

IDEAlliance Policies & Practices 2011-13 INTELLECTUAL PROPERTY POLICY

Summary

In all matters of intellectual property (IP) rights and procedures, the IDEAlliance intention is to benefit the public at large, while respecting the legitimate rights of IP owners. To promote the widest adoption of Work Product (as defined in the Program Operating Procedures Policy) IDEAlliance seeks to create Work Product from IDEAlliance Programs (as defined in the Program Operating Procedures Policy) that may be implemented on a Royalty-Free (RF) or reasonable and non-discriminatory (RAND) basis. Members that participate in IDEAlliance Programs and make contributions to which they or their member organization have essential intellectual property claims in any patent or patent application in any jurisdiction in the world that would necessarily be infringed by implementation of the Work Product, it is the Members responsibility to make that known so that the contribution can be set aside and IP rights can be respected.

1.0 Overview

In all matters of intellectual property rights, the intention of IDEAlliance is to benefit the public at large while respecting the legitimate rights of intellectual property owners. To promote the widest adoption of standards, IDEAlliance seeks to create Work Product that may be implemented on either a RF or RAND basis.

1.0 Application of Intellectual Property Policy

Only the affirmative act of joining a Program or otherwise agreeing to the terms of this Policy will obligate a Member to be bound by the terms and conditions of this Policy. The terms and conditions of this Policy shall apply to all Work Product including the Draft or Final Specifications. Within this Policy, the term Member shall include the individual as well as the organization the individual represents.

3.0 Received Member Contributions

In the course of its work, IDEAlliance receives Contributions (defined as ideas, inventions, intellectual property and/or documentation) submitted by Members which are reasonably understood by the Members at the time of submission to have been submitted for purposes of incorporation into Work Product.

3.1 Ownership

Members retain ownership of the intellectual property rights in their Contributions.

3.2 Copyright

To the extent that a Contribution is subject to a copyright, the Member grants a perpetual, non-exclusive, royalty-free, world-wide right and license to IDEAlliance under the Member's copyright rights in the Contribution to reproduce, publish, distribute, display, perform, distribute, sublicense and create derivative works of the Contribution.

3.3 Acknowledgement

Members acknowledge that IDEAlliance has no duty to publish or otherwise use or disseminate any Contribution.

3.4 Confidentiality

Members agree that no information in the Contribution is confidential and that IDEAlliance and its other Members may freely disclose any information in the Contribution.

3.5 Disclosure

Member must make a disclosure of the existence of any intellectual property rights in the Contribution at the time the Contribution is made or, if the intellectual property rights are not known to the Member at the time of the Contribution is made, as soon as practicable after such rights are known to the Member.

3.6 Additional Disclosure

When making a Contribution, Member must also make a disclosure if the Contribution (1) is likely to violate the intellectual property rights of any IDEAlliance Member or third party, or (2) is likely to subject the Work Product including Final Specification to licensing obligations that are not consistent with the licensing obligations set forth in Section 4.0 as applicable to the Program to which the Contribution is made.

3.7 IDEAlliance Knowledge

If IDEAlliance has knowledge from a Member or from of third party of any intellectual property rights in a Contribution affecting Work Product, IDEAlliance shall make note of the existence of such rights in the public disclosure area of the Work Product.

3.8 Disclaimer

IDEAlliance disclaims any duty to identify the existence or to evaluate the applicability of any claimed intellectual property rights in a Contribution, and takes no position on the validity or scope of any such rights. IDEAlliance will not make any claims or determinations as to whether any intellectual property in the Contribution is essential to the implementation of any IDEAlliance Work Product.

4.0 Licensing Requirements

4.1 *Licensing Goals*

IDEAlliance seeks to issue Work Product including Final Specifications that can be implemented on a RF or RAND basis. To this end, each Program Charter will include a reference to which basis, RF or RAND, the Work Product shall be subject to.

4.2 *Licensing Obligations*

As a condition of participating in a Program, each Member shall agree to make available under RF or RAND licensing terms, depending upon the Program Charter, any Essential Claims as defined in Section 7.0. This requirement includes Essential Claims that the Member owns and any that the Member has the right to license without obligation of payment or other consideration to an unrelated third party. The applicable RF or RAND licensing obligations are binding on Member for the life of the patent or other property containing the Essential Claims, regardless of changes in Program participation status or IDEAlliance Membership.

4.3 *Exclusion from Licensing Requirements*

A Member may request exclusion of specifically identified and disclosed Essential Claims from the applicable RF or RAND licensing requirements as set forth in the Program Charter.

4.3.1 Exclusion with Continued Participation

Exclusion of Essential Claims from the applicable RF or RAND licensing requirements may be sought by a Member who seeks to remain in the Program only if that Member indicates its refusal to appropriately license specific Essential Claims before the first publication of Work Product, including Draft Specifications, by specifically requesting such exclusion from the Chair of the Program. A Member who requests exclusion of Essential Claims may continue to participate in the Program. If any claims are made essential in Work Product such as a Draft Specification as a result of subject matter not present or apparent in the first published Work Product, a Member may request exclusion of these New Essential Claims, and only these claims, by using this exclusion procedure above before any subsequent publication of the Work Product.

4.3.2 Exclusion and Resignation from Program

A Member may resign from a Program after the first publication of Work Product such as a Draft Specification and be excused from all licensing commitments arising out of Program participation which may arise after the date of resignation.

4.3.3 Joining an Already Established Working Group

A Member who joins a Program after the first publication of Work Product must request exclusion of any Essential Claims no later than 45 days after the first publication.

