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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

EAS SENSORSSENSE, INC.,  
Plaintiff,  
v.  
UNIVERSAL SURVEILLANCE  
CORPORATION  
Defendant.

Case No.: EDCV 04-1603 GW (AJWx)

**PROTECTIVE ORDER**

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UNIVERSAL SURVEILLANCE  
CORPORATION, a California  
Corporation  
Counterclaim Plaintiff,  
v.  
EAS SENSORSSENSE, INC., a  
California Corporation, ARTHUR  
FUSS, an Individual, and ROES 1-10.  
Counterclaim Defendants.

Discovery Cutoff: June 1, 2009  
Motion Cutoff: July 6, 2009  
Pre-Trial Conf.: July 30, 2009  
**TRIAL DATE: August 11, 2009**

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1 **GOOD CAUSE STATEMENT**

2 Subject to the approval of the Court, all documents, material or information  
3 produced or created by a party or non-party (“Designating Party”) to a party in this  
4 action (“Receiving Party”) containing information which the Designating Party  
5 believes in good faith to be confidential or trade secret information, shall be  
6 designated as CONFIDENTIAL or CONFIDENTIAL-ATTORNEYS’ EYES  
7 ONLY by the Designating Party and maintained by the Receiving Party(ies)  
8 pursuant to the terms of this Order.

9 **A. Factual Background**

10 Plaintiff filed a complaint in this Court alleging Defendant’s infringement of  
11 Plaintiff’s patent. Defendant filed an answer denying infringement, *inter alia*, and  
12 asserted a counterclaim for 1) declaratory judgment on the issue of invalidity, non-  
13 infringement, and unenforceability of the patent at issue, 2) violation of Section  
14 43(a) of the Lanham Act, 3) interference with Defendant’s/Counterclaim Plaintiff’s  
15 prospective business advantage, and 4) unfair competition under Section 17200 of  
16 California’s *Business & Profession Code*. Counterclaim Defendants filed their  
17 answer denying the substance of these allegations. The issues to be adjudicated in  
18 this action will contemplate the request and production of information that is of  
19 such a sensitive, proprietary, non-public, and confidential nature to warrant the  
20 issuance of a protective order to protect its confidentiality.

21 The industry that underlies the disputes between the parties concerns theft  
22 deterrent devices and products, namely electronic article surveillance tags. The  
23 parties are not only competitors of each other but of other businesses not a party to  
24 this action. The parties possess business information such as research and  
25 development, product specifications, supplier lists, customer lists, cost-of-goods  
26 sold, pricing manufacturing agreements, and other information of a similar nature  
27 that are confidential, not disclosed to the public, and must, therefore, be protected  
28 from disclosure outside of this litigation. The parties agree that safeguards must be

1 in place to protect this highly sensitive information yet still allow for certain  
2 disclosures to opposing parties so as to avoid competitive harm.

3 **B. The Stipulation for Protective Order Focuses on the Protection of**  
4 **Commercially Sensitive Business Information**

5 Federal Rule Civil Procedure Rule 26(c)(7) permits the grant of a protective  
6 order upon a showing of good cause, and provides that the protection of a trade  
7 secret or other confidential commercial information is a proper basis for the  
8 issuance of a protective order. The party seeking such as order must demonstrate a  
9 particular and specific need for the protective order. *Gary v. Rodewald*, 133 F.R.D.  
10 39, 40 (N.D. Cal. 1990).

