

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application Serial No.: 76/644283
Trademark: UNIVERSAL NIGHT SCOPE
Filed: August 04, 2004
Published in the *Official Gazette*: June 06, 2006
Our File No: PC-2105 OPP

10/10/2006 6THDMS2 00000141 76644283
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KNIGHT'S ARMAMENT COMPANY :
: :
Opposer, :
: :
v. :
OPTICAL SYSTEMS TECHNOLOGY, INC.:
: :
Applicant. :
----- X

Opposition No.



10-05-2006

U.S. Patent & TMO/TM Mail Rcpt Dt: #

NOTICE OF OPPOSITION

KNIGHT'S ARMAMENT COMPANY ("Opposer"), a Florida company existing under the laws of the State of Florida, with its principal place of business in Titusville, Florida believes that it will be damaged by the registration of the trademark UNIVERSAL NIGHT SCOPE by Optical Systems Technology, Inc. ("Applicant") as applied for as an *intent-to-use* trademark Application Serial Number 76/644,283 ("Applicant's Application"), for use in connection with goods in International Class 009.

As grounds for opposition it is alleged that:

1. Opposer is a Florida company existing under the laws of Florida, with its principal place of business in Titusville, Florida.
2. Opposer develops, distributes, offers for sale, promotes, and/or sells and offers products under the UNIVERSAL NIGHT SIGHT and UNS trademarks for in-line sight weapons

and a variety of weapon mounted night vision devices including UKS and UNIVERSAL KNIGHTSCOPE trademarks for similar products.

3. Opposer develops, distributes, offers for sale, promotes, and/or sells and offers products under the UNIVERSAL KNIGHTSCOPE and KNIGHTSCOPE trademarks for optical scopes which provide vision capability in low light situations, with or without additional magnification devices and other related weapons.

4. Opposer is the owner of a federal trademark registration for the following trademark incorporating the term "NIGHT": KNIGHTSCOPE, Registration No. 2,949,160. Opposer is also the owner of two additional federal trademark registrations; namely, UNS, Registration No. 2,949,159 and UKS, Registration No. 2,949,158, which are acronyms for UNIVERSAL NIGHT SIGHT and UNIVERSAL KNIGHTSCOPE, respectively. Opposer is also the owner of federal trademark applications for the following trademarks: UNIVERSAL KNIGHTSCOPE, Serial No. 78/747,500, UNIVERSAL NIGHT SIGHT, Serial No. 78/747,483, and other trademarks. Based on these pending applications and registrations, as well as extensive common-law use of trademarks incorporating the sound and/or the terms "NIGHT" and "SCOPE," Opposer owns and has trademark rights which preclude Applicant's use of the terms "NIGHT" and "SCOPE" in connection with optical scopes and in-line sight weapons in OSTI's Application for UNIVERSAL NIGHT SCOPE.

5. Opposer is the owner of the following State of Florida registered trademarks used as a mark under class 0009: UNIVERSAL NIGHT SIGHT, trade mark number T0600000031, registered January 10, 2006 and UNS, trademark number T0600000032, registered January 10, 2006. Based on these registrations, as well as extensive common-law use of the trademarks as stated above, Applicant is precluded from the use of the related terms that are confusingly similar

in connection with optical scopes and in-line sight weapons in their Application for UNIVERSAL NIGHT SCOPE.

6. Opposer has used Opposer's Trademark UNIVERSAL KNIGHTSCOPE in interstate commerce in the U.S. since at least as early as September 20, 2000 in connection with International Class 009, for "optical scopes for providing vision capability in low light situations, with or without additional magnification devices."

7. Opposer has used Opposer's Registered Trademark "KNIGHTSCOPE," in interstate commerce in the U.S. since at least as early as August 1, 2003 in connection with Class 009, for optical scopes which provide vision capability in low light situations, with or without additional magnification devices.

8. Opposer has expended substantial amounts of money, time and effort in advertising, promoting and popularizing Opposer's Trademarks UNIVERSAL KNIGHTSCOPE and KNIGHTSCOPE. The trade, industry, and public have throughout the years, associated and attributed usage of Opposer's Trademarks to Opposer, so that the trade, in general, and the purchasing public, in particular, have come to know and recognize Opposer's Trademarks and products and to know that the same originates with and belongs to Opposer.

