of such intent to the CAB Forum Chair ("Exclusion Notice") within the Review Period and the Exclusion Notice shall be effective upon its receipt by the CAB Forum Chair. The Exclusion Notice for issued patents and published

applications shall include the patent number(s) or title and application number(s), as the case may be, for each of the issued patent(s) or pending patent application(s) that a Participant reasonably believes at the time may contain Essential Claims the Participant wishes to exclude from the CAB Forum RF License. If an issued patent or pending patent application that may contain Essential Claims is not set forth in the Exclusion Notice, such Essential Claims shall continue to be subject to the CAB Forum RF License. The Exclusion Notice for unpublished patent applications must provide either: (i) the text of the filed application; or (ii) identification of the specific part(s) of the Guideline whose implementation makes the excluded claim an Essential Claim. If (ii) is chosen, the effect of the exclusion will be limited to the identified part(s) of the Guideline. Exclusion Notices shall be published at ~~{URL}~~www.cabforum.org.

4.4 Effect of Exclusion Notice.

The timing of the Exclusion Notice will determine the effect on the Participant's CAB Forum RF License obligation as specified in Sections 4.4(a) and 4.4(b). If a Participant provides the CAB Forum Chair with an Exclusion Notice in accordance with Section 4.3, then:

~~(a) Such~~ such Participant's CAB Forum RF License obligation shall remain in full force and effect for any Essential Claims in a Final Guideline that has been finally adopted ("Previously Adopted Final Guideline") by the CAB Forum prior to the date ("Date of Receipt") that the CAB Forum Chair receives such Participant's Exclusion Notice; and

~~(b) Such~~ such Participant's CAB Forum RF License obligation shall remain in full force and effect for any Essential Claims in any Draft Guideline for which a Review Period has been completed unless and to the extent that an Exclusion Notice has been given within such Review Period.

5. CAB Forum Royalty-Free (RF) Licensing Requirements

5.1 License Requirements

With respect to Final Guidelines developed under this policy, a CAB Forum ~~Royalty-Free~~RF License shall mean a non-assignable, non-sublicensable license to make, have made, use, sell, have sold, offer to sell, import, and distribute and dispose of Compliant Portions (provided that such license need not extend to any part or function of a product ~~other than the Compliant Portion therein in which a Compliant Portion is incorporated but that is not itself part of the Compliant Portion~~) of the Final Guideline that:

- a. shall be available to all, worldwide, whether or not they are CAB Forum Members;
- b. shall extend to all Essential Claims owned or controlled by the Participant and/or its Affiliates;
- ~~c. may be conditioned on licensee providing notice to a buyer of its products or services that they implement an Essential Patent of a particular entity relating to a particular CAB Forum Final Guideline and that licensee's right to sell the products or services to buyer,~~

~~and buyer's use of the products or services, are conditioned on the buyer's acceptance of the same terms of the RF or RAND License granted to licensee under the CAB Forum IPR Policy~~

- ~~c.~~ d. may be limited to implementations of the Final Guideline, and to what is required by the Final Guideline;
- ~~d.~~ e. may be conditioned on a grant of a reciprocal RF license (as defined in this policy) to all Essential Claims owned or controlled by the licensee or its Affiliates. ~~A (a) reciprocal license may be required to be available to all, and a reciprocal license may itself be conditioned on a further reciprocal license from all.~~ ;
- ~~e.~~ f. may not be conditioned on payment of royalties, fees or other consideration;
- ~~f.~~ g. may be suspended with respect to any licensee when licensor is sued by licensee for infringement of claims essential to implement any CAB Forum Final Guideline;
- ~~g.~~ h. may not impose any further conditions or restrictions on the use of any technology, intellectual property rights, or other restrictions on behavior of the licensee, but may include reasonable, customary terms relating to operation or maintenance of the license relationship such as the following: choice of law and dispute resolution; and
- ~~h.~~ i. shall not be considered accepted by an implementer who manifests an intent **not** to accept the terms of the CAB Forum Royalty-Free License as offered by the licensor.

5.2 License Term

- ~~a.~~ The CAB Forum RF license conforming to the requirements in this policy shall be made available by the licensor and/or its Affiliates as long as the Final Guideline is in effect. The term of such license shall be for the life of the patents in question, subject to the limitations of 5.2(b).
- ~~b.~~ If the Final Guideline is rescinded by the CAB Forum, then no new licenses need be granted but any licenses granted before the Final Guideline was rescinded shall remain in effect.

5.3 Survival of CAB Forum RF License Obligation After Member Termination

[A Member whose participation in the CAB Forum has terminated shall continue to be obligated to grant CAB Forum RF Licenses for](#)

- ~~a. A Member whose participation in the CAB Forum has terminated shall continue to be obligated to grant CAB Forum RF Licenses for (i) any Essential Claims in a Final Guideline created by a technical work group in which the Member Participated that has been adopted by the CAB Forum prior to the effective date of such Member's termination; (ii) any Essential Claims in such terminating Member's Contributions incorporated into any Final Guideline adopted by the CAB Forum after the effective date of such Member's withdrawal, and (iii) any Essential Claims in any Draft Guideline~~

~~created by a technical work group in which the Member Participated in which a Review Period has been completed.~~

- b. any Essential Claims in such terminating Member's Contributions incorporated into any Final Guideline adopted by the CAB Forum after the effective date of such Member's withdrawal; and
- c. any Essential Claims in any Draft Guideline created by a technical work group in which the Member Participated in which a Review Period has been completed.