11 A protective order that focuses on preventing disclosure of particular  
12 information, e.g. confidential business information, where disclosure would “likely  
13 cause serious harm,” is supported by good cause. *Hayden v. Siemens Medical*  
14 *Systems, Inc.*, 106 F.R.D. 551, 556, (S.D.N.Y. 1985). To support a showing of  
15 good cause, however, a protective order must be sufficiently tailored in the  
16 information it seeks to protect, e.g. by designating certain classes or types of  
17 information. *Id.*

18 A “blanket” protective order, as opposed to a broader “umbrella” protective  
19 order, “permits the parties to protect the documents that they in good faith believe  
20 contain trade secrets or other confidential commercial information. Such protective  
21 orders are routinely agreed to by the parties and approved by the courts in  
22 commercial litigation, especially in cases between direct competitors.” *Bayer AG*  
23 *and Miles Inc. v. Barr Laboratories, Inc.*, 162 F.R.D. 456, 465 (S.D.N.Y. 1995).

24 The parties’ Stipulated Protective Order was drafted to protect the  
25 confidentiality and disclosure of each party’s confidential business information and  
26 to provide extra precautions on the disclosure of highly sensitive business  
27 information, as defined below, and as balanced against the need and use for such  
28 information to prosecute and defend this action. Confidential information, whether

1 designated CONFIDENTIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY,  
2 is open to challenge by either party, any third party, or the public.

3 **C. Conclusion**

4 Based on the foregoing demonstration of good cause in support of the  
5 Stipulation for Protective Order, this Order should be granted by the Court to  
6 protect that parties' confidential business information.

7 **STIPULATION AND ORDER**

8 In accordance with Rule 26(c) *Federal Rules of Civil Procedure* the parties  
9 stipulate and agree, through their respective counsel, to the entry of a protective  
10 order governing the disclosure during pretrial discovery and the subsequent  
11 handling of trade secret information, proprietary information, other confidential  
12 commercial, financial or personal information, and documents containing any such  
13 information (hereinafter collectively referred to as "CONFIDENTIAL  
14 INFORMATION"), as follows:

15 **1. INITIAL DESIGNATION.**

16 **1.1 Confidential Information.** In connection with discovery in this  
17 action, the parties may designate materials, including electronic files, documents,  
18 things, testimony, as "CONFIDENTIAL" under the terms of this Stipulated  
19 Protective Order ("Order"). Confidential information is information that has not  
20 been made public and which concerns or relates to the processes, operations, type  
21 or work, or apparatus, or to the production, sales, shipments, purchases, transfers,  
22 identification of customers, inventories, blueprints, amount or source of any  
23 income, profits, losses, or expenditures of any persons, firm, partnership,  
24 corporation or other organization, the disclosure of which information may have  
25 the effect of causing harm to the competitive position of the person, firm,  
26 partnership, corporation or to the organization from which the information was  
27 obtained, and, to the extent not already encompassed in the preceding definition,  
28 trade secrets as defined in California *Civil Code* § 3426.1. By designating a

1 document, thing, material, testimony or other information derived therefrom as  
2 “CONFIDENTIAL” under the terms of this Order, the party making the  
3 designation is certifying to the court that there is a good faith basis both in law and  
4 in fact for the designation within the meaning of Federal Rules of Civil Procedure  
5 26(g). Material designated as “CONFIDENTIAL” under the Order, the  
6 information contained therein, and any documents derived in whole or in part from  
7 material designated as “CONFIDENTIAL” (“CONFIDENTIAL MATERIAL”) shall only be used for the prosecution, defense or settlement of this action, and for  
8 no other purpose.  
9

10       **1.2 Produced Documents.** A party producing documents that it believes  
11 constitute or contain CONFIDENTIAL INFORMATION shall produce copies  
12 bearing a label designating such material “CONFIDENTIAL.” As used herein, the  
13 term "documents" includes all writings or other media on which information is  
14 recorded and other tangible things subject to production under the *Federal Rules of*  
15 *Civil Procedure*.

16       **1.3 Interrogatory Answers.** If a party answering an interrogatory  
17 believes in good faith under the criteria set forth in Paragraph 1.1 above that its  
18 answer contains CONFIDENTIAL INFORMATION, it shall set forth its answer in  
19 a separate document that is produced and designated as CONFIDENTIAL OR  
20 CONFIDENTIAL INFORMATION in the same manner as a produced document  
21 under subparagraph 1.2. The answers to interrogatories should make reference to  
22 the separately produced document containing the answer, but such document  
23 should not be attached to the interrogatories.

