

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
76.516, 796

Attorney's Reference:PC-1968



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

12-28-2005
U.S. Patent & TMO/TM Mail Rpt Dt. #11

MOTION TO SUSPEND PROCEEDINGS PURSUANT TO 37 CFR §2.117(a)

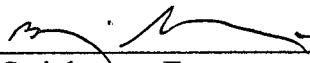
Registrant, by its attorney, hereby moves, pursuant to Trademark Rule 2.117(a), for suspension of the subject proceeding for Cancellation No. 92044819, pending the resolution of three (3) Notices of Opposition, filed herewith. Trademark applications filed by Petitioner are opposed by Registrant; the marks applied for by Petitioner and dates of filing are:

- DUALBAND UNIVERSAL NIGHT SIGHT, Application Serial No. 76/599,396
filed June 24, 2004
- DUNS, Application Serial No. 76/599,397, filed June 24, 2004
- MUNS, Application Serial No. 76/599,377, filed June 24, 2004

As grounds in support of this motion, Registrant asserts that suspension of the cancellation action is necessary because of important allegations and facts raised in the enclosed oppositions, and the successful conclusion of these oppositions will result in the termination of the cancellation proceeding.

Respectfully submitted,

LAW OFFICES OF BRIAN S. STEINBERGER, P.A.

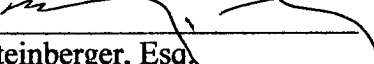
By:  12/28/05

Brian S. Steinberger, Esq.
Joyce P. Morlin, Esq.
101 Brevard Avenue
Cocoa, FL 32922
(321) 633-5080

Attorneys for Knight's Armament Company

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing MOTION TO SUSPEND PROCEEDINGS PURSUANT TO 37 CFR §2.117(a) was deposited with the U.S. Postal Service on the date shown below as Express Mail No. EV216770608US 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, Counsel for Applicant, Optical Systems Technology, Inc., this 28 day of December, 2005.



Brian S. Steinberger, Esq.
Joyce P. Morlin, Esq.
101 Brevard Avenue
Cocoa, FL 32922
(321) 633-5080

Attorneys for Knight's Armament Company

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

In re Application Serial No.: 76/599,396
Trademark: DUALBAND UNIVERSAL NIGHT SIGHT
Filed: June 24, 2004
Published in the *Official Gazette*: August 30, 2005
Our File No: PC-1981 OPP

----- X
KNIGHT'S ARMAMENT COMPANY :
:
Opposer, :
:
v. : Opposition No.
:
OPTICAL SYSTEMS TECHNOLOGY, INC.:
:
Applicant. :
----- X

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 DUALBAND UNIVERSAL NIGHT SIGHT by Optical Systems Technology, Inc. ("Applicant") as applied for in Application Serial Number 76/599,396 ("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 and UKS and UNIVERSAL KNIGHTSCOPE for similar products.

3. Opposer develops, distributes, offers for sale, promotes, and/or sells and offers products under the UNIVERSAL NIGHT SIGHT and UNS 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 KNIGHT SCOPE, 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 term "NIGHT," Opposer owns trademark rights which preclude Applicant's use of the term "NIGHT" in connection with optical scopes and in-line sight weapons in their Application for DUALBAND UNIVERSAL NIGHT SIGHT.

5. Opposer has used Opposer's Trademark UNIVERSAL NIGHT SIGHT in interstate commerce in the U.S. since December, 2000 in connection with International Class 009, for "optical scopes for providing vision capability in low light situations, with or without additional magnification devices."

6. Opposer has used Opposer's Trademark "UNS", an acronym for UNIVERSAL NIGHT SIGHT, 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.

7. Opposer has expended substantial amounts of money, time and effort in advertising, promoting and popularizing Opposer's Trademarks UNIVERSAL NIGHT SIGHT and UNS. 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.

8. Opposer has used Opposer's Trademark UNIVERSAL NIGHT SIGHT in interstate commerce openly, notoriously and continuously since the date of first use, which is at least as early as December, 2000 for International Class 009.

9. Opposer has used Opposer's Trademark UNS in interstate commerce openly, notoriously and continuously since the date of first use, which is at least as early as August 1, 2003 for International Class 009.

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

11. The purported DUALBAND UNIVERSAL NIGHT SIGHT 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 DUALBAND UNIVERSAL NIGHT SIGHT mark in connection with the goods identified in Applicant's Application.

12. Opposer first filed Opposer's Trademark Application for UNIVERSAL NIGHT SIGHT on May 09, 2003, which is before Applicant filed their Application for DUALBAND UNIVERSAL NIGHT SIGHT; Opposer has a first use date at least as early as December, 2000, this date being prior to any date claimed by or available to Applicant.

