

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MYRIAD GROUP AG,)	
)	
Plaintiff,)	
)	C.A. No. _____
v.)	
)	
ORACLE AMERICA, INC., a Delaware)	JURY TRIAL DEMANDED
corporation,)	
)	
Defendant.)	

**PLAINTIFF’S COMPLAINT FOR DAMAGES,
DECLARATORY JUDGMENT, AND INJUNCTIVE RELIEF**

Plaintiff Myriad Group AG (“Plaintiff” or “Myriad”) alleges as follows:

THE PARTIES

1. Myriad is a Swiss corporation with its principal place of business in Dubendorf, Switzerland.
2. Oracle America, Inc. (“Sun”) is a wholly-owned subsidiary of Oracle Corp. (“Oracle”). Oracle America, Inc., a Delaware corporation headquartered in Redwood City, California, was known as Sun Microsystems until January of 2010, when it was acquired by Oracle. Oracle maintains international offices in over 150 countries.

NATURE OF THE ACTION

3. Myriad asserts claims for breach of contract, violation of the Lanham Act, and related common-law and statutory claims, and seeks a declaratory judgment that Myriad is entitled to rely on a joint development agreement entered with Sun to develop specifications for applications written in Sun’s Java computer programming language. Myriad also seeks damages for the substantial harm caused to its business.

4. Sun developed and owns IP rights to the Java language, but it fostered the development of a cooperative process known as the “Java Community Process” (JCP) in order to encourage independent technology companies, like Myriad, to improve and enhance the value of Java by creating specifications for new uses of Java. These specifications are referred to as “Java Specification Requests” (JSRs).

5. In order to create the JCP Sun, Myriad, and a host of other technology companies entered into cross-licensing agreements contained in the “Java Specification Participation Agreement” (JSPA). By signing the JSPA, a company joined the JCP and licensed its IP rights to the other members, receiving reciprocal licenses in return. These licenses were granted both so that the contracting parties could develop new JSRs in cooperation with each other, and so that they individually could develop software that conformed to those specifications. This type of Java software is referred to as an “implementation” of the JSR.

6. As part of this cross-licensing agreement, in the JSPAs Sun licensed to Myriad (and to others) certain of Sun’s intellectual property (IP) rights applicable to Java, either royalty free or on fair, reasonable and non-discriminatory (FRAND) terms. As described herein, Sun has consistently failed to honor those licenses.

7. In developing a new JSR, the JCP results in three distinct but interrelated products: (1) the specification itself, which describes what the new kind of Java implementation will do; (2) a Technology Compatibility Kit (TCK), which is a suite of tests, tools, and documentations that are the only permissible method for determining whether an instance of software complies with the specification, and thus qualifies as a implementation; and (3) a Reference Implementation (“RI”) of the specification, which is a prototype or “proof of concept” implementation that complies with the specification and passes the TCK.

8. No instance of software can qualify as a Java implementation without passing the TCK. In order to permit the creation of implementations, therefore, in the JSPA Sun, Myriad and the other JCP members licensed their applicable IP in the TCKs to all interested parties, either on a royalty-free, fully-paid-up basis or on fair, reasonable, and non discriminatory (FRAND) terms, depending on the context. Pursuant to the JSPA and Sun's published policies, software that passes the TCK for the relevant Java specification may be identified with various versions of the Java "coffee cup" logo.

9. Implementations of a given JSR can be described under the JSPA as either "Independent Implementations" or RI-based implementations.

10. Independent Implementations are implementations of a JSR that pass the corresponding TCK, but that (except as required by the JSR) do not use any of the RI code created in the JCP, but instead are created by a Java software developer outside the JCP context.

11. In the JSPAs, Sun, Myriad and other JCP members granted each other perpetual royalty-free, fully paid-up licenses to create and/or distribute Independent Implementations, under all of their IP rights implicated by such implementations.

12. RI-based implementations are those that incorporate some or all of the RI code for a JSR, often along with other code created by the developer outside the JCP. In order to permit the use and modification of RI code in the creation of RI-based implementations, in the JSPA Sun, Myriad, and the other JCP members licensed each other to access, use, modify and distribute RI code on fair, reasonable, and non-discriminatory (FRAND) terms.