6. Copyrights

6.1 Coverage

All Contributions to CA/Browser Forum are accepted on the basis of this Section 6.

6.2 Copyright License Grant

Each CAB Forum Participant, on behalf of itself and its Affiliates, grants to the other CAB Forum Participants and their Affiliates an irrevocable, worldwide, perpetual, royalty-free, nontransferable, nonexclusive copyright license to (1) reproduce, modify and distribute (in any and all print, electronic or other means of reproduction, storage or transmission) its Contributions for the purpose of developing and publishing Draft Guidelines and Final Guidelines, and (2) upon release of the Final Guideline a license to all, worldwide, whether or not they are CAB Forum Participants to reproduce, distribute, make derivative works and display such Final Guidelines.

6.3 Enforcement of Copyrights

Each CAB Forum Participant (the "Enforcing Participant") shall have the right, but not the obligation, to enforce the copyright interest in the Final Guidelines against an infringer. The other Participants shall take such actions as they deem appropriate consistent with the terms of this Agreement, to reasonably cooperate with the Enforcing Participant in its efforts to enforce such copyright interest. For the avoidance of doubt, no Participant shall be required to participate as a plaintiff in an action to enforce the copyright in a Final Guideline.

6.4 Representations and Warranties

CAB Forum Participants that submit Contributions, by making a Contribution, represent and warrant that, to the extent personally known to the individual Contributors under their control:

- a. ~~There~~there are no limits to the CAB Forum Participant's ability to make the grants, acknowledgments and agreements herein; and
- b. ~~The~~the Contribution does not contain source code that is intended to be incorporated as technical components of a Guideline, and
- c. ~~The~~the Contribution, if incorporated into a Final Guideline will not subject the Final Guideline or implementations of the Final Guideline, in whole or in part, to licensing obligations, restrictions or requirements which are inconsistent with those set forth in this Intellectual Property Rights Policy .

7. Exception Handling

7.1. PAG Formation

In the event a patent has been disclosed that may contain an Essential Claim, but such Essential Claim is not available under CAB Forum RF Licensing, a Patent Advisory Group (PAG) will be launched to resolve the conflict. The PAG is an ad-hoc group constituted specifically in relation to the Final Guideline containing the conflict. A PAG may also be formed without such a disclosure if a PAG could help avoid anticipated patent problems.

7.2. PAG Formation After a Guideline Is Adopted

A PAG may also be convened in the event Essential Claims are discovered after a Guideline is issued. In this case the PAG will be open to any interested Member, though the PAG may choose to meet without the holder of the Essential Claims in question.

7.3. PAG Procedures

~~7.4.1. a.~~ PAG Formation Timing

The PAG will be convened by a Chair who shall be elected by the PAG and who must not be affiliated with the company owning the Essential Claim that is the subject of the PAG, The timing for convening the PAG is at the discretion of the Chair. In some cases, convening a PAG before a specific patent disclosure is made may be useful. In other cases, it may be that the PAG can better resolve the licensing problems when the specification is at the Review Period level.

~~7.5.1. b.~~ Possible PAG Conclusions. After appropriate consultation, the PAG may conclude that:

- i. ~~a.~~Thethe initial concern has been resolved, enabling the work on the Guideline to continue; ;
- ii. ~~b.~~Thethe CAB Forum should be instructed to consider designing around the identified claims; ;

- iii. ~~e. The~~the PAG should seek further information and evaluation, including and not limited to evaluation of the patents in question or the terms under which ~~the~~ CAB Forum RF ~~licensing requirements~~Licensing Obligation may be met.;
- iv. ~~d. The~~the project relating to the Draft Guideline in question should be terminated.;
- v. ~~e. The~~the Final Guideline should be rescinded. or
- vi. ~~f. Alternative~~alternative licensing terms should be considered.

8. Definition of Essential Claims and Other Key Terms

8.1. Essential Claims

"Essential Claims" shall mean all claims in any patent or patent application in any jurisdiction in the world that would necessarily be infringed by implementation of the Final Guideline. A claim is necessarily infringed hereunder only when it is not possible to avoid infringing it because there is no non-infringing alternative for implementing the Normative Requirements of the Final Guideline. Existence of a non-infringing alternative shall be judged based on the state of the art at the time the Draft Guideline is adopted as a Final Guideline. For avoidance of doubt, if all the alternatives for performing a particular function or action would infringe claims of a patent or patent application, then all claims which cover such alternatives would be Essential Claims.