13. The goods identified in Applicant's Application are the same 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.

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

15. 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.

16. Opposer clearly has superior and paramount rights as compared to Applicant because Opposer has used Opposer's Trademarks for UNIVERSAL NIGHT SIGHT and UNS in interstate commerce in the U.S. continuously, since the dates of first use identified in paragraphs 6 and 8 *supra*.

17. Applicant has committed fraud in applying for registration of the "DUALBAND UNIVERSAL NIGHT SIGHT" 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 UNS and UNIVERSAL NIGHT SIGHT, UKS and UNIVERSAL KNIGHTSCOPE as trademarks.

18. Applicant gained actual or constructive knowledge that Opposer, the prime government contract holder, was using the mark "UNS" and the related mark "UNIVERSAL NIGHT SIGHT" 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 and UNS, which are acronyms of UNIVERSAL KNIGHTSCOPE and UNIVERSAL NIGHT SIGHT, respectively.

19. Further, Opposer expressly alleges Applicant had knowledge of Opposer's pending application for "UNIVERSAL NIGHT SIGHT," Serial No. 76/516,798 which is now abandoned and for which Opposer is now reapplying for registration as Trademark Application Serial No. 78/747,483.

20. In addition, the record indicates that Applicant filed a disclaimer to the terms DUALBAND and NIGHT SIGHT stating, "no claim is made to the exclusive right to use "DUALBAND and NIGHT SIGHT" apart from the mark as shown." Applicant's disclaimer together with Opposer's superior rights to UNIVERSAL NIGHT SIGHT is 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.

21. For these reasons, Opposer expressly alleges and asserts that registration of the mark "DUALBAND UNIVERSAL NIGHT SIGHT" 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 "DUALBAND UNIVERSAL NIGHT SIGHT" mark be refused.

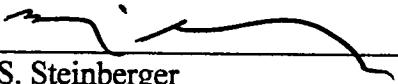
The government filing fee of \$300.00 is attached hereto, together with a duplicate copy of this Notice of Opposition.

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

12/28/05
Date



Brian S. Steinberger
Law Offices of Brian S. Steinberger, P.A.
101 Brevard Avenue
Cocoa, FL 32922
(321) 633-5080
Attorney for Opposer

CERTIFICATE OF SERVICE

I hereby certify that the foregoing NOTICE OF OPPOSITION to registration of application Serial No. 76/599,396, "DUALBAND UNIVERSAL NIGHT SIGHT", 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. EV216770599 W 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, Counsel for Applicant, Optical Systems Technology, Inc., this 28th day of December, 2005.



Brian S. Steinberger

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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 KNIGHT SCOPE, 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 term "NIGHT," Opposer owns trademark rights which preclude Applicant's use of the term "NIGHT" in connection with optical scopes and in-line sight weapons in their Application for DUALBAND UNIVERSAL NIGHT SIGHT.

5. Opposer has used Opposer's Trademark UNIVERSAL NIGHT SIGHT in interstate commerce in the U.S. since December, 2000 in connection with International Class 009, for "optical scopes for providing vision capability in low light situations, with or without additional magnification devices."

6. Opposer has used Opposer's Trademark "UNS", an acronym for UNIVERSAL NIGHT SIGHT, 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.

7. Opposer has expended substantial amounts of money, time and effort in advertising, promoting and popularizing Opposer's Trademarks UNIVERSAL NIGHT SIGHT and UNS. 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.

8. Opposer has used Opposer's Trademark UNIVERSAL NIGHT SIGHT in interstate commerce openly, notoriously and continuously since the date of first use, which is at least as early as December, 2000 for International Class 009.

9. Opposer has used Opposer's Trademark UNS in interstate commerce openly, notoriously and continuously since the date of first use, which is at least as early as August 1, 2003 for International Class 009.

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

11. The purported MUNS mark covered by Applicant's Application is an acronym for MAGNUM UNIVERSAL NIGHT SIGHT and 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 MUNS mark in connection with the goods identified in Applicant's Application.

12. Opposer first filed Opposer's Trademark Application for UNIVERSAL NIGHT SIGHT (the spelled-out version of UNS) on May 09, 2003, which is before Applicant filed their

Application for MUNS. Opposer has a first use date at least as early as December, 2000, this date being prior to any date claimed by or available to Applicant.

13. The goods identified in Applicant's Application are the same 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.

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

15. 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.