9. Opposer's Trademarks are strong trademarks and have developed product recognition, goodwill and a good reputation exclusive to Opposer.

10. The purported UNIVERSAL NIGHT SCOPE mark covered by Applicant's Application is confusingly and deceptively similar to Opposer's Trademarks and Applications, which Opposer has been using prior to the filing of Applicant's Application. Hence, Applicant is not entitled to adopt, use, or seek registration of the purported UNIVERSAL NIGHT SCOPE mark in connection with the goods identified in Applicant's Application.

11. Opposer first filed Opposer's Registered Trademark Application for KNIGHTSCOPE on May 09, 2003, which is before Applicant filed their Application for UNIVERSAL NIGHT SCOPE. Opposer has a first use date at least as early as September 20, 2000, for the trademark UNIVERSAL KNIGHTSCOPE, this date being prior to any date claimed by or available to Applicant.

12. The goods identified in Applicant's Application as "optical scopes for firearms" in Class 9, are the same or are confusingly similar to the Class 9 goods identified by Opposer's Trademarks and Applicant's goods are likely to be distributed and sold by Applicant through the same channels of trade and to the same class of customers or purchasers as Opposer's goods. Such goods would reasonably be expected by the trade and purchasing public to emanate from or be sponsored by the same source.

13. Opposer's Trademarks and Applicant's purported mark are substantially identical in appearance, connotation, and pronunciation, so that simultaneous use of the respective marks will create a likelihood of confusion, mistake or deception among the trade and consumers.

14. Because of the strength of Opposer's Trademarks and because Applicant's purported mark is nearly identical thereto, any faults or imperfections in the goods of Applicant will reflect adversely on Opposer and its established goodwill and reputation, all to the detriment of Opposer unless the opposition is sustained.

15. Opposer clearly has superior and paramount rights as compared to Applicant because Opposer has used Opposer's Trademarks for UNIVERSAL KNIGHTSCOPE and KNIGHTSCOPE in interstate commerce in the U.S. continuously, since the dates of first use identified in paragraphs 6 and 7 *supra*, which is, at least as early as, September 2000. Opposer's rights clearly override any rights of Applicant, since Applicant filed an *intent-to-use* trademark

for UNIVERSAL NIGHT SCOPE on August 4, 2005. Opposer's trademark for UNIVERSAL KNIGHTSCOPE was published on August 09, 2006 and has not been opposed and will register in due course; Opposer's rights are clearly superior to Applicant's.

16. Applicant has committed fraud in applying for registration of the "UNIVERSAL NIGHT SCOPE" mark when Applicant filed a declaration containing false material misrepresentations to the United States Patent and Trademark Office; the material misrepresentations include, but are not limited to, Applicant's knowledge of Opposer's use of KNIGHTSCOPE and UNIVERSAL KNIGHTSCOPE as trademarks.

17. Applicant gained actual or constructive knowledge that Opposer, the prime government contract holder, was using the mark "KNIGHTSCOPE" and the related mark "UNIVERSAL KNIGHTSCOPE" when Applicant was working as a subcontractor for Opposer on a contract for the sale of night vision devices in commerce and Opposer was aware of Applicant's use of Opposer's registered marks UKS (Reg. No. 2,949.158), an acronym of UNIVERSAL KNIGHTSCOPE, and KNIGHTSCOPE (Reg. No. 2,949,160), respectively.

18. In addition, the record indicates that Applicant filed a disclaimer to the terms NIGHT and SCOPE stating, "No claim is made to the exclusive right to use "NIGHT SCOPE" apart from the mark as shown." Applicant's disclaimer together with Opposer's superior rights to UNIVERSAL KNIGHTSCOPE are further evidence that Applicant's entire trademark must be rejected by the U.S. Patent and Trademark Office since there are no rights left to Applicant.

19. If, for any reason, a determination is made that Opposer does not possess superior and paramount rights to the trademark UNIVERSAL KNIGHTSCOPE, Opposer avers that the term or phrase "universal night scope" is generic, and is thus ineligible for registration. A generic term is one that refers to the genus of which a particular product or service is a species.

The phrase "universal night scope" is widely and generically used by others in connection with optical scopes and/or night vision devices attached to weapons. A search of the Internet via the www.google.com search engine using the terms "universal night scope" reveals approximately 5,350,000 results that are related to variations of the terms "universal night scope." "Universal night scope" generically refers to a type of optical scope that can be attached to different firearms, etc. and is thus ineligible for trademark protection.