13. Sun and Myriad both participate in the business of creating either Independent Implementations or RI-based implementations of some JSRs, and of selling those products to

customers in need of such software. Their products compete in the downstream market for such implementations.

14. Sun refers to its RI-based implementations as “Optimized Implementations,” and markets them under its “HotSpot™” trade name.

15. Despite the fact that Myriad does not and never has used Sun’s HotSpot™ code in its products, Sun refuses to honor the free or FRAND TCK license, the free license for Independent Implementations, or the FRAND license to use, modify and distribute RI code, all of which it granted Myriad and others in the JSPA. Instead, Sun insisted that Myriad enter into “Sun Community Source Licenses” (SCSLs) for HotSpot code, and required Myriad to pay for RI and TCK access on the unfair, unreasonable and discriminatory royalty-based terms specified in the SCSLs’ Attachments D and in a companion Master Support Agreement.

16. Moreover, Sun has increasingly attempted to seize an unfair advantage in the downstream market for Java Implementations. It has done so by:

- (a) Seeking to disrupt or destroy Myriad’s relationships with its customers and to induce them to purchase competitive products from Sun, by falsely claiming that Myriad is no longer licensed to create and offer Java-branded products. These representations are false because Myriad holds a license pursuant to the JSPA;
- (b) Flouting the requirements of the Master Service Agreements and falsely asserting that Myriad is no longer able to offer Java-compliant implementations;
- (c) Denying Myriad access to the Web site where TCKs are available;

- (d) Charging Myriad's customers exorbitant royalties on the false assertion that Myriad is providing Sun Optimized Implementations or incorporating code from Sun Optimized Implementations into Myriad's own implementations;
- (e) Charging Myriad exorbitant royalties that were higher than the downstream price Sun was charging for its competitive HotSpot™ offerings;
- (f) Prohibiting Myriad from marketing and selling competitive offerings to certain categories of customer.

JURISDICTION AND VENUE

17. Because Myriad is a citizen of Switzerland and Sun a citizen of California and Delaware, and because Myriad seeks damages in excess of \$75,000, this court has jurisdiction pursuant to 28 U.S.C. § 1332(a)(3).

18. This Court also has jurisdiction over Myriad's Lanham Act claim pursuant to 28 U.S.C. § 1331, and pendent jurisdiction over Myriad's state-law claims pursuant to 28 U.S.C. § 1367(a).

19. Venue is proper in this District under 28 U.S.C. § 1391(a)(2), because Sun transacts and is registered to do business in, resides in, and is found within this District. Sun has also appointed an agent for service of process in Delaware.

FACTUAL BACKGROUND

I. The Functioning of the JCP

20. "Java" refers to a number of computer software products and specifications. Java technology allows a host of different programs to be developed and deployed for use on hundreds of millions of devices, ranging from desktop computers to consumer electronics to industrial robots.

21. The Java computer programming language was originally developed by Sun and released in 1995, and Sun has legitimate IP rights in the language itself. The success of the language, however, is due in large part to the cooperation of a great number of other technology companies in the JCP, including Myriad.

22. Myriad became a member of the JCP, effective when one of its predecessor entities, Esmertec AG, signed the JSPA with Sun.

23. Other JCP members also attained membership by entering into bilateral JSAs with Sun. JCP contributors included such firms as AT&T, IBM, Motorola, Nokia, Panasonic, Samsung, Siemens, SonyEricsson, T-Mobile, and Time-Warner Cable.

24. The JCP is oriented towards creating specifications for Java implementations.

25. The creation of a Java specification in the JCP begins with a “Java Specification Request” (JSR). At the beginning of the JSR process, Sun appoints a “Spec Lead” to oversee the development of the JSR, assisted by an “Expert Group” of multiple JCP members. The Spec Lead and Expert Group then cooperate to develop the JSR, which ultimately describes the necessary characteristics of an implementation of the Java software in a given type of product or application.

