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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**
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12 GARDENSENSOR, INC., a Delaware
13 Corporation, formerly known as
14 PLANTSENSE, INC., a Delaware
15 Corporation,

16 Plaintiff,

17 v.

18 STANLEY BLACK & DECKER, INC., a
19 Delaware Corporation, formerly known as
20 BLACK & DECKER (U.S.), a Maryland
21 Corporation,

22 Defendant.

Case No. 12-cv-03922 NC

**ORDER RE: PRETRIAL RULINGS,
DEADLINES, AND TRIAL
PROCEDURES**

23 The parties attended a pretrial conference on October 15, 2014. This order sets forth
24 the Court's rulings on issues discussed at the conference and sets pretrial deadlines in
25 addition to those previously set in the Court's Order Re: Trial Preparation, Dkt. No. 119:

26 1. E-FILING. By 5:00 p.m. on October 17, 2014, the parties must file in ECF any
27 documents submitted to the Court as part of the Joint Trial Readiness Binder or emailed to
28 ncpo@cand.uscourts.gov that have not already been filed.

2. TRIAL STIPULATIONS. The Court grants the parties' Joint Stipulation and
Proposed Order Regarding Pretrial and Trial Protocol, Dkt. No. 121-1.

Case No. 12-cv-03922 NC
ORDER RE: PRETRIAL DEADLINES
AND TRIAL PROCEDURES

1 3. JURY SELECTION.

2 (A) Jury selection will begin on Monday, October 27, 2014 at 9:00 a.m.

3 (B) There will be 8 jurors selected; no alternates.

4 (C) If the parties intend to use a jury questionnaire or intend to ask the Court to
5 conduct any part of the voir dire, the proposed questionnaire and questions must be jointly
6 filed by 5:00 p.m. on October 17, 2014.

7 (D) Each side will be entitled to three peremptory challenges.

8 4. SUMMARY OF CASE STATEMENT. By 5:00 p.m. on October 17, 2014, the
9 parties must jointly file an agreed-upon summary of the case, not to exceed one page.

10 5. VERDICT FORM. By 5:00 p.m. on October 17, 2014, the parties must meet and
11 confer and jointly file a proposed verdict form.

12 6. MOTIONS IN LIMINE.

13 (A) The Court adopts its Tentative Ruling on Motions in Limine, Dkt. No. 155,
14 denying the parties' *Daubert* motions, Dkt. Nos. 125 and 134. The Court offered
15 Gardensensor the opportunity to conduct a *Daubert* hearing on Gardensensor's motion to
16 exclude Black & Decker's expert witness Larry Londre, Dkt. No. 134, which Gardensensor
17 declined. The Court finds that the challenged expert witnesses are qualified to give
18 testimony under Federal Rule of Evidence 702 and that their testimony is both relevant and
19 reliable and thus meets the threshold established by Rule 702. The Court further finds that
20 the testimony does not warrant exclusion under Federal Rule of Evidence 403.

21 (B) The Court further adopts its Tentative Ruling on Motions in Limine, Dkt. No.
22 155, as its order on the parties' remaining motions in limine.

23 7. TRIAL WITNESSES.

24 (A) By 5:00 p.m. on October 17, 2014, the parties must file a revised list of all
25 witnesses likely to be called at trial (other than solely for impeachment or rebuttal)
26 considering the time limits on evidence presentation set by the Court.

27 The witness list must include a brief statement following each name describing the
28 substance of the testimony to be given and a time estimate of the direct and cross

1 examinations. This information must be presented in chart format and organized by party.

2 (B) No party will be permitted without leave of Court to call in their case-in-chief
3 any witness who is not disclosed in the joint pretrial conference statement.

4 8. TRIAL EXHIBITS.

5 (A) By 5:00 p.m. on October 17, 2014, the parties must meet and confer about the
6 admissibility of each exhibit and file jointly a revised, combined exhibit list. The list may
7 contain no more than 50 exhibits per side. The list should not contain duplicate exhibits.

8 The exhibit list must contain a brief description of each exhibit's contents, and the
9 identity of each sponsoring witness. The list must specify whether the parties stipulate to
10 admit the exhibit or the grounds for any objections to the exhibit. If the list states
11 "objection" but no grounds are provided, the Court will deem that as a waiver of the
12 objection. If no objections have been noted on the list with respect to a given exhibit, the
13 Court will treat that as an indication that the parties stipulate to the admissibility of the
14 exhibit. The exhibit list must also include an additional column so that the Court can track
15 the date on which each exhibit is admitted. This information must be presented in chart
16 format and organized numerically.

17 (B) Exhibits must be provided to the Court by October 23, 2014, as follows: two sets
18 of exhibits marked, tabbed, indexed, and to be provided in binders. Exhibits sets may be
19 delivered/mailed directly to Chambers. The parties must otherwise coordinate with the
20 Courtroom Deputy for other delivery.

21 Each exhibit must be pre-marked with an exhibit tag placed in the top right corner of
22 the first page of a document. Parties are to use a color other than white for the exhibit tags.
23 A page of blank trial exhibit tags can be found on the Court's website. If an exhibit is a
24 physical object (rather than a document), a picture should be taken and placed in the
25 binder.

26 9. TRIAL SCHEDULE.

27 (A) Trial days will be 9:00 a.m. to 4:00 p.m. with two 15-minute breaks at
28 approximately 10:30 a.m. and 2:30 p.m., and a 45-minute lunch break at 12:00 p.m.

1 (B) Opening statements and presentation of the evidence will begin on October 28,
2 2014. There will be no trial proceedings on October 29. The trial will resume on October
3 30, and the Court expects that it will be completed by November 10, 2014.

4 (C) Each side (plaintiffs and defendant) will be allotted a total of eighteen hours for
5 their case, including presentation of evidence and cross-examination, but excluding
6 opening and closing statements, or legal argument.

7 The Court takes Black & Decker's request for additional time under consideration
8 pending submission of the revised witness and exhibit lists ordered by the Court. Black &
9 Decker must file a separate witness list and a separate exhibit list for those witnesses and
10 exhibits for which it contends additional evidence presentation time is necessary. The
11 separate witness and exhibit lists must include sufficient information to allow the Court to
12 determine whether or not the additional evidence is cumulative.

13 Each side will be allotted 45 minutes for their opening statement. The clerk will
14 maintain a record of time used by each side.

15 (D) No continuance of trial will be granted except by Court order in response to a
16 motion supported by good cause. Jury costs may be assessed against a party or counsel for
17 failure to proceed with trial or failure to provide timely notice of settlement.

18 (E) By October 17, 2014, the parties must make any necessary arrangements
19 regarding a court reporter.

20 IT IS SO ORDERED.

21 Date: October 17, 2014

22 
Nathanael M. Cousins
United States Magistrate Judge