24       **1.4 Inspections of Documents.** In the event a party elects to produce files  
25 and records for inspection and the requesting party elects to inspect them, no  
26 designation of CONFIDENTIAL INFORMATION need be made in advance of the  
27 inspection. For purposes of such inspection, all materials produced shall be  
28 considered as CONFIDENTIAL INFORMATION. If the inspecting party selects

1 specified documents to be copied, the producing party shall designate  
2 CONFIDENTIAL INFORMATION in accordance with subparagraph 1.2 at the  
3 time the copies are produced.

4 **1.5 Deposition Transcripts.**

5 Testimony taken at a deposition, conference, hearing or trial and any  
6 corresponding exhibits may be designated as CONFIDENTIAL or  
7 CONFIDENTIAL MATERIAL by making a statement to that effect on the record  
8 at the deposition or other proceeding. Arrangements shall be made with the court  
9 reporter transcribing such proceeding to separately bind such portions of the  
10 transcript containing information designated as CONFIDENTIAL or  
11 CONFIDENTIAL MATERIAL and label such portions appropriately.

12 **1.6 Multi-page Documents.** A party may designate all pages of an  
13 integrated, multi-page document, including a deposition transcript, interrogatory  
14 answers and responses to document requests, as CONFIDENTIAL  
15 INFORMATION by placing the label specified in subparagraph 1.1 on the first  
16 page of the document. If a party wishes to designate only certain portions of an  
17 integrated, multi-page document as CONFIDENTIAL INFORMATION, it should  
18 designate such portions immediately below the label on the first page of the  
19 document and place the label specified in subparagraph 1.1 on each page of the  
20 document containing CONFIDENTIAL INFORMATION.

21 **1.7 List.** Within ten days after producing or designating  
22 CONFIDENTIAL INFORMATION, the producing or designating party shall  
23 provide a log identifying all such designated material. The log shall identify the  
24 documents or other material either by Bates stamp number(s) or by a description  
25 sufficiently detailed to make the document or material the basis for the claimed  
26 CONFIDENTIAL designation. The log shall state with specificity all the asserted  
27 basis which support the need to identify designated materials as CONFIDENTIAL.

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1           **1.8 Attorneys’ Eyes Only Material.** The parties may also designate  
2 discovery material or testimony of a highly confidential and/or proprietary nature  
3 as “ATTORNEYS’ EYES ONLY” (“Attorneys’ Eyes Only Material”), in the  
4 manner described in paragraph 1 above. Attorneys’ Eyes Only Material, and the  
5 information contained therein, may be disclosed only to the following: (i) the  
6 Court; (ii) mediators or arbitrators agreed upon by the parties; (iii) outside counsel  
7 for any party (and their staff); or (iv) other “qualified persons” listed in  
8 subparagraphs 3.1 herein. Attorneys’ Eyes Only Material shall not be disclosed to  
9 any party or to any officer, director or employee of any party unless agreed in  
10 writing by the parties or ordered by the Court.

11           **1.9 Later Designations.** A party may also designate information  
12 disclosed at a deposition as CONFIDENTIAL or ATTORNEYS’ EYES ONLY by  
13 notifying all parties in writing, within thirty (30) days of receipt of the transcript, of  
14 the specific pages and lines designated as such. Each party shall attach a copy of  
15 such written statement to the face of each transcript in its possession, custody or  
16 control. For seven (7) days after receipt of the transcript, depositions shall be  
17 treated as ATTORNEYS’ EYES ONLY, but after that period any portions not  
18 designated as CONFIDENTIAL or ATTORNEYS’ EYES ONLY may be  
19 disclosed.