26. The JCP contemplates that Expert Group members’ contributions to JSR development may rely on the members’ own IP. Therefore, pursuant to Section 4 of the JSPA, each JCP member grants Spec Leads a license, with a few narrow exceptions, of any of the JCP member’s copyrights, trade secrets, and patents that might be implicated by the JCP member’s contributions to the process.

27. The Spec Lead and Expert Group also create a TCK and RI for each finalized JSR. The TCK is a software tool for determining whether other software complies with the JSR.

The RI is a prototype or “proof of concept” compliant implementation. Pursuant to the JSPA, TCKs for Independent Implementations are licensed on a royalty-free, fully paid-up basis; TCKs for RI-based implementations are licensed on FRAND terms; and use, modification, and distribution of the RI is licensed on FRAND terms, as described herein.

28. Section 5.F of the JSPA requires Spec Leads to license the RIs for their respective JSRs on FRAND terms. Section 5.F.IV specifically provides that this license may not “limit or restrict the right of any licensee to create or distribute products derived from the RI.” This license includes the right to access, use, modify the source code of the RI, and distribute RI binary code.

29. Pursuant to Sections 5.F.II(a) and 5.B of the JSPA, the aforementioned RI license applies only to developers who access, use or modify RI source code, or distribute RI binary code as part of a Java implementation that complies with the applicable TCK. Section 5.F.I of the JSPA therefore requires each Spec Lead to offer the TCK for its Java Specification “to any interested party” on FRAND terms.

30. With respect to Independent Implementations, which do not use any RI code except as required by the JSR, Section 5 of the JSPA provides that the Spec Lead “shall offer to grant a perpetual, non-exclusive, worldwide, fully paid-up, royalty free, irrevocable, license under its licensable copyrights in and patent claims covering the Specifications (including rights licensed to the Spec Lead [by Expert Group members and other JCP members who contributed to the specs] pursuant to Section 4.A or 4.C) to anyone who wishes to create and/or distribute an Independent Implementation of the Spec.”

31. Section 15 of the JSPA provides that any action related thereto will be governed by the law of California, exclusive of its choice of law rules.

II. Myriad's Business

32. Myriad creates Java implementations of various kinds, including for use in smaller devices such as mobile phones, in television set-top boxes such as cable receivers and in Blu-Ray players.

33. Myriad produces RI-based implementations—technologies that are created by Myriad itself, outside the JCP, but that incorporate some RI code—and Independent Implementations, using no RI code. All Myriad's Java products have passed the TCK for the relevant JSR.

34. Sun appointed itself the Spec Lead for some of the JSRs that Myriad implements. With respect to some JSRs for which it is not the Spec Lead, Sun has misappropriated to itself the Spec Lead's licensing rights.

III. Sun's Attempts To Make Myriad And Myriad's Customers Pay Exorbitant Royalties For RI and TCK Access

35. Sun has refused to comply with its licensing obligations under the JSPAs. Instead, as set forth herein, Sun has required Myriad and Myriad's customers to pay exorbitant royalties for all Myriad's Java products.

36. Sun has entered into a series of "Sun Community Source Licenses" (SCSLs) and accompanying Attachments D, "Commercial Use Licenses," with Myriad and its predecessors. Esmertec AG entered into Attachments D with Sun on March 20, 2002 and June 30, 2006. Myriad itself entered an Attachment D agreement with Sun on June 25, 2009.

37. The SCSLs and their Attachments D purport to give Myriad and its predecessors access to RI-based Optimized Java Implementations created by Sun. This software, often marketed by Sun under the brand name "HotSpot™," was created by Sun outside the JCP context.

38. Many of Sun's HotSpot™ implementations covered by the SCSLs and Attachments D incorporate code from RIs created using Myriad's IP, which Myriad cross-licensed to Sun and other JCP members pursuant to the JSPA.

39. The SCSLs and Attachments D purport to require Myriad and its customers to pay both periodic royalties for the use of Sun's Optimized Implementations, and per-unit royalties for any Myriad products that incorporate code from those Optimized Implementations.

40. Although Sun insisted that Myriad agree to the SCSLs and Attachments D, Myriad has never incorporated into its products any of the Sun Optimized Implementation code purportedly licensed therein.

41. Even after entering the SCSLs and Attachments D, Sun maintained that Myriad could not create Java implementations without further entering into a Master Support Agreement ("MSA"), pursuant to which Myriad is (and in certain circumstances its customers are) obliged to pay unreasonable, unfair and discriminatory annual fees in order to access the TCKs for the JSRs Myriad implements. Myriad therefore agreed to the MSA.

42. Sun thus has continuously demanded that Myriad and its customers pay royalties on all its Java products pursuant to the SCSLs, their Attachments D, and the MSA. This insistence is in violation of Myriad's licenses under the JSPA.

43. Since 2004 Myriad has paid \$20 million in such royalties to Sun. On information and belief, Myriad's customers have paid in excess of \$100 million in royalties to Sun.

44. The non-FRAND nature of the royalties is evident in that Sun is selling products similar to Myriad's, and has attempted to win away Myriad's current and potential customers by representing that Sun's price for the finished product is lower than the licensing royalties it charges Myriad.

45. For example, on information and belief, Sun targeted a potential Myriad customer, Cyberlink, and offered a price lower than the per-unit royalty Myriad was forced to pay Sun under the Attachments D. As a result, Sun was able to secure Cyberlink's business.

46. Additionally, on information and belief, Sun contacted another potential customer of Myriad's, Alticast, and asserted that Oracle (Sun's corporate parent) could sell Alticast a finished Java implementation for the same price that it charges to Myriad to license the code, thus making it impossible for Myriad to recover the royalty cost imposed by Oracle.

47. Beginning in September 2009, Myriad repeatedly advised Sun that it wished to exercise its rights under the JSPA to apply TCKs on free or FRAND terms; access, use, modify and distribute RI code on FRAND terms; and engage in free Independent Implementations, rather than operating under the more onerous conditions imposed by the SCSLs, Attachments D, and MSA. Accordingly, Myriad has asked Sun to provide it with a schedule of the FRAND rates Sun is obligated to charge Myriad. To date, Sun has refused to provide such a list, and has thus failed to fulfill its obligations under the JSPA.

IV. Sun's Attempts To Exclude Myriad From The Downstream Market Through Breach Of The JSPA

48. Instead, Sun has also breached its obligations under the JSPA by launching a comprehensive campaign designed to exclude Myriad from the downstream market for implementations of the relevant Java specifications.

49. As part of this campaign, Sun has repeatedly, and erroneously, told current or potential customers of Myriad that Myriad is no longer licensed to produce Java-compliant implementations, implying that they should purchase similar Sun products instead.

50. These statements that Myriad is no longer licensed are false, because Myriad continues to enjoy its JSPA license to apply TCKs for free or on FRAND terms; to access, use,

modify and distribute RI code on FRAND terms; and to engage in Independent Implementations at no charge.

51. These statements that Myriad is no longer licensed are false for the additional reason that Sun has failed to comply with the termination and dispute-resolution procedures set forth in the Master Support Agreement.

52. Sun has cut off Myriad's access to the Web site where TCKs are available, claiming that Myriad's rights in that respect have lapsed because Myriad has not paid the fees purportedly required by the MSA. This claim is spurious because Myriad has an independent license to access TCKs under free or FRAND terms based on the JSPA.

53. In any event, Sun's claim that the MSA has lapsed for non-payment is also meritless, for two reasons. First, under Paragraph 4.1 of the MSA, Sun may terminate support only if Myriad is 30 days delinquent in paying an invoice from Sun, but Sun has never sent any invoice. Second, pursuant to Paragraph 2.1 of the MSA, Sun is required to offer written notice and a 30-day cure period before terminating the agreement based on any breach not relating to a confidentiality violation. Sun has given no written notice of breach, nor offered an opportunity to cure.

54. Moreover, Sun has recently refused to consummate a series of straightforward trademark licensing agreements with some of Myriad's most significant customers, including a major set-top box manufacturer headquartered in San Jose, California, based upon Sun's false assertion that Myriad is no longer licensed to create Java-branded products.

55. This assertion is false because Myriad enjoys a license to create Java-compliant products pursuant to the JSPA, and Sun has publicly granted licensees the right to use its relevant Java-related trademarks. *See* <http://java.sun.com/logos/>.

