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10 Attorneys for Defendant THE STANLEY WORKS

11

12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14 SAN FRANCISCO DIVISION

15

16 ZIRCON CORPORATION, a California
 corporation,
 17
 Plaintiff,
 18

19 vs.

20 THE STANLEY WORKS, a Connecticut
 corporation,
 21
 Defendant.
 22

No. C09-0042 EDL

STIPULATION AND ~~PROPOSED~~
ORDER TO FILE AMENDED
ANSWER

Judge: Honorable Elizabeth D. Laporte
 Compl. Filed: January 6, 2009
 Trial Date: None set

23

24 Defendant, The Stanley Works (“Stanley”), hereby moves this Court under Rule
 25 15(a)(2) of the Federal Rules of Civil Procedure, to file the Amended Answer attached
 26 hereto as Exhibit A.

27 The Amended Answer adds a Third Affirmative Defense, which alleges patent
 28 invalidity under 35 U.S.C. §102 and/or §103. Good cause exists for the Amended Answer,

1 as the filing of this Amended Answer is early in the proceedings, prior to the
2 commencement of discovery, and will not cause prejudice or delay. Plaintiff, Zircon
3 Corporation, has reviewed the proposed Amended Answer and hereby consents to the filing
4 of the same.

5 Upon entry of this stipulation by this Court, Stanley will file its Amended Answer
6 within five (5) court days of said notice.

7 DATED: December 10, 2009 HAYNES AND BOONE, LLP

8

9 By /s/ Dianne L. Sweeney
10 Dianne L. Sweeney
11 Attorneys for Plaintiff
ZIRCON CORPORATION

12 DATED: December 10, 2009 PILLSBURY WINTHROP SHAW PITTMAN LLP

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14 By /s/ Clark S. Stone
15 Clark S. Stone
16 Attorneys for Defendant
THE STANLEY WORKS

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*Filer's Attestation: Pursuant to General Order No.
45, Section X.B. regarding non-filing signatories,
Dianne L. Sweeney hereby attests that concurrence
in the filing of this Stipulation has been obtained
from Clark S. Stone.*

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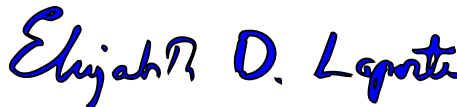
[PROPOSED] ORDER

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22 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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25 Dated: December 11, 2009

26

ELIZABETH D. LAPORTE
United States Magistrate Judge

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EXHIBIT

A

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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

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SAN FRANCISCO DIVISION

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16 ZIRCON CORPORATION, a California
corporation,
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Plaintiff,
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vs.
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THE STANLEY WORKS, a Connecticut
20 corporation,
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Defendant.
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No. C09-0042 EDL
AMENDED ANSWER

Judge: Honorable Elizabeth D. Laporte
Complt. Filed: January 6, 2009
Trial Date: None set

23

24 Defendant, The Stanley Works (“Stanley”), by its attorneys, answers the Complaint
25 for Patent Infringement (“the Complaint”) filed by Plaintiff, Zircon Corporation (“Zircon”)
26 as follows:

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The Parties

1. Stanley is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 1 of the Complaint, and therefore denies the same.

2. Stanley admits the allegations in paragraph 2 of the Complaint, but notes that the alleged “subsidiary offices” are for subsidiaries engaged in businesses unrelated to Stanley’s tools business or the sale of the products that Zircon has accused of infringement.

Jurisdiction and Venue

3. Stanley admits the allegations in paragraph 3 of the Complaint.

4. Stanley admits that this Court has personal jurisdiction over it, but denies the allegations that it has sold any products that infringe the patent asserted in the Complaint.

5. Stanley admits venue is proper in this Court, but denies the existence of any events giving rise to a claim.

Intra-District Assignment

6. This is a procedural statement to which no response is required.

Background

7. Stanley admits that the statement in paragraph 7 of the Complaint generally describes a “stud finder,” but denies the allegation in paragraph 7 to the extent Zircon is alleging a claim interpretation definition.

8. Stanley is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 8 of the Complaint, and therefore denies the same.

9. Stanley admits the allegations in paragraph 9 of the Complaint.

10. Stanley admits selling, offering for sale, and importing stud finders in or into the United States, including the Stanley Stud Sensor 200 and the Stanley FatMax® Stud Sensor. The remaining allegations in paragraph 10 are denied.

11. Stanley admits the allegations in paragraph 11 of the Complaint.

Count I – Patent Infringement

12. Stanley incorporates its responses to paragraphs 1-11 of the Complaint as though fully set forth herein.

1 13. Stanley admits that a copy of U.S. Patent No. 7,116,091 (“the Miller ‘091
2 patent”) was attached as Exhibit A of the Complaint, which speaks for itself. Stanley
3 denies the remaining allegations in paragraph 13 of the Complaint.

4 14. Stanley is without sufficient knowledge or information to form a belief as to
5 the truth of the allegations in paragraph 14 of the Complaint, and therefore denies the same.

6 15. Stanley is without sufficient knowledge or information to form a belief as to
7 the truth of the allegations in paragraph 15 of the Complaint, and therefore denies the same.

8 16. Stanley denies the allegations in paragraph 16 of the Complaint.

9 17. Stanley denies the allegations in paragraph 17 of the Complaint.

10 18. Stanley denies the allegations in paragraph 18 of the Complaint.

11 19. Stanley denies the allegations in paragraph 19 of the Complaint.

12 20. Stanley denies the allegations in paragraph 20 of the Complaint.

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AFFIRMATIVE DEFENSES

15 Stanley asserts the following affirmative defenses in response to the Complaint:

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First Affirmative Defense

17 Stanley has not directly or indirectly infringed any valid claim of the Miller ‘091
18 patent, either literally or under the doctrine of equivalents.

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Second Affirmative Defense

20 Zircon is barred from asserting infringement by the accused Stanley products under
21 the doctrine of equivalents by prosecution history estoppel and/or the disclosure-dedication
22 rule.

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Third Affirmative Defense

24 One or more claims of the Miller ‘091 patent is invalid as being anticipated under
25 35 U.S.C §102 and/or obvious under 35 U.S.C §103.

26 Because discovery has not begun, Stanley reserves the right to raise any affirmative
27 defense in the future of which it may become aware.

28

* * * * *

1 WHEREFORE, Stanley denies that Zircon is entitled to any of the relief prayed for
2 in the Complaint. Further, Stanley respectfully prays for judgment as follows:

3 A. A finding that Stanley has not infringed directly or indirectly any claim of
4 the Miller '091 patent.

5 B. A finding that Stanley has not willfully infringed the Miller '091 patent.

6 C. A finding that the claims of the Miller '091 patent are invalid.

7 D. A finding that this case is exceptional, and that Stanley be awarded its
8 attorneys fees under 35 U.S.C. §285.

9 E. A finding that Stanley is entitled to its costs.

10 F. An awarding to Stanley of all other legal and equitable relief that this Court
11 deems just and proper.

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13 Dated: December ____, 2009.

PILLSBURY WINTHROP SHAW PITTMAN LLP

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By _____
BRYAN P. COLLINS
Attorneys for Defendant
THE STANLEY WORKS

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