20           **2. DESIGNATIONS BY ANOTHER PARTY.** If a third party  
21 produces documents that any party reasonably believes should be protected under  
22 this Order, within seven (7) days of the production said party to this action shall  
23 advise all counsel of its designation of such documents as CONFIDENTIAL or  
24 ATTORNEYS’ EYES ONLY and shall affix the corresponding stamp on such  
25 documents. For seven (7) days after receipt of the documents from a third party,  
26 the documents shall be treated as ATTORNEYS’ EYES ONLY, but after that  
27 period any portions not designated as CONFIDENTIAL or ATTORNEYS’ EYES

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1 ONLY may be disclosed. All parties shall cooperate to effectuate affixing the  
2 necessary stamp.

3 **3. HANDLING PRIOR TO TRIAL.**

4 **3.1 Authorized Disclosures.** CONFIDENTIAL INFORMATION  
5 produced pursuant to this Order may be disclosed, communicated or made  
6 available only to the following: (i) the Court; (ii) mediators or arbitrators agreed  
7 upon by the parties; (iii) outside counsel for any party (and their staff); (iv) in-  
8 house counsel for a party who have a legitimate need to access the confidential  
9 material for purposes of this action; and (v) qualified persons designated below:

- 10 a The parties and any of their officers, directors or employees deemed  
11 necessary by counsel to aid in the prosecution, defense or settlement of this action;
- 12 b. Experts, consultants and their staff who are consulted by counsel for a  
13 party;
- 14 c. Persons taking testimony involving such information, and necessary  
15 stenographic, videotape and clerical personnel;
- 16 d. Deposition witnesses who are “qualified persons”;
- 17 e. The author, addressees and recipients of the documents or any person  
18 who would have had access to such information by virtue of his /her employment;  
19 and,
- 20 f. Any other person as to whom the parties agree in writing.

21 Such disclosures are authorized only to the extent necessary to prosecute or  
22 defend this litigation. There will be no disclosure of CONFIDENTIAL  
23 INFORMATION to any person who is a manufacturer competitor (or an employee  
24 of a manufacturer competitor) of a party. There will be no disclosure of  
25 CONFIDENTIAL INFORMATION to any distributor or supplier (or an employees  
26 of a distributor or supplier) of a party unless within 14 days of written notice by the  
27 party wishing disclosure, either the parties agree to the terms of disclosure or the

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1 party objecting to a proposed disclosure files a motion objecting to disclosure and  
2 the court orders otherwise.

3       **3.2 Procedures.** CONFIDENTIAL MATERIAL may be shown to a  
4 “qualified person” listed in subparagraphs 3.1(a), (b), (d), (e) and (f) and Attorneys’  
5 Eyes Only Material to a “qualified person” listed in subparagraphs 3.1(b) and (g),  
6 only if the following procedure is used:

7       a. Prior to disclosure, the party seeking approval provides all other  
8 parties with: (1) the designated person’s name; (2) present employer and title; (3)  
9 resume or curriculum vitae for “qualified persons” under subparagraph 3.1(b)  
10 above only; and (4) a signed “Written Assurance” acknowledgement (Attachment  
11 “A”).

12       b. Within ten (10) calendar days after receipt of the information set out  
13 in subparagraph 3.2(a) above, any party may object to the designated person (by  
14 hand delivery, facsimile or overnight mail), based on good faith belief that the  
15 designated person may use Confidential Material or Attorneys’ Eyes Only  
16 Material for unauthorized purposes. Failure to object within ten days shall be  
17 deemed approval but shall not preclude objection based on subsequently learned  
18 facts. No party shall disclose material designated under this Order until an  
19 outstanding objection is resolved in accordance with the provisions of  
20 subparagraph 3.2(c) below.

21       c. Within ten (10) calendar days from receipt of notice of objection in  
22 accordance with Local Rule 37 of the Central District of California (“Local Rule”),  
23 the parties shall meet and confer and attempt to resolve the dispute. If the parties  
24 cannot resolve the dispute or the conference does not take place, the objecting  
25 party may move the Court by written stipulation as provided in Local Rule 37-2,  
26 for an order that access to the material be denied to the designated person.

