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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

OPENWAVE SYSTEMS INC.,
Plaintiff,

No. C 10-02805 WHA

v.

MYRIAD FRANCE S.A.S.,
Defendant.

**ORDER GRANTING
LEAVE TO FILE MOTION
FOR SUMMARY JUDGMENT**

AND RELATED COUNTERCLAIMS

On February 22, Openwave sought leave to file an early motion for summary judgment (Dkt. No. 56). Myriad opposed Openwave's request (Dkt. No. 59). After a hearing on Myriad's discovery dispute, the summary judgment issue was deferred, and Openwave was instructed that it could renew its request on March 21 (Dkt No. 62). Openwave did so; Myriad again opposes the request (Dkt. Nos. 121, 122).

Having reviewed both parties' submissions, this order finds that good cause exists to grant Openwave's request. None of Myriad's counter-arguments is persuasive. Because fact discovery is set to close on April 29, Openwave's request is not alarmingly premature. Openwave's request for permission to file a motion for summary judgment on or before April 7, 2011, is **GRANTED**. Openwave should notice such motion to be heard on the normal 35-day track. Myriad must focus on relevant issues and work to substantially complete its discovery on those issues by the time its opposition to Myriad's summary judgment motion is due.

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Myriad’s opposition to the instant request also “suggests” that, in the event Openwave’s request is granted, cross-motions for summary judgment should be entertained at the same time “as a matter of efficiency.” If Myriad wishes to file its own motion for summary judgment, it must seek leave to do so by way of the précis procedure established in the order regarding motion practice (Dkt. No. 54). If and when leave to file such a cross-motion is sought and granted, matters of timing and efficiency will then be considered.

IT IS SO ORDERED.

Dated: March 31, 2011.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE