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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.

**ORDER ADDING  
THRESHOLD ISSUE**


MYRIAD FRANCE S.A.S.,  
Defendant.

\_\_\_\_\_  
AND RELATED COUNTERCLAIMS  
\_\_\_\_\_

In November 2010, this action was divided into phases, and the parties were instructed that the following threshold issues would be resolved first: (1) the standing of Myriad France SAS to assert rights under the June 2008 agreement; (2) the validity and meaning of the contract clause providing for assignment of "Missing Assigned Patents"; and (3) the meaning of the word "cover" in the definition of Missing Assigned Patents (Dkt. No. 26 at 1). In this connection, the following issue also will be addressed in this first phase of the action: whether the Court (or jury) makes a *de novo* determination whether a patent is a Missing Assigned Patent versus whether Openwave need only show it had a reasonable basis for its denial as to each such patent.

**IT IS SO ORDERED.**

Dated: May 17, 2011.

  
\_\_\_\_\_  
WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE

United States District Court  
For the Northern District of California