56. Sun has falsely asserted to employees of Broadcom Corporation that it is impossible for Blu-Ray player software built on Myriad's implementations (or any others developed independently of Sun's own Java Virtual Machine) to comply with the suite of tests prescribed by the Blu-Ray Disc Association.

57. Sun has also represented to Broadcom that it is impossible for Myriad's implementations to be verified as Java compliant without violating Sun's IP rights. This representation is in violation of the license in those rights that Sun granted to Myriad in the JSPA.

58. Sun has falsely represented to employees of Philips Singapore that Myriad is not entitled to license some of its Java implementations.

59. Upon information and belief, Myriad has lost a number of major potential customers due to Sun's actions, including Sharp, Pioneer, Vividlogic, and Mitsubishi.

60. Sun's grossly inaccurate statements have resulted in and will likely continue to result in irreparable harm to Myriad's relationship with these customers.

CLAIMS FOR RELIEF

COUNT ONE

Breach of Contract

61. Plaintiff Myriad repeats and realleges all of the allegations in all the paragraphs above as if set forth fully herein.

62. As set forth above, in the JSPA, Sun entered into contractual commitments with Myriad. Those commitments included a grant by Spec Leads, such as Sun, of licenses to:

- (a) Access and apply TCKs for free (with respect to Independent Implementations) or on FRAND terms (with respect to RI-based implementations);
- (b) Engage in Independent Implementations for no charge;
- (c) Access, use and modify RI code, including source code, for use in RI-based implementations, and distribute the binary RI code in such implementations.

63. Sun breached, and continues to breach, the JSPA contract by refusing to permit Myriad to engage in Independent Implementations or access the corresponding TCKs at no charge, by refusing to permit Myriad to engage in its RI-based implementations or access the corresponding TCKs on FRAND terms, and by falsely representing to customers that Myriad's licensing rights have lapsed.

64. As a result of Sun's continuing refusal to honor its contractual commitments, Myriad and its customers have been wrongfully required to pay in excess of \$120 million in "royalties" to Sun.

65. As a further result of Sun's breach, Myriad continues to lose market share in the markets for its products because Sun is able to provide its own implementations at prices far below the cost it improperly imposes on Myriad and Myriad's customers.

66. As yet a further result of the breach, Myriad has been injured in its business or property through the loss of past, present, and future profits, by the loss of customers and potential customers, and by the loss of goodwill and product image. In addition, as a result of Sun's breach, Myriad sustained damages, including lost business opportunities.

67. Myriad has suffered and continues to suffer actual damages as a result of Sun's actions.

COUNT TWO

Violation of the Lanham Act, 15 U.S.C. § 1125(a)(2)

68. Plaintiff Myriad repeats and realleges all of the allegations in all the paragraphs above as if set forth fully herein.

69. As stated above, Sun has falsely represented that Myriad is not licensed to create Java-compliant implementations; has falsely implied that Myriad's Java implementations use Sun Optimized Implementation code, for which Sun has the right to charge Myriad the same price as it charges downstream customers for Sun code; and has falsely stated that Myriad is not authorized to create or distribute Java-branded software products.

70. These statements are literally false, and are misrepresentations of the nature, quality, and characteristics of Myriad's goods.

71. This deception is material in that it likely did and will continue to influence customers' purchasing decisions, thus causing injury to Myriad in the form of declining sales, market share, and goodwill.

72. The magnitude of the deception is compounded by the fact that Sun is attempting not only to unjustly expand the scope of its IP rights, but also to seize for itself an unfair competitive advantage in the downstream market for Java implementations.

73. Myriad's goods, about which Sun's misrepresentations have been made, travel in interstate and international commerce.

COUNT THREE

Tortious Interference With Prospective Economic Advantage

74. Plaintiff Myriad repeats and realleges all of the allegations in all the paragraphs above as if set forth fully herein.

75. Myriad had economic relationships with Alticast, Broadcom, Philips Singapore, and other current and potential customers in need of Java implementations. These relationships contained the probability of future economic benefit to Myriad.

