

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 AMEND
COUNTERCLAIM AND
VACATING HEARING**

AND RELATED COUNTERCLAIM

Myriad France S.A.S. filed the instant motion for leave to amend its counterclaim on December 31, 2010. On January 20, Openwave Systems Inc. filed a response to the motion, stating that “Openwave does not oppose Myriad’s motion for leave to amend.” Five days later, counsel for Myriad left a voice message with the courtroom deputy clerk explaining that Myriad would not be filing a reply in support of its motion and that the motion therefore was ripe for disposition.

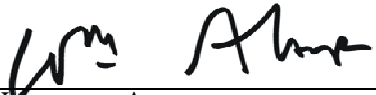
Myriad already has amended its counterclaim once as a matter of right, so further amendments may be made only with the opposing party’s written consent or the court’s leave. Leave should be freely given when justice so requires. FRCP 15(a). On the current record, leave to amend is appropriate. Myriad’s operative counterclaim was filed December 1, 2010. It seeks to compel Openwave to assign ten patents to Myriad, based on a contractual agreement. Because

1 the deal was closed before the specific patents were identified, the contract provided for
2 assignment of patents that Myriad would identify “from time to time” after the closing date.
3 Myriad represents that it “finalized its identification” of these patents on December 27, about four
4 weeks after filing the operative counterclaim (Br. 2). Myriad seeks to amend its counterclaim by
5 adding 25 patents and one patent application that it identified after filing its last pleading.
6 Myriad’s proposed expansion of the counterclaim is related to the same contract and raises the
7 same issues that already are in play, so the interests of judicial economy would be served by
8 adjudicating assignment of all identified patents in the same proceeding. Myriad’s motion is not
9 tainted by delay or bad faith, and amendment would not be futile. Moreover, Openwave would
10 not be unduly prejudiced or surprised by the proposed amendment at this stage of the action.

11 Myriad’s unopposed motion for leave to amend its counterclaim is **GRANTED**. The
12 hearing on the motion set for February 10, 2011, is **VACATED**.

13
14 **IT IS SO ORDERED.**

15
16 Dated: January 26, 2011.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

17
18
19
20
21
22
23
24
25
26
27
28