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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 BLACK & DECKER (U.S.), INC., a
19 Maryland Corporation,

20 Defendant.

Case No. 12-cv-03922 NC

**AMENDED TENTATIVE RULING
ON PLAINTIFF'S REQUEST FOR
REBUTTAL TESTIMONY BY
EXPERT MARK BRINKERHOFF**

21 Today after the presentation of evidence to the jury, the parties discussed whether
22 plaintiff would be permitted to call expert Mark Brinkerhoff as a rebuttal expert. The
23 Court has further considered Brinkerhoff's report and amends its tentative ruling as
24 follows: if Black & Decker does not call Samuel Phillips as a witness, then Brinkerhoff
25 will not be permitted to present rebuttal testimony. This is because his previously
26 disclosed opinions were almost all in response to Phillips. And to the extent Brinkerhoff
27 has an independent opinion, that opinion would be cumulative of the testimony today from
28 plaintiff's COO, Andrew Hill. Hill, over the objection of Black & Decker, was permitted
to opine as to his failure analysis. Plaintiff does not need to rebut the testimony of its own

Case No. 12-cv-03922 NC
ORDER RE REBUTTAL EVIDENCE

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COO.

IT IS SO ORDERED.

Date: November 4, 2014



Nathanael M. Cousins
United States Magistrate Judge