



Visual Identity and Legal Risk in Military Replica Production

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This paper explores the overlooked role of industrial design rights in defense strategy, focusing on the legal implications of producing military decoys during the Russian-Ukrainian war. Using doctrinal legal analysis and real-world case studies, it examines how unauthorized replicas, both inflatable and constructed, imitate protected defense systems. The paper highlights Ukraine's legal restraint: instead of suspending IP rights under TRIPS Article 73, it maintained procedural continuity to protect its IP reputation. The paper identifies a growing legal gray zone in the copying of military designs for tactical purposes in the form of decoys, particularly by private contractors. The research finds that such phenomena may be tolerated by rights holders and society when they bring additional and more substantial benefits. The study addresses the motivations behind tolerating unauthorized replicas and the implications for future defense innovation. It concludes that design rights should be integrated into national defense IP strategies through tailored licensing and contract clauses, anticipating future commercialization and international legal exposure. The study underscores the need for proactive IP governance where industrial designs are treated as strategic assets with legal, tactical, and commercial consequences.

Keywords: Industrial Design, Decoys, Russian-Ukrainian War, Replica, Licensing

With the onset of the Russian-Ukrainian war, both countries have demonstrated unusual approaches to regulating intellectual property rights (IPRs). Some commentators even use striking phrases such as “IPRs as a weapon”^{1,2} to describe this phenomenon. Russia has indeed pursued a radical IPR waiver^{1,2} policy as a direct response to its lagging innovation development. Ukraine, on the other hand, addressed systemic challenges through legislative and administrative mechanisms: dealing with wartime difficulties in coordination with its IP office via the Law “On Protection of the Interests of Persons in the Sphere of Intellectual Property during Martial Law Introduced Due to the Armed Aggression of the Russian Federation against Ukraine” (which expired in 2025); and tackling ethical questions about the use of war symbols and other sensitive issues through administrative means³.

It is important to emphasize that both states based their chosen strategies on considerations of political and economic expediency. For Ukraine, maintaining the IP framework became an element of its international image, whereas for Russia it became an object of forced rethinking under sanctions pressure and technological isolation.

Ukraine has not invoked Article 73 of the TRIPS Agreement, which allows for the temporary suspension of IPRs for reasons of national security, including armed conflict. Although some commentators have claimed that the mentioned Law “eases the hurdles in the access and availability of medical products and medicine”¹, this claim is entirely unfounded and false. It is possible the author drew this conclusion under the influence of another study⁴ that explicitly called for activating the provisions of Article 73 TRIPS, but the mentioned Ukrainian Law contains no references to compulsory licensing, patent revocation, or permission for production without the rights holder's consent, etc. From a legal perspective, that Ukrainian Law focused on extending the duration of rights and suspending certain procedures, rather than modifying the regime for expanded access to the rights of others. Its goal was to preserve the stability of the IP system rather than radically reform it during the conflict.

Ukraine likely chose not to implement an IPR waiver so as not to damage its reputation as a jurisdiction that respects IPRs. Moreover, unlike Russia, Ukraine has been receiving a substantial number of innovations voluntarily, in the form of international aid.

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Interestingly, unlike Ukraine, Russia's decision to refuse IP protection for companies from "unfriendly countries" has exposed it to the prospect of numerous arbitration claims under bilateral investment treaties, which include IP as a protected asset⁵. In the absence of effective enforcement mechanisms in international law, arbitration has become one of the primary tools for corporate pressure on a violating state⁵. This example illustrates an alternative approach – legal pressure through investment protection.

The Ukrainian IP system is indeed facing new challenges that have the potential to grow to an international scale. Beyond the issues mentioned above, particular attention should be paid to questions of protecting the rights of foreign companies, managing joint developments, and preserving inventors' IP. This war has indeed given rise to unusual approaches and solutions.

In Ukraine, local offices of globally renowned defense companies are opening, large volumes of aid are being delivered by international donors, and military equipment requires servicing and disclosure of its technical features, among other things.

The presence of foreign manufacturers also raises the issue of technology imports during wartime. Such transfers are often governed by confidentiality agreements and use restrictions, which may conflict with practices of manufacturing imitations or retrofitting products for the needs of the Ukrainian armed forces.

When a system is designed by a single company, its maintenance is also effectively monopolized.⁶ Weapon decoys are produced without the participation of the original rights holders, creating the risk of similar dependencies in the event of later commercial use of these developments.