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1           **3.3 Unauthorized Disclosures.** In the event of disclosure of material  
2 designated as CONFIDENTIAL MATERIAL or ATTORNEYS’ EYES ONLY  
3 Material, other than as authorized in this Order, counsel for the party responsible  
4 for the disclosure shall notify all parties of all pertinent facts, and shall make every  
5 effort to prevent further disclosure, including retrieving disclosed materials and  
6 copies of such materials and having unauthorized persons to whom disclosure was  
7 made sign a “Written Assurance” acknowledgement (Attachment “A”). Upon  
8 written stipulation, in accordance with Local Rule 37, the Court may order such  
9 further and additional relief as it deems necessary and just.

10           **3.4 Court Filings.** If Confidential Material, including any portion of a  
11 deposition transcript designated as CONFIDENTIAL or ATTORNEYS’ EYES  
12 ONLY is included in any of the papers to be filed with the Court, the Confidential  
13 Material or any portions of the pleadings which contain Confidential Material shall  
14 be labeled “Confidential – Subject to Court Order,” shall be lodged under seal, and  
15 shall be accompanied by an application to file the Confidential Material under seal  
16 directed to the judge to whom the papers are directed, until further order of this  
17 Court. If Confidential Material or Attorneys’ Eyes Only Material is used in any  
18 court proceeding in this action, it shall not lose its protected status through such  
19 use, and the party using it shall take reasonably available steps to protect its  
20 confidentiality during such use. The parties agree that exhibits provided to any jury  
21 empanelled in this proceeding shall be provided without the “CONFIDENTIAL” or  
22 “ATTORNEYS’ EYES ONLY” stamp.

23           **4. HANDLING DURING TRIAL.** CONFIDENTIAL  
24 INFORMATION or ATTORNEYS’ EYES ONLY which is subject to this order  
25 may be marked and used as trial exhibits by either party, subject to terms and  
26 conditions as imposed by the trial court upon application by the designating party.

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1           5.     **HANDLING AFTER TRIAL.** This Order shall survive the final  
2 termination of this action and shall protect all retained materials that have remained  
3 confidential through final termination of the case. Upon final termination of this  
4 case, counsel for the parties may each retain one copy of the pleadings, transcripts  
5 of any hearings or trials, transcripts of depositions, and exhibits from any hearings,  
6 trials or depositions. Counsel shall destroy or assemble and return to each other  
7 materials designated as confidential and all copies or summaries thereof.

8           6.     **RESTRICTIONS.** Nothing herein shall impose any restriction on the  
9 use or disclosure by a party of material: (1) obtained lawfully by a party hereto  
10 other than through discovery in this action, from a person who, to the best of such  
11 party's knowledge, was not at the time such materials were obtained by such party  
12 under a duty (contractual or otherwise) to maintain such materials in confidence;  
13 (2) that is public knowledge or became public knowledge after disclosure under  
14 this Order (other than through an act or omission or a person receiving material  
15 under this Order).

16           7.     **OTHER REQUESTS.** The Order shall be without prejudice to the  
17 right of any party: (i) to request re-designation of material as Confidential Material,  
18 Attorneys' Eyes Only, or neither; (ii) upon written stipulation, in accordance with  
19 Local Rule 37, to request the Court's ruling on whether a document or information  
20 is Confidential Material or Attorneys' Eyes Only Material, or whether its use  
21 should be restricted; (iii) to present a motion to the Court under FRCP 26(c) for a  
22 separate protective order as to any document or information, including restrictions  
23 differing from those specified herein. The Order shall not be deemed to prejudice  
24 the parties in any way in any future application for modification of this Order.

