

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

OPTICAL SYSTEMS TECHNOLOGY, INC. )  
Petitioner, )  
v. )  
KNIGHT'S ARMAMENT COMPANY )  
Registrant. )

Cancellation No.: 92044819  
Registration No.: 2,949,159

Attorney's Reference: PC-1968

**TTAB**

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P. O. Box 1451  
Alexandria, VA 22313-1451

**ANSWER TO PETITION TO CANCEL REGISTRATON NO. 2,949,159**

Registrant, KNIGHT'S ARMAMENT COMPANY (hereinafter "REGISTRANT") in answer to the Petition to Cancel filed by OPTICAL SYSTEMS TECHNOLOGY, INC. (hereinafter "PETITIONER") against Registrant's trademark No. 2,949,159, registered on May 10, 2005, answers the Petition for Cancellation as follows:

1. REGISTRANT is without sufficient information to admit or deny the allegations of paragraph 1, the only paragraph in the statement of grounds for cancellation, and each and every allegation set forth in paragraph 1 is accordingly denied.

**AFFIRMATIVE DEFENSES**

2. REGISTRANT is actively using their mark in connection with the services listed in the subject Registration, and has not abandoned their mark. REGISTRANT's mark is being used actively in association with the sale of optical scopes which provide vision capability in low light situations, with or without additional magnification devices.



3. REGISTRANT's use of their mark predates PETITIONER's first use of September 2002, and appropriate affidavits will be filed with documents showing use of the mark UNS as the acronym for the mark Universal Night Sight at least as early as 2001. PETITIONER had actual or constructive knowledge of REGISTRANT's early use of their mark UNS based on their being a subcontractor to REGISTRANT in the production of REGISTRANT'S Model KnightScope.

4. REGISTRANT's rights to their mark can be established to be clearly senior to the PETITIONER's mark. REGISTRANT's mark was filed for in May 2003, with a continuous use in interstate commerce that can be established at least as early as 2001 through the present. The PETITIONER's mark for UNS was filed in June 2004, alleging a first use in September 2002.

5. REGISTRANT's rights to their mark can be established as that of a prime contractor with PETITIONER working as a subcontractor under the direction and control to REGISTRANT in the development of optical copes for firearms. PETITIONER had actual or constructive knowledge that REGISTRANT was using the marks UNS and the related mark Universal Night Sight when PETITIONER prepared Engineering Drawings for REGISTRANT.

6. PETITIONER is not entitled to cancellation of REGISTRANT's mark for fraud or unclean hands. PETITIONER had actual or constructive knowledge of REGISTRANT's prior use of the mark and now that the registration has been granted, considerable economic prejudice is created for REGISTRANT as a result of this Petition for Cancellation.

7. PETITIONER is not entitled to cancellation of REGISTRANT's mark for estoppel. PETITIONER had actual or constructive knowledge of REGISTRANT's prior use of the mark as a subcontractor of REGISTRANT for a period of time since at least as early as 2001. PETITIONER's conduct over this long period of time, has resulted in an estoppel against cancellation.

8. PETITIONER committed fraud in applying for their respective marks with the U.S. Patent & Trademark Office. PETITIONER filed DECLARATIONS in their respective applications for their marks that "The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. sec. 101, and that such willful false statements may jeopardize the validity of the application or any resulting registration , , , to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance as to likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements set forth in the application are true, that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true." PETITIONER had actual or constructive knowledge and notice of REGISTRANT's prior use, in commerce, of the marks for which PETITIONER now seeks registration. Thus, PETITIONER made false material misrepresentations to the U.S. Patent & Trademark Office when they filed their respective marks UNS and Universal Night Sight.

9. Cancellation of REGISTRANT's mark UNS will result in damage and injury to REGISTRANT.

**COUNTER-CLAIMS**

10. The allegations of paragraphs 1 – 9 are incorporated herein.

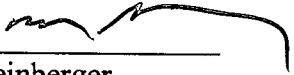
**RELIEF REQUESTED**

REGISTRANT respectfully requests that this cancellation proceeding be dismissed and that the registration No. 2,949,159 for UNS continue as a valid trademark.

This answer is submitted in triplicate. Please conduct all correspondence in this matter with the attorney listed at the below address.


Respectfully submitted,

Date: November 18, 2005

  
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Certificate of Service  
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The person whose signature appears below confirms that the above Answer has been filed with the United States Patent and Trademark Office, Trademark Trial and Appeal Board, P. O. Box 1451, Alexandria, VA 22313-1451, by Express Mail, Post Office to Addressee, No. EV 216770404 US and by First-Class mail in an envelope to David V. Radack, Eckert Seamans Cherin & Mellott, LLC, 600 Grant Street, 44<sup>th</sup> Floor, Pittsburgh, PA 15219, Attorney for Petitioner, this 18<sup>TH</sup> day of November 2005.

 11/18/05  
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Brian S. Steinberger