20. If Applicant were granted registration of UNIVERSAL NIGHT SCOPE, it would thereby obtain a *prima facie* exclusive right to use the mark in connection with the goods described in its application, and use this exclusive right to harass Opposer and others who, like Opposer, are currently and legitimately using the generic phrase "universal night scope" in connection with goods in International Class 009, thus causing them damage and injury.

21. Opposer alleges in the alternative, as another ground for refusal of the registration to Applicant, that the term or phrase "universal night scope" is descriptive, and is thus ineligible for registration. The phrase "universal night scope" describes a quality, characteristic, function, feature, purpose or use of the optical scopes for firearms, which are the goods specified in Applicant's application. "Universal" is used to describe the compatibility feature of the device which can be used on just about any rifle or carbine. "Night scope" is descriptive of the function of allowing the user to see in low light situations, such as night time. Furthermore, a search of the Internet via the www.google.com search engine reveals about 5,350,000 results for "universal night scope."

22. As of March 17, 2006, Applicant received a denial of Applicant's protest of the award of a government contract to Opposer by the U. S. Government Accountability Office (GAO) Report of Protest Nos. B-296516.2 and B-296516.3. In the denial of the protest, the

GAO stated that Applicant had no superior rights to intellectual property such as the trademark, UNS which is an acronym for the trademark UNIVERSAL NIGHT SCOPE.

23. The protest denial supports the fact that Applicant's Declaration was clearly false when Applicant filed the *intent-to-use* application for the UNIVERSAL NIGHT SCOPE mark, and falsely claimed a right to use the mark.

24. If Applicant were granted registration of its mark, it would thereby obtain a *prima facie* exclusive right to use the mark in connection with the goods described in its application, thus inhibiting competition, curtailing the freedom of the public to use the language involved, and causing damage and injury to be suffered by Opposer and others who, like Opposer, are currently and legitimately using the descriptive phrase "universal night scope" in connection with optical scopes and night vision devices.

25. Additionally, Applicant has already falsely accused Opposer of exploitation of its contract with Applicant to facilitate Opposer's sale to the military of an optical night vision device. Again, Applicant filed protests with the government against the award of government contracts to Opposer, falsely alleging trademark rights, and the protests were found NOT to have any merit. Thus, if granted the registration of UNIVERSAL NIGHT SCOPE, Applicant could potentially misuse its exclusive right in an anticompetitive manner to harass Opposer, its competitor, and cause Opposer to suffer further damage and injury.

26. For the above reasons, Opposer expressly alleges and asserts that registration of the mark "UNIVERSAL NIGHT SCOPE" by Applicant for the referenced goods would be inconsistent with the standards for registration set forth in 15 U.S.C. §§1052, 1063 and other applicable authority.

WHEREFORE, Opposer respectfully requests that this Opposition be sustained and that registration of Applicant's "UNIVERSAL NIGHT SCOPE" mark be refused.

The government filing fee of \$300.00 is attached hereto, together with a duplicate copy of this Notice of Opposition.

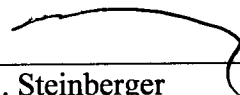
In accordance with 37 C.F.R. § 2.104(a), a duplicate copy of this Notice of Opposition is attached.

Respectfully submitted,

KNIGHT'S ARMAMENT COMPANY

Date


10/4/06



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing NOTICE OF OPPOSITION to registration of application Serial No. 76/76/644283, "UNIVERSAL NIGHT SCOPE", together with a check in the amount of \$300.00, a duplicate copy and postcard receipt, were deposited with the U.S. Postal Service on the date shown below as Express Mail No. EV216771149 US to the Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA. 22313-1451 and by first class mail to Mark A. Willard and David V. Radack, Eckert, Seamans, Cherin & Mellott, LLC, 600 Grant Street, 44th Floor, Pittsburgh, PA. 15219, and Cami Dawson Boyd, Munck Butrus, 900 Three Galleria Tower, 13155 Noel Road, Dallas, Texas 75240, Counsels of Record for Applicant, Optical Systems Technology, Inc., this 4 day of October, 2006.



Brian S. Steinberger