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8. **CUSTODY.** Recipients of material under this Order shall maintain such material secured and shall exercise the same standard of care with respect to storage, custody, use and dissemination of the material as they exercise for their own proprietary information, but in no event shall the standard be less than that of a reasonable person.

This order shall be binding on the parties when signed regardless of whether and when this Court endorses this Order.

**IT IS SO ORDERED.**

March 06, 2009

Dated: \_\_\_\_\_



\_\_\_\_\_  
The Honorable Andrew J. Wistrich  
Magistrate – United States District Court

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**EXHIBIT A**  
**WRITTEN ASSURANCE**

I, \_\_\_\_\_ (print name),  
reside at \_\_\_\_\_, in the City of  
\_\_\_\_\_, \_\_\_\_\_. I am employed by \_\_\_\_\_,  
with a business address of \_\_\_\_\_, in  
the City of \_\_\_\_\_, \_\_\_\_\_. I have read and understand the  
Stipulation for Protective Order (“Order”) filed in the case of *EAS Sensorsense, Inc. v. Universal Surveillance Corporation, et al.*, United States District Court Case EDCV04-1603 GW (AJWx). I agree to comply with and be bound by the provisions of the Order. I will not divulge Confidential Material or Attorneys’ Eyes Only Material (as those terms are defined in the Order) to persons other than those specifically authorized by the Order. I will not copy, retain, or use, except solely for the purpose of this litigation, any information protected by the Order except as expressly permitted by the Court, and will promptly return all protected information to the party providing me with the same.

Executed at \_\_\_\_\_, \_\_\_\_\_ (insert city and state), this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Signature

**PROOF OF SERVICE**  
(Sections 1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA        )  
  ) ss.  
COUNTY OF LOS ANGELES )

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is: 888 South Figueroa Street, Suite 1800, Los Angeles, California 90017-5455.

On February 24, 2009, I served the foregoing document described as **[PROPOSED] PROTECTIVE ORDER** in this action as follows:

***SEE ATTACHED SERVICE LIST***

***EFILE*** - The above individuals are registered with the District Court for service and filing of documents in this case. Said document was transmitted to the above registrants via e-filing.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed this February 24, 2009, at Los Angeles, California.

/s/ Sara Rodriguez  
SARA RODRIGUEZ \_\_\_\_\_

**SERVICE LIST**  
*EAS Sensorsense, Inc. v. Universal surveillance Corp.*  
USDC Case No. EDCV04-1603 GW (AJWx)

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Thomas V. Girardi  
Graham B. Lippsmith  
Girardi Keese  
1126 Wilshire Blvd  
Los Angeles, A 90017  
213-977-0211  
213-481-1554  
**Attorneys for  
Defendant/Counterclaimant  
UNIVERSAL SURVEILLANCE  
CORPORATION**

Ronald R. Camhi  
MICHELMAN & ROBINSON  
15760 Ventura Blvd., Suite 500  
Encino, California 91436  
818-783-5530  
213-783-5507 Fax  
**Attorneys for Plaintiff and  
Counterclaim Defendants EAS  
Sensorsense, Inc. and  
Arthur Fuss**

Maxwell M. Blecher  
BLECHER COLLINS, P.C.  
515 S Figueroa St, Suite 1750  
Los Angeles, CA 90071  
213-622-4222  
213-622-1656 Fax  
**Attorneys for Defendants and  
Counterclaimant Universal  
Surveillance Corporation**

Milord A. Keshishian  
MILORD & ASSOCIATES  
2029 Century Park East  
Suite 2100  
Los Angeles, CA 90067  
310-226-7878  
310-226-7879  
**Attorneys for Defendants and  
Counterclaimant Universal  
Surveillance Corporation**

Robert R. Waters  
Waters Law Offices  
10503 Timberwood Circle, Suite 116  
Louisville, KY 40223  
502-425-2424  
**Attorneys for Plaintiff and  
Counterclaim Defendants EAS  
Sensorsense, Inc. and  
Arthur Fuss**