4.3.4 Exclusion Procedures for Pending, Unpublished Patent Applications

Exclusion of Essential Claims in pending, unpublished patent applications or other such property follows the procedures for exclusion of issued claims and claims in published applications. Any exclusion of an Essential Claim in an unpublished patent application or property must provide either: (1) the text of the application or property; or (2) identification of the specific parts of the Work Product whose implementation makes the excluded claim essential.

4.4 RF Licensing Terms

A RF license to the Essential Claims:

- A. shall be available to all, worldwide, whether or not they are IDEAlliance Members;
- B. shall extend to all Essential Claims;
- C. may not be conditioned on payment of royalties, fees or other consideration;
- D. shall be made available as long as the Work Product such as Final Specification is in effect; and
- E. shall have a term for the life of the property in question.

5.0 Disclosure Requirements

5.1 Requirement

Disclosure is required of a Member when either of the following are true: (1) a Member receives a Separate Disclosure Request from IDEAlliance or the Chair of a Program which is related to Work Product being developed by that particular Program; or (2) a Member has actual knowledge of an issued patent, published patent application or other property application which the Member believes contains Essential Claims.

5.2 Disclosure Requests

Separate Disclosure Requests will be automatically included in each Draft Specification as it reaches each new maturity level. Separate Disclosure Requests may be issued by IDEAlliance or the Program Chair to any Member suspected of having knowledge of Essential Claims.

5.3 Disclosure Statements

Where disclosure is required per Section 5.1, a Member will do so in a Disclosure Statement. Disclosure Statements must include: (1) patent number or property identification, but need not mention specific claims, (2) Program, and (3) the Work Product to which it applies. Disclosure Statements should be sent to the Chair of the Program.

5.4 Patent Claims

In the case of published patent applications, a Member's disclosure obligation in a Disclosure Statement extends to amended and/or added claims that have been allowed by the relevant legal authorities and that the Member believes to be Essential Claims. To satisfy the disclosure obligation for such claims, the Member shall either (1) disclose such claims in the Disclosure Statement or (2) identify in the Disclosure Statement those portions of the Work Product likely to be covered by such claims.

5.5 Disclosure of Pending, Unpublished Applications

If a Member includes claims in a patent application and such claims were developed based on information from a Program or IDEAlliance document, the Member must disclose the existence of such pending unpublished applications as the Member believes may have Essential Claims.

5.6 Good Faith Disclosure Standards

All Disclosures required by this Policy are limited to the personal knowledge of the individual Member who submits a Contribution or who submits a Disclosure Statement.

5.7 Timing of Disclosure Obligations

The disclosure obligation of this Policy is an ongoing obligation. Full satisfaction of the disclosure obligation may not be possible until later in the Work Product.

5.8 Termination of Disclosure Obligations

The disclosure obligations herein terminate when the final Work Product is published or when the Program terminates.

5.9 Disclosure Obligations of Third Parties

Invited experts or members of the public participating in a Program must agree to comply with the terms and conditions of this Policy including complying with the same disclosure obligations of Members and to the extent of their own personal knowledge.

6.0 Exclusion Handling

6.1 Procedure

If a request for exclusion has been made or if a patent, patent application or other property containing Essential Claims has been disclosed in a Disclosure Statement, but is not available on the applicable RF or RAND licensing terms per the Program Charter, this matter shall be brought to the attention of the President. The President will advise the Program whether to: (a) disband the Program; (b) direct the Program to exclude this area from the standardization effort so that the Work Product remains implementable; (c) make the implementation of the relevant portion of the Work Product optional so that the non-optional part remains implementable; or (d) suggest alternate licensing terms as proposed below in Section 6.2.

6.2 Alternate Licensing Terms

The President may make a Proposal that specifically disclosed technology be included in the Work Product even though such claims are not available according to the applicable RF or RAND licensing requirements of this Policy. The Proposal must explain: (1) why the chartered goals of the Program cannot be met without inclusion of the disclosed technology; (2) how the proposed licensing terms will be consistent with widespread adoption. The Proposal must include: (1) a complete list of claims and licensing terms of the proposed alternative arrangements; and, (2) a proposed new Charter for the Program. If the President determines that the Proposal is the best alternative consistent with the IDEAlliance mission then the Proposal shall be circulated for public comment and Program review. The Program will then need to recharter under the new terms. Members of the Program who are bound to RF or RAND terms are not released from their obligations by virtue of the Proposal alone. As with any newly chartered Program, new disclosures must be made along with possible exclusions. In order to expedite the process, the Proposal should consider whether additional claims would be excluded under the new charter and include such information in the Proposal.

7.0 Essential Claims

7.1 Definition

Essential Claims shall mean all claims in any patent, patent application or property in any jurisdiction in the world that would be infringed by implementation of the Work Product. A claim is infringed hereunder only when it is not possible to avoid infringing it because there is no non-infringing alternative for implementation. Existence of a non-infringing alternative shall be judged based on the state of the art at any time, for example when a Draft Specification becomes a Final Specification.

7.2 Exclusions to Essential Claims

7.2.1 Other claims in the same patent, patent application or property as containing the Essential Claims shall not be defined as Essential Claims solely due to the fact they are included in the same patent, patent application or property.

7.2.2 Essential Claims shall not include claims which would be infringed only by:

- A. portions of an implementation that are not fully set forth in detail in the Work Product
- B. enabling technologies that may be necessary to make or use any product or portion thereof that complies with the Work Product and are not themselves expressly set forth in the Work Product, or
- C. the implementation of technology developed elsewhere and merely incorporated by reference in the body of the Work Product.

7.2.3 Essential Claims shall not include claims of design patents or design applications.