

# DMTF Patent and Technology Policy

*Adopted by the DMTF October 17, 2001*

1. Distributed Management Task Force, Inc. (DMTF) is a non-profit corporation that supports, encourages and works to further the creation, broad publication, dissemination and availability of technical standards for inter-operability of distributed management technology.
2. An individual (herein the "Proponent") submitting a new contribution to the DMTF for consideration as part of a technical standard (herein "Submission") shall disclose to the DMTF Technical Committee any personal knowledge or awareness of any patent which in the judgment of the Proponent could be infringed by an implementation of the Submission. Neither the individual Proponent nor the Proponent's organization shall be required to conduct a patent search with respect to the Submission. A Proponent is encouraged but not required to include a statement from his or her organization indicating (1) the organization's licensing policy with respect to patents it owns or controls and/or (2) whether a search was performed on the Submission and, if so, its general scope.
3. The DMTF shall not ordinarily adopt new Submissions for incorporation into standard when the DMTF Board has received notice that any implementation thereof is likely to infringe Essential Patent Rights not made available by the patent holder on a non-discriminatory basis either royalty-free or at a fair and reasonable royalty rate. Essential Patent Rights as used in this DMTF Patent & Technology Policy shall mean any patent claim or claims which (and claims in any patent application, which, if issued) would necessarily be infringed by implementation of a DMTF standard incorporating any relevant Submission. A claim is necessarily infringed only when there is no commercially practicable non-infringing alternative for implementing the required portions of the DMTF standard.

The following shall *not* be deemed to constitute Essential Patent Rights:

- (a) claims which would be infringed by enabling technologies that may be necessary to make or use any product or portion thereof that complies with the DMTF standard but are not themselves expressly set forth in the DMTF standard (e.g., compiler technology, object oriented technology, basic operating system technology, semiconductor manufacturing technology and the like);
- (b) claims that would be infringed by the implementation of technology developed elsewhere and merely incorporated by reference in the body of the DMTF standard.

4. Proponents shall include the following text on the cover page of Submissions to the DMTF Technical Committee for consideration or comment:

*Recipients of this document are requested to provide comments at their earliest opportunity, together with notification to the DMTF Technical Committee of any patent rights -- of which they have actual personal knowledge or awareness -- that could be infringed an implementation of the enclosed contribution.*

5. Each individual participant in the DMTF shall comply with the requirements set forth in Section 4 above.

6. Any standard adopted and published by the DMTF shall contain the following printed notice:

*Implementation of certain elements of this standard or proposed standard may be subject to third party patent rights, including provisional patent rights ( herein "patent rights"). DMTF makes no representations to users of the standard as to the existence of such rights, and is not responsible to recognize, disclose, or identify any or all such third party patent right, owners or claimants, nor for any incomplete or inaccurate identification or disclosure of such rights, owners or claimants. DMTF shall have no liability to any party, in any manner or circumstance, under any legal theory whatsoever, for failure to recognize, disclose, or identify any such third party patent rights, or for such party's reliance on the standard or incorporation thereof in its product, protocols or testing procedures. DMTF shall have no liability to any party implementing such standard, whether such implementation is foreseeable or not, nor to any patent owner or claimant, and shall have no liability or responsibility for costs or losses incurred if a standard is withdrawn or modified after publication, and shall be indemnified and held harmless by any party implementing the standard from any and all claims of infringement by a patent owner for such implementations.*

7. If the DMTF Technical Committee determines that technical reasons justify the preparation and adoption of a standard in terms which include the use of items covered or incorporating Essential Patent Rights, the following procedures shall be followed:
  - a) If the DMTF accepts the new proposed standard on technical grounds, the DMTF shall ask the holder(s) of any such identified Essential Patent Rights, for a written statement confirming that the patent holder(s) is/are willing to grant licenses on a non-discriminatory basis either royalty-free or at a fair and reasonable royalty rate subject to applicable governmental laws and regulations, to parties throughout the world.

- b) The DMTF Technical Committee shall place a copy of the patent holder's written statement in their meeting minutes. The DMTF shall give a copy to DMTF legal counsel for review and retention. The patent holder's statement shall be reproduced in the introduction to the relevant Standard (see paragraph 8 below).
- c) Negotiations and execution of such licenses between the patent holder and third parties shall be solely a commercial matter for the parties concerned. The DMTF shall have no involvement or participation in such negotiations.
- d) If the patent holder does not provide such a statement, the DMTF Technical Committee or relevant sub-committee shall not proceed to include in the Standard any item covered by the patent, unless the express written authorization of the DMTF Board and the review of the DMTF legal counsel has been obtained.

8. A published standard for which Essential Patent Rights have been identified during the preparation thereof shall include the following notice in the Introduction:

*Implementation of this standard may involve the use of a patent concerning \_\_\_\_\_ [INSERT PATENT TITLE, DESCRIPTION OF SUBJECT MATTER] as given in DMTF standard # \_\_\_\_\_, subparagraph \_\_\_\_\_ of the standard [INSERT REFERENCE TO RELEVANT SUB-CLAUSE AFFECTED BY PATENT CLAIM] issued on [DATE] \_\_\_\_\_ to [NAME OF ASSIGNEE/OWNER] \_\_\_\_\_ under the laws of \_\_\_\_\_.*

*DMTF takes no position concerning the evidence, validity or scope of this patent right.*

*The holder of this patent right has agreed to grant licenses on a non-discriminatory basis either royalty-free or at a fair and reasonable royalty rate, subject to applicable government laws and regulations, to parties throughout the world. In this respect, the written statement of the holder of this patent right is on file with the DMTF. Further information may be obtained from:*

*\_\_\_\_\_ [NAME OF OWNER/ASSIGNEE OF ASSERTED PATENT RIGHTS, ADDRESS]*

Implementation of certain elements of this standard or proposed standard may be subject to third party patent rights, including provisional patent rights (herein "patent rights"). DMTF makes no representations to users of the standard as to the existence of such rights, and is not responsible to recognize, disclose, or identify any or all such third party patent right, owners or claimants, nor for any incomplete or inaccurate identification or

disclosure of such rights, owners or claimants. DMTF shall have no liability to any party, in any manner or circumstance, under any legal theory whatsoever, for failure to recognize, disclose, or identify any such third party patent rights, or for such party's reliance on the standard or incorporation thereof in its product, protocols or testing procedures. DMTF shall have no liability to any party implementing such standard, whether such implementation is foreseeable or not, nor to any patent owner or claimant, and shall have no liability or responsibility for costs or losses incurred if a standard is withdrawn or modified after publication, and shall be indemnified and held harmless by any party implementing the standard from any and all claims of infringement by a patent owner for such implementations.