

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

NETWORK-1 TECHNOLOGIES, INC,	§	
	§	
Plaintiff,	§	CIVIL ACTION NO. 6:11-CV-00492-RWS
	§	
v.	§	
	§	
ALCATEL-LUCENT USA, INC. ET AL.,	§	
	§	
Defendant.	§	

**ORDER ADOPTING REPORT AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE**

The above-entitled and numbered civil action was referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636. The Report and Recommendation of the Magistrate Judge (“Report,” Docket No. 954), which contains her findings, conclusions, and recommendations regarding Defendants Hewlett-Packard Company and Hewlett Packard Enterprise Company’s (collectively, “HP”) Motion for Summary Judgment of FRAND Obligation (Docket No. 825), has been presented for consideration. The Report recommends that HP’s Motion for Partial Summary Judgment be granted-in-part and denied-in-part. No objections were filed. Accordingly, the Court reviews the Magistrate Judge’s Report and Recommendation for clear error. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

The Report notes that Network-1 agreed to four contentions in HP’s motion: (1) that a contract exists between Merlot Communications, Inc. (“Merlot”) and the Institute of Electrical and Electronic Engineers (“IEEE”) to license the ’930 Patent on the terms stated in the 2003 letter of assurance (“LOA”); (2) that Network-1 is bound by the LOA submitted to the IEEE for the ’930 Patent; (3) that HP, an IEEE member, is an intended third-party beneficiary of the contract between

Network-1 and the IEEE; and (4) that the LOA applies to the 802.3-2008 Standard including the 802.3af amendment. See Docket No. 954 at 2; Docket No. 852 at 3. Network-1 disputes whether the contract includes HP's asserted FRAND terms, and HP contends that there is no difference between "FRAND" terms and the terms of the 2003 LOA. Docket No. 852 at 3; Docket No. 954 at 3 (citing Docket No. 931 at 22–24). The Court agrees with the Magistrate Judge's conclusion that any disputes regarding whether the LOA obligation and HP's definition of FRAND are the same are questions for the jury. Accordingly, the Court **ADOPTS** the findings and conclusions of the Magistrate Judge as those of the Court. It is

**ORDERED** that Defendants' Motion for Summary Judgment of FRAND Obligation (Docket No. 825) is **GRANTED-IN-PART** and **DENIED-IN-PART**.

**SIGNED this 16th day of October, 2017.**

  
ROBERT W. SCHROEDER III  
UNITED STATES DISTRICT JUDGE