Among these challenges, the issue of protecting design rights in military products remains the least explored in research. This question becomes particularly interesting in the context of the widespread use of decoys by legal entities⁷ that are not the owners of the original design.

The use of decoys is not new, but Ukraine is demonstrating large-scale deployment of them⁸. Given resource constraints and the high tempo of combat operations, approaches that ensure mass production through simplicity and low cost take on critical importance⁹. In this context, the logic of creating decoys fits into a broader strategy aimed at deceiving the enemy, preserving real combat units,

and overloading targeting systems. Such measures are seen as part of a sustainable defense landscape in which affordability and reproducibility become tactical advantages. The development of computer vision and autonomous systems is making decoys an integral part of modern survival tactics^{10,11}. In other words, these solutions have significant commercial potential.

Despite active debates about copyright, inventions, and trademarks in wartime conditions, the protection of industrial designs in the defense sector remains largely outside the scope of enforcement and academic practice. Yet industrial designs often serve not only aesthetic but also tactical functions, especially in identifying equipment and weapons on the battlefield. Their unauthorized copying, including in the form of decoys, raises new questions about balancing security, necessity, and rights.

Accordingly, this study focuses on examining the issue of infringement of industrial design rights in decoys and the prospects for enforcement in this context. The research does not limit itself to formal legislation but also draws on real-world cases and technical specifics.

Decoys used in Ukraine

Among weapons and equipment, it is worth distinguishing between constructed replicas and inflatable decoys. The most discussed examples include:^{7,12,13}

- (i) F-16 Fighting Falcon – Original manufacturer: General Dynamics / Lockheed Martin – Decoy manufacturer: Inflatelch – Type: inflatable.
- (ii) M777 howitzer – Original manufacturer: BAE Systems / United Defense – Decoy manufacturer: Metinvest – Type: constructed.
- (iii) M142 HIMARS – Original manufacturer: Lockheed Martin – Decoy manufacturer: Inflatelch / Unknown Ukrainian factories – Type: inflatable / constructed
- (iv) M270 MLRS – Original manufacturer: Lockheed Martin – Decoy manufacturer: Inflatelch – Type: inflatable.
- (v) IRIS-T – Original manufacturer: Diehl Defence – Decoy manufacturer: Unknown – Type: constructed.
- (vi) Sentinel A4 radar – Original manufacturer: Lockheed Martin – Decoy manufacturer: Metinvest – Type: constructed.

- (vii) Patriot air-defense system – Original manufacturer: Raytheon Technologies – Decoy manufacturer: Inflatech – Type: inflatable.
- (viii) Leopard 2 – Original manufacturer: Krauss-Maffei Wegmann / Rheinmetall – Decoy manufacturer: Inflatech – Type: inflatable.

The list above features widely recognized examples of military equipment, whose IP is (or was) carefully protected by the manufacturers. These names are easy to find in trademark databases. Trademark protection can be renewed indefinitely. However, it is important to note that inventions, utility models, and industrial designs are not protected forever. All of the models listed above were originally developed beyond the duration of design rights protection but have undergone numerous improvements that can allow for renewed protection.

The issue of dual-use technologies further complicates the legal picture. Decoys, though originally created for military deception, can later be adapted for training, simulation, or civilian demonstration purposes. Once they enter these domains, the argument of military necessity weakens, and the risk of IP infringement increases. Any future commercialization must therefore account for licensing requirements and potential claims, especially in export-oriented scenarios.

Company Activity in Protecting Design Rights

Undoubtedly, such technical solutions are valuable for their functionality, so an obvious first step in protection, alongside trademark registration in target markets, is obtaining patents for inventions. Industrial designs do not protect functional elements or names. Is design registration important for the mentioned companies? Yes, we almost always see a comprehensive approach to rights protection among manufacturers¹⁵ and global leaders. In relevant databases, it is easy to find hundreds of industrial design applications filed by these companies, averaging around 50 applications per company across different jurisdictions, showing that this type of IP is of interest to them, even if not their top priority.

However, during the war, these companies have shown activity in Ukraine mainly in trademark registration. Overall, in Ukraine, in Locarno Classification classes 12 (Means of transport or hoisting) and 22 (Arms, pyrotechnic articles, articles for hunting, fishing and pest killing), only about 100

designs have been registered since February 2022, but not by the companies mentioned. Furthermore, since the start of Russian aggression, the annual number of design applications has nearly halved and, according to recent reports¹⁶, has not returned to pre-war levels.

