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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

OPENWAVE SYSTEMS INC.,
Plaintiff,
v.
MYRIAD FRANCE, S.A.S.,
Defendant.

Case No. CV-10-2805 (WHA)

~~JOINT PROPOSED~~ ORDER
REGARDING DISCOVERY HEARING
OF FEBRUARY 28, 2011

MYRIAD FRANCE, S.A.S.,
Counterclaimant,
v.
OPENWAVE SYSTEMS INC.,
Counterdefendant.

Upon the motion of Myriad France, S.A.S. (“Myriad”) to compel further production of documents and interrogatory responses [Docket No. 57], and considering the opposition of Openwave Systems, Inc. (“Openwave”) [Docket No. 60] as well as arguments of all counsel, the Court ORDERS as follows:

1. Myriad's Document Request Nos. 6-9 are quashed. Myriad may serve a reasonable and narrowly-drawn reformulation of Request No. 6 on or before Wednesday, March 2, 2011. Openwave's response shall be due within two weeks after service.
2. Openwave will produce or log as privileged all documents responsive to Myriad's Document Request No. 5 as limited by agreement of the parties: "all pre-closing documents reflecting licensing discussions or offers for sale relating to any of the Identified Missing Assigned Patents."
3. Regarding Myriad's Document Request No. 16, calling for "Documents sufficient to Identify by patent number each patent and patent application owned by You prior to June 27, 2008 in each of the three 'key patent families' listed on page 5 of Exhibit 1," Openwave represented to the Court through counsel that "no nonprivileged responsive documents" exist. [Tr. of 2/28/11 at 15:21-22.]
4. Regarding Myriad's Document Request No. 17, the Court reformulates this request into the following interrogatory: "State with as much specificity as possible what the 42 issued, allowed, and pending patents were that were referred to in slide 5 of the presentation entitled "Overview of Client Business," attached as Exhibit 1 to Defendant's Answer to Second Amended Complaint and Second Amended Counterclaim [Dkt. No. 52], and why they were referred to." Openwave shall serve its response to this interrogatory within two weeks.
5. Regarding Myriad's Interrogatory No. 2, the Court reformulates this interrogatory to read as follows: "Identify and describe the meaning or definition that you contend should be given to the term "cover" as that term is used in Section 1.3 of the IPLA, including, without limitation, an Identification of: (a) all facts, circumstances or other foundation that support your meaning or definition; and (b) all documents that you rely upon to support its meaning or definition." Both parties must simultaneously exchange verified responses by e-mail on Friday,


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March 11, 2011, at exactly 12:00 p.m. PST. These responses must include the parties' rationales for their definitions of "cover." [Tr. at 26:8-15.]

6. Within two weeks, Openwave will produce either documents or a privilege log for materials created between January 1, 2008 through December 31, 2008 that indicate what patents or patent applications are needed to cover the products and services of the client mobile handset business being sold. [Tr. at 40:22-25.]

IT IS SO ORDERED.

DATED: March 7, 2011



The Hon. William Alsup
United States District Judge

DATED: March 3, 2011

Respectfully Submitted,

FARELLA BRAUN + MARTEL LLP

By: /s/ Andrew Leibnitz
Andrew Leibnitz

Attorneys for Defendant
MYRIAD FRANCE, S.A.S.

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