16. Opposer clearly has superior and paramount rights as compared to Applicant because Opposer has used Opposer's Trademarks for UNIVERSAL NIGHT SIGHT and UNS in interstate commerce in the U.S. continuously, since the dates of first use identified in paragraphs 6 and 8 *supra*.

17. Applicant has committed fraud in applying for registration of the "MUNS" mark, an acronym for MAGNUM UNIVERSAL NIGHT SIGHT, 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 UNS and UNIVERSAL NIGHT SIGHT, UKS and UNIVERSAL KNIGHTSCOPE as trademarks.

18. Applicant gained actual or constructive knowledge that Opposer, the prime government contract holder, was using the mark "UNS" and the related mark "UNIVERSAL NIGHT SIGHT" 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 and UNS, which are acronyms of UNIVERSAL KNIGHT SCOPE and UNIVERSAL NIGHT SIGHT, respectively.

19. Further, Opposer expressly alleges Applicant had knowledge of Opposer's pending application for "UNIVERSAL NIGHT SIGHT," Serial No. 76/516,798 which is now abandoned and for which Opposer is now reapplying for registration as Trademark Application Serial No. 78/747,483.

20. In addition, the record indicates that Applicant is seeking to register MUNS which is the acronym for MAGNUM UNIVERSAL NIGHT SIGHT (Serial No. 76/599,378), a pending application of Applicant, wherein Applicant filed a disclaimer to the terms NIGHT SIGHT stating, "no claim is made to the exclusive right to use "NIGHT SIGHT" apart from the mark as shown." Applicant's disclaimer together with Opposer's superior rights to UNIVERSAL NIGHT SIGHT leave Applicant with the term MAGNUM, which is a generic and descriptive term in the weaponry art. Thus, Opposer provides 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 for the spelled-out version MAGNUM UNIVERSAL NIGHT SIGHT or the acronym MUNS.

21. For these reasons, Opposer expressly alleges and asserts that registration of the mark "MUNS" 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 "MUNS" mark be refused.

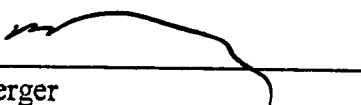
The government filing fee of \$300.00 is attached hereto, together with a duplicate copy of this Notice of Opposition.

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

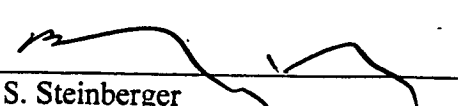
Date 12/28/05



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Attorney for Opposer

CERTIFICATE OF SERVICE

I hereby certify that the foregoing NOTICE OF OPPOSITION to registration of application Serial No. 76/599,377, "MUNS", 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. EV216770585US 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, Counsel for Applicant, Optical Systems Technology, Inc., this 28 day of December, 2005.



Brian S. Steinberger

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

In re Application Serial No.: 76/599,397
Trademark: DUNS
Filed: June 24, 2004
Published in the *Official Gazette*: August 30, 2005
Our File No: PC-1982 OPP

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KNIGHT'S ARMAMENT COMPANY :
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Opposer, :
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OPTICAL SYSTEMS TECHNOLOGY, INC.:
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Applicant. :
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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 and UKS and UNIVERSAL KNIGHTSCOPE for similar products.

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13. The goods identified in Applicant's Application are the same 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.

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

15. 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.

16. Opposer clearly has superior and paramount rights as compared to Applicant because Opposer has used Opposer's Trademarks for UNIVERSAL NIGHT SIGHT and UNS in interstate commerce in the U.S. continuously, since the dates of first use identified in paragraphs 6 and 8 supra.

17. Applicant has committed fraud in applying for registration of the "DUNS" mark, an acronym for DUALBAND UNIVERSAL NIGHT SIGHT, 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

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19. Further, Opposer expressly alleges Applicant had knowledge of Opposer's pending application for "UNIVERSAL NIGHT SIGHT," Serial No. 76/516,798 which is now abandoned and for which Opposer is now reapplying for registration as Trademark Application Serial No. 78/747,483.

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21. For these reasons, Opposer expressly alleges and asserts that registration of the mark "DUNS" 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 "DUNS" mark be refused.

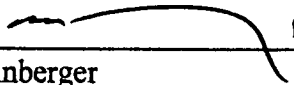
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Attorney for Opposer

CERTIFICATE OF SERVICE

I hereby certify that the foregoing NOTICE OF OPPOSITION to registration of application Serial No. 76/599,397, "DUNS", 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. E1216770510 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, Counsel for Applicant, Optical Systems Technology, Inc., this 28 day of December, 2005.



Brian S. Steinberger