There are several possible explanations for this phenomenon. Low confidence in Ukraine's IP enforcement system (companies are more inclined to invest in IP protection when they trust enforcement¹⁷) – this explanation is less likely given the noted presence of trademark applications. Expiration of potential protection terms for solutions – this has medium probability, since even older technical solutions often undergo significant improvements due to the challenges of the new war. Protection of unregistered designs – this is a plausible explanation, as Ukraine operates a European-style system where owners do not have to register designs to secure protection. Protection of IP through trade secrets and know-how is also a likely explanation, given the specifics of the defense industry. Reputational and business considerations – while decoys are helping Ukraine and global manufacturers make money on original products, they are effectively “in the same boat” with local producers, and IP disputes at this stage could be perceived negatively by the public. It is also likely that all key manufacturers of the decoys have licenses, but, probably, not every SME involved in the process.

It should be noted that for rights holders, what matters is not only registration but also effective enforcement. Even a registered design is essentially unprotected if the owner does not intend to defend their rights in court, and during wartime, such precedents are unlikely.

Even if Ukraine were to invoke Article 73 TRIPS, we see that decoys are being produced by private companies that earn income from defense contracts. The commercial purpose is a significant argument in favor of recognizing the consequences of unauthorized copying. The Czech company Inflatech has been in this business for quite some time and is an approved NATO supplier, so the legality of its activities is likely settled. The Ukrainian company Metinvest, along with other unnamed private Ukrainian manufacturers, repurposed its production to manufacture decoys with the onset of the war. We have no data or circumstantial evidence on licensing of Ukrainian producers, but the risks of lacking licenses are higher here than in the case of Inflatech;

however, for the reasons mentioned above, no disputes have yet arisen.

It is important to clarify that even when invoking national security under Article 73 TRIPS, the key limitation remains the requirement of proportionality and good faith – the measures should not be aimed solely at achieving economic benefit for private actors.

It is also important to anticipate the potential post-war situation. Ukrainian companies that have developed technological processes and gained experience in successfully producing decoys may want to scale their business, given global instability and corresponding market demand. In such cases, questions of the legality of decoy production will resurface. As private contractors accumulate experience in replicating complex systems, it is important to account for potential legal consequences in advance when transitioning production beyond wartime and purely defense needs⁶.

Comparison of Designs

Is there any risk of potential infringement at all? As mentioned above, Ukraine has a design protection regime similar to that of the EU, so European practice is applicable here. The individual character of designs is, first of all, determined by “the sector that the products in which the design is intended to be incorporated or to which it is intended to be applied belong”¹⁸. This is an accepted practice where transferring the visual appearance of a design from one type of product to another does not automatically constitute infringement if there is no overlap with the protected product class¹⁹. Classification of goods covered by designs, as in other types of IP²⁰, is important when comparing them. In the case of decoys that closely imitate the original form and are used for military purposes, this involves the deliberate reproduction of the design within the same sector, which means the risk of infringement remains.

Secondly, “the informed user of those products in accordance with their purpose and, with reference to that informed user, the degree of awareness of the prior art and the level of attention in the comparison (direct if possible) of the designs”¹⁸. In our specific case, the “users” want very cheap and the most realistic possible copy, so their overall impression must confirm the similarity. Paradoxically for IP protection practice, but entirely appropriate in the context of military

conflict, the quality of a decoy is defined by how closely it resembles the original design and how effectively it deceives the enemy.

Thus, the main informed user is someone deliberately purchasing a replica to fool the adversary. The problem of knowingly acquiring counterfeits is well known²¹, but even so, the counterfeit does not become the original simply because the informed user is aware of that. The rights holder still retains the right to claim infringement.

It should also be emphasized that in international practice, courts in complex technical cases may assign key importance not only to external similarity or the existence of infringement but also to the intended purpose of the manufacturer.²²

It is also necessary to consider that in wartime, the user is the soldier, or equipment operator or the defense organization, as well as the operators of adversary’s drones and reconnaissance systems that identify silhouettes by templates. This adds a new dimension to how decoys are perceived visually.

When comparing designs, the designer’s degree of freedom is assessed in developing their design. When purposefully creating a copy of a specific product, it is obvious that the degree of freedom is narrow. But in this context, the approach “the more the designer’s freedom in developing the registered European Union design is restricted, the more likely it is that minor differences between the designs at issue will be sufficient to make a different overall impression on the informed user”¹⁸ is unlikely to be used since the purpose of creating military decoy is to create a realistic replica.

