

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580



Office of the Secretary

September 22, 2008

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The Commission believes that such a change in the Order is unnecessary. The purpose of the Order is not to enforce or contradict the current policies of the IEEE-SA, which like other standards organizations has broad discretion to choose the policies that it believes best protect the procompetitive standards process. Rather, the purpose of the Order is to rectify the anticompetitive effects of the specific conduct by the respondent N-Data, which engaged in patent hold-up by refusing to license N-Way technology to requesting parties under the terms of the original 1994 assurance letter. Under the proposed Order, N-Data is required to offer licenses for the N-Way technology on the 1994 terms as specified by the Order. Whatever bundle of patents Respondent might offer together with the relevant patents, and whatever the value of such additional patents to prospective licensees, patent hold-up is possible unless Respondent makes available an option to license N-Way technology on the 1994 terms.

However, prospective licensees are not required to accept the offer required by the Order. If they choose to reject it, they and N-Data are free to negotiate the licensing terms of the patents listed in the 2002 letter as a bundle that includes the Relevant Patents otherwise covered by the Order. Such hypothetical alternative negotiations, if any occur, would appear to go beyond the scope of the conduct addressed in this case. As the Analysis to Aid Public Comment points out, “not all breaches of commitments made by owners of intellectual property during a standard-setting process will constitute an unfair act or practice under Section 5. For exam and pa