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18 Attorneys for Plaintiff
 19 GARDENSENSOR, INC.

20 **UNITED STATES DISTRICT COURT**
 21 **NORTHERN DISTRICT OF CALIFORNIA**

22 GARDENSENSOR, INC., a Delaware Corporation,
 23 formerly known as PLANTSENSE, INC., a
 24 Delaware Corporation,

25 Plaintiff,

26 v.

27 STANLEY BLACK & DECKER, INC., a
 28 Delaware Corporation, formerly known as, BLACK
 & DECKER (U.S.), INC., a Maryland Corporation,

Defendant.

Case No. C 12-03922 NC

JOINT STIPULATION AND
~~PROPOSED~~ ORDER
REGARDING PRETRIAL AND TRIAL
PROTOCOL

The Honorable Nathanael Cousins

1 Plaintiff GardenSensor, Inc. (“GardenSensor”) and Defendant Black & Decker
2 (U.S.), Inc., (“Black & Decker”), submit this Joint Stipulation and [Proposed] Order
3 Regarding Pretrial and Trial Protocol.

4 Accordingly, GardenSensor and Black & Decker, collectively (the “Parties”)
5 hereby stipulate and agree as follows.

6 **AUTHENTICITY OF DOCUMENTS**

7 1. The Parties will not object to the admissibility of any of the documents described below
8 based on genuineness under Federal Rule of Civil Procedure 36, or authenticity under
9 Federal Rule of Evidence 901:

- 10 a. Documents identified by GardenSensor or Black & Decker as exhibits for trial in
11 the Parties’ pre-trial disclosures pursuant to Fed. R. Civ. P. 26(a)(3), subject to
12 the reservation of their right to supplement, amend, or modify this list up to and
13 through the time of trial; and
14 b. Correspondence, e-mails, and their attachments that both (i) were produced in this
15 litigation by either GardenSensor or Black & Decker, and (ii) purport to have
16 been authored or created by any of them.

17 2. IT IS FURTHER STIPULATED AND AGREED, that this Stipulation:

- 18 a. Shall not constitute or effect a waiver or limitation of the Parties’ rights from any
19 prior or future rulings in this matter, which rights are expressly reserved;
20 b. Shall be subject to the Court’s ruling on any motion *in limine*;
21 c. Shall not constitute or effect a waiver or limitation of the Parties’ rights to object
22 to any testimony, argument, or demonstrative material (even if such testimony,
23 argument or demonstrative material relates to or concerns the same or similar
24 subject matter as any exhibit stipulated to herein as not objectionable based on
25 genuineness or authenticity); and
26 d. Shall not constitute or effect a waiver or limitation on the Parties’ rights to object
27 to any document on grounds other than foundation, genuineness, or authenticity.
28

1 **TRIAL INFORMATION EXCHANGE PROTOCOL**

- 2 3. Every party that intends to call or calls a live witness to testify at trial shall provide
3 written notice of the witness by 6 p.m. on the date two days before the witness may be
4 called to testify; provided, however, as a witness may be called on a Monday, notice of
5 that witness shall be provided by 6 p.m. of the preceding Friday. However, Plaintiff
6 shall give fair notice to Defendant in anticipation of resting their case in chief to allow
7 Defendant to provide sufficient notice of witnesses.
- 8 4. Every party that intends to call or calls a witness by videotape or via written deposition
9 designations shall provide written notice of the witness and proposed testimony
10 designations by 6 p.m. on the date two days before the witness testimony may be
11 introduced and any counter designations shall be served in writing by 6 p.m. on the date
12 before the witness testimony may be introduced.
- 13 5. Copies of documents may be used at trial in lieu of originals and shall not be deemed
14 inadmissible solely on the basis that they are copies. Upon request, both parties shall
15 make originals available to the other side, if available.
- 16 6. Both parties expect to use demonstrative exhibits, including graphic or audiovisual
17 presentations, to illustrate arguments and witness testimony and to aid the Court and the
18 jury's understanding of the same. Both parties anticipate revising and improving such
19 demonstratives until at least before trial. Therefore, any such demonstrative material
20 must be provided to the other party at least twenty-four hours before it is presented to
21 the Court or jury, to give the other party time to evaluate it and raise any objections with
22 the Court without interrupting the other party's case
- 23 7. Notice of a party's intended use of blow-ups (enlargements) of trial exhibits and of
24 ballooning, excerption, or highlighting of such exhibits need not be given (and need not
25 be exchanged as a demonstrative exhibit) so long as the party has identified its intention
26 to use the trial exhibit according to the preceding paragraph.
- 27 8. Demonstratives shall not go to the jury unless admitted into evidence.
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