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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

DUHN OIL TOOL, INC.,
Plaintiff/Counterclaim-Defendant,
vs.
COOPER CAMERON CORPORATION,
Defendant/Counterclaim-Plaintiff.

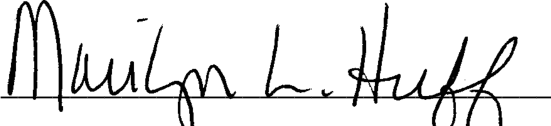
CASE NO. 05-CV-1411-MLH-GSA
SCHEDULING ORDER

On March 9, 2012, Plaintiff Duhn Oil Tool, Inc. (“Duhn Oil”) filed a brief on damages, and Defendant Cooper Cameron Corporation filed a renewed motion for reconsideration on obviousness for claim 3 of the ‘925 patent. (Doc. Nos. 763, 764.) The Court is still considering the parties’ arguments. In the meantime, the Court orders further briefing addressing the issue of reasonable royalty damages to be filed on or before **March 23, 2012**. Specifically, if the Court were to conclude that Duhn Oil is not entitled to lost profits because there were available, acceptable, noninfringing substitutes, see Rite-Hite Corp. v. Kelley Co., 56 F.3d 1538, 15545 (Fed. Cir. 1995) (en banc); Panduit Corp. v. Stahlin Bros Fibre Works, Inc., 575 F.2d 1152, 1156 (6th Cir. 1978), is there evidence in the record to apply the jury’s reasonable royalty rate to assess the damages? If so, the Court requests the parties to provide citations to the trial record and supporting data for determining the royalty base and royalty rate. Additionally, the Court requests briefing on if the entire market value rule applies or if

1 the damages are properly apportioned to claim 3. See King Instrument Corp. v. Otari Corp.,
2 767 F.2d 853 (Fed. Cir. 1985); TWM Mfg. Co. v. Dura Corp., 789 F.2d 895 (Fed. Cir. 1986).

3 **IT IS SO ORDERED.**

4 DATED: March 13, 2012

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6 MARILYN L. HUFF, District Judge
7 UNITED STATES DISTRICT COURT
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