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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 DENYING
LEAVE TO FILE
MOTION TO STRIKE**

AND RELATED COUNTERCLAIMS

Myriad France S.A.S. “seeks leave to file a motion to strike Openwave System, Inc.’s [sic] July 29, 2011 Supplemental Response To Court-Ordered Interrogatory regarding the meaning of the word ‘cover’ as untimely and in violation of the Court’s order” (Dkt. No. 330). Openwave Systems Inc. opposes (Dkt. No. 331). Having considered both submissions, Myriad’s request is **DENIED**. Openwave will be permitted to argue for its eleventh-hour revised interpretation of the contract term “cover” at trial. Neither side, however, will be entitled to take additional discovery. In permitting Openwave to present its new theory at trial this order does not in any way vet or comment on the merits of the new theory or excuse Openwave from any discovery sanction precluding all or part of the new theory at trial.

IT IS SO ORDERED.

Dated: August 3, 2011.


WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

United States District Court
For the Northern District of California