8.2. Limitations on the Scope of Definition of Essential Claims

The following are expressly excluded from and shall not be deemed to constitute Essential Claims:

- a. any claims other than as set forth above even if contained in the same patent as Essential Claims; and
- b. claims which would be infringed only by: portions of an implementation that are not specified in the Normative Requirements of the Final Guideline, or enabling technologies that may be necessary to make or use any product or portion thereof that complies with the Final Guideline and are not themselves expressly set forth in the Final Guideline (e.g., semiconductor manufacturing technology, compiler technology, object-oriented technology, basic operating system technology, and the like); or
- c. the implementation of technology developed elsewhere and merely incorporated by reference in the body of the Final Guideline.
- d. design patents and design registrations.

8.3. Other Key Definitions

- a. **“Affiliate”** means an entity that directly or indirectly controls, is controlled by or is under common control with, a Participant. Control for the purposes of this Agreement shall mean direct or indirect beneficial ownership of more than fifty percent of the voting stock, or decision-making authority in the event that there is no voting stock, in an entity.. A CAB Forum Participant may, in instances in which the CAB Forum receives assurances that the CAB Forum Participant is not attempting to avoid its licensing obligations under Section 3, exclude related parties as Affiliates that would otherwise fall under the Affiliate definition set forth in this Section 8.3a.(such excluded related party is hereinafter referred to as an “Excluded Affiliate”). If an Excluded Affiliate files, maintains, or voluntarily participates in a lawsuit asserting that an implementation of a Final Guideline or Final Maintenance Guideline infringes its Essential Claims, then the CAB Forum Participant whose Excluded Affiliate took such action relinquishes any rights, grants, commitments, and promises it has received for the Final Guidelines or Final Maintenance Guidelines it would have otherwise received under this Intellectual Property Policy from other CAB Forum Participants unless that lawsuit was in response to a corresponding suit first brought against the Excluded Affiliate.
- b. **“Compliant Portion”** means only those specific portions of a product (hardware, software or combinations thereof) that implement and are compliant with all Normative Requirements of the Final Specification (as applicable to such portions that are adopted) and that are within the bounds of the Scope.
- c. **“Contribution”** means material, including Draft Guidelines, Draft Guideline text, and modifications to other Contributions, made verbally or in a tangible form of expression (including in electronic media)which is provided by a Participant in the process of developing a Draft Guideline for the purpose of incorporating such material into a Draft Guideline or a Final Guideline. For a verbal contribution to be deemed a Contribution hereunder it must be memorialized within approved meeting minutes of the CAB Forum.
- d. **“Draft Guideline”** means a version of a CAB Forum guideline that has not been approved as a Final Guideline, regardless of whether or not the Draft Guideline has been published.
- e. **“Final Guideline”** is any version of a Draft Guideline that the Participants have agreed is a final version of such Draft Guideline pursuant to the CAB Forum process for approving Final Guidelines. A Final Guideline shall include a Final Maintenance Guideline. A Final Maintenance Guideline is an errata to or amendment of an existing CAB Forum Final Guideline.
- f. **“Members”** means all entities and their Affiliates that are members of the CAB Forum.
- g. **“Normative Requirements”** means those portions of the Final Specification that are expressly identified as required for compliance with the Final Specification including

those portions of an optional or alternative portion of the Final Specification that are identified as required for compliance with such optional or alternative portion. For clarity, those portions of the Final Specification, including any portions of an optional or alternative portion thereof, which are designated by the terms “must”, “shall”, “mandatory”, “normative” or “required” are expressly identified as being required for compliance under this Section 1.12.

- h. ~~g.~~ **“Scope”** means those protocols, communication and network interface protocols, application program interfaces, service provider interfaces, physical dimensions and characteristics, data structures and any other hardware and/or software interface technologies solely to the extent disclosed in and required by a Final Guideline for the implementation of systems and methods for managing public/private keys and their associated certificates for securing or managing public/private keys and the implementation of systems and methods for obtaining and validating the accuracy and currency of data in support of certificate issuance, renewal and revocation. The Scope shall include only architectural and interconnection requirements of the Final Guideline and shall not include any implementation examples contained in the Final Guideline unless the Final Guideline expressly states that such implementation examples are to be included within the Scope of the license set forth in Section 5.1.

8.4 Transfer of Essential Claims

Any transfer by Participant or its Affiliates to an unaffiliated third party of a patent having Essential Claims shall be subject to the terms and conditions of this IPR Policy. A Participant may choose the manner in which it complies with this Section, provided that any agreement for transferring or assigning Essential Claims includes a provision that such transfer or assignment is subject to existing licenses and obligations to license imposed on the Participant by standards bodies, specification development organizations, or similar organizations (or language of similar import).

Document comparison by Workshare Compare on Monday, October 22, 2012
4:58:18 PM

Input:	
Document 1 ID	file://C:\Users\jespinoza\Documents\c drive 22nov2011\CAB Forum\APPLE IPR revisions 11 Oct 2012\CABForumIPR_101012.docx
Description	CABForumIPR_101012
Document 2 ID	file://C:\Users\jespinoza\Documents\c drive 22nov2011\CAB Forum\APPLE IPR circulation 22 Oct 2012\CABForumIPR_101912.docx
Description	CABForumIPR_101912
Rendering set	Standard no moves

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	42
Deletions	58
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	100