76. Sun knew of these relationships, and, by misrepresenting the contents and licensure status of Myriad's software and the prices Sun was permitted to charge Myriad, Sun intentionally or negligently disrupted the relationships.

77. As described above, these actions were wrongful, as they violated the Lanham Act, as well as Sun's contractual duty of good faith and fair dealing.

78. By reason of Sun's actions, Myriad has been injured and suffered damages in an amount to be proved at trial and, without injunctive relief, Myriad will continue to suffer irreparable injury as a result of Sun's unlawful conduct. Myriad has no adequate remedy at law.

79. Myriad is also entitled to punitive damages for Sun's willful and malicious conduct.

COUNT FOUR

Violation of California Business and Professions Code §§ 17200, 17500, and 17508(a)

80. Plaintiff Myriad repeats and realleges all of the allegations in all the paragraphs above as if set forth fully herein.

81. Sun's has misrepresented to Myriad's customers that Myriad's products incorporate Sun HotSpot™ code and therefore are necessarily more expensive than Sun

products, and has misrepresented that Myriad's products are not licensed Java implementations and may not bear the Java logo.

82. Sun knew or should have known that these statements were false, and Sun made these statements in connection with its proposed sale of its own computer code. Accordingly, Sun has violated Cal. Bus. & Prof. Code § 17500.

83. These misstatements were false or misleading advertising claims purporting to be based on factual or objective evidence, and as such were additionally in violation of Cal. Bus. & Prof. Code § 17508(a).

84. These unfair and deceptive business acts or practices additionally were unfair competition within the meaning of Cal. Bus. & Prof. Code § 17200.

85. By reason of Sun's violations of Cal. Bus. & Prof. Code §§ 17200 *et seq.*, Myriad has been injured in its business and its property including the loss of past, present, and future profits, by the loss of customers and potential customers, and by the loss of goodwill and product image.

86. Myriad has suffered irreparable injury by reason of the acts, practices, and conduct of Sun alleged above and will continue to suffer such injury until and unless the Court enjoins such acts, practices, and conduct. Myriad is informed and believes that Sun will continue to do the acts alleged herein unless the Court orders Sun to cease and desist.

87. Myriad is entitled to relief, including an injunction and full restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits that may have been obtained by Sun from Myriad, its actual customers, and its potential customers as a result of such unfair business acts or practices.

PRAYER FOR RELIEF

WHEREFORE, Myriad requests that the Court:

- a. Adjudge and decree that Sun has breached the JSPA, violated the Lanham Act, tortiously interfered with Myriad's prospective economic advantages, and engaged in unfair competition;
- b. Order the disgorgement of the sums, amounting to at least \$120 million, that Sun has wrongfully demanded and received from Myriad and its customers;
- c. Enter judgment against Sun for the amount of Myriad's additional damages as proven at trial;
- d. Enter preliminary and permanent injunctions against Sun's continuing violation of law by:
 - (1) requiring Sun to honor Myriad's perpetual and royalty-free license to conduct Independent Implementations and to access TCKs for that purpose;
 - (2) requiring Sun to provide FRAND rates to Myriad for Myriad's use of Reference Implementations and accessing of TCKs for that purpose;
 - (3) barring Sun from demanding or collecting any royalties whatsoever for RIs with respect to which it does not lawfully hold the applicable Spec Lead rights;
 - (5) barring Sun from representing that Myriad's license to create Java implementations or Java-branded products has lapsed;

- (6) barring Sun from asserting its IP rights to prevent Myriad's products from demonstrating Java compliance through the application of TCKs, or from representing to any person that it has the right to do so;
 - (7) requiring Sun to provide Myriad with access to TCKs for the purposes of conducting its Java implementations.
- e. Enter further equitable relief as necessary or appropriate, including full restitution to Myriad and/or disgorgement of any other revenues, profits, compensation, and benefits that may have been obtained by Sun from Myriad, its actual customers, and its potential customers as a result of such unfair business acts or practices;
- f. Award Myriad its costs and expenses of litigation, including attorneys' fees and expert witness fees; and
- g. Enter judgment against Sun for such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff Myriad hereby demands trial by jury in this action on all issues so triable.

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