It is important to note that “features that are solely dictated by a technical function and features that must necessarily be reproduced in their exact form and dimensions in order to allow interconnection with another product cannot contribute to the novelty and individual character of a design”¹⁸. This represents the main difference between the original product and the decoy – technical function.

The modern approach to IP regulation increasingly assumes that not every visual similarity should automatically be interpreted as infringement. In enforcement practice, a principle of non-intervention is gradually taking shape, according to which the assessment of design decisions takes into account the actual purpose of the object and the presence of objectives beyond imitation²². If a product, even one visually similar to the original, serves other purposes,

it may be considered lawful. However, if the primary goal is to imitate the visual features of the original object without the rights holder's permission and without other justification or special legal regime under IPRs, such copying may fall outside the acceptable bounds and create legal risks, especially in the context of scaling production or commercialization.

The use of different materials – such as plastic, rubber, or plywood instead of the metal used in the original product – can be applied to justify differences, as this affects the visual perception of the informed user. Employing materials different from the original may slightly reduce legal risks, but if such models achieve high visual accuracy, this does not eliminate the potential conflict with rights over non-functional but aesthetically significant elements.

In practice, we observe that the protected subject is the visual embodiment of a design associated with a specific type of product¹⁹. This means that copying the shape or silhouette of the original item may be deemed infringement if the reproduction occurs within the same product class and retains the overall visual impression.

Some differences in size are generally not significant²³, although decoy manufacturers are likely to aim for original dimensions. Moreover, designs that have been invalidated due to lack of novelty²⁴ may gain novelty again after implementation of new specific components, and such components may, in turn, be protected even if they are not registered²⁵.

Therefore, the risk of infringing original product designs is present for both inflatable and constructed decoys. Although at the early stages of the war, constructed decoys were created more crudely from available materials (e.g., using sewer pipes to imitate artillery¹³), current reports by journalists and analysts indicate that constructed decoys are now highly similar to the original products²⁶. Inflatable decoys were initially developed for maximum realism.

The legal ambiguity surrounding military decoys is compounded by the absence of explicit exemptions in international IP law for defensive imitation. While some national systems allow limited exceptions for state use, these are rarely extended to private contractors or wartime production outside formal procurement contracts. As a result, companies manufacturing decoys without licenses operate in a high-risk zone of tolerated illegality – one sustained only by the temporary unspoken suspension of enforcement and the public interest rationale of

national security. This creates a paradox: the more successful, useful, and realistic the decoy, the greater the chance it could be considered infringing, particularly if it enters commercial or export channels after the conflict. This also raises questions about cross-border enforcement, especially where the original design is protected in multiple jurisdictions. A failure to resolve these tensions may lead to legal fragmentation or even diplomatic friction, especially if original rights holders are defense firms with strong lobbying power. In such a scenario, the state's interest in technological autonomy should be reconciled with its international legal obligations and the commercial interests of its domestic producers. Therefore, a proactive legal framework, clarifying permissible use and offering structured compensation, may be a sustainable path forward.

Designs are increasingly becoming tools of competition in high-tech industries¹⁷. IP regulation increasingly treats industrial design not merely as a shape, but as a market asset that ensures product distinctiveness²⁷. In a saturated global market, design often remains the only factor distinguishing one product from another: it creates visual identity and carries aesthetic, cultural, and even social significance, allowing companies to segment markets and influence consumer behavior²⁷. In the defense sector, this becomes particularly important: the visual characteristics of military equipment may be perceived as part of a brand, technological image, or even political influence²⁷. Thus, the creation of imitative models (decoys), especially those with a high degree of visual similarity, constitutes an intrusion into this zone of distinctiveness and may be viewed as a threat to the rights holder's competitive position.

Design conveys values associated with image²⁷. For example, recognizable shapes of Western military equipment may be seen as symbols of technological superiority and political support. The production of decoys of such equipment, even for defense purposes, may be perceived as unauthorized use of that visual identity, particularly when done by commercial contractors. In such cases, the protection of design goes beyond mere rights to a shape: it becomes a matter of control over a visual symbol in international communication.

State-directed use of unauthorized replicas within the framework of national defense may fall under security exceptions, provided such measures are

temporary, proportionate, and aimed at safeguarding lives and infrastructure. By contrast, when private contractors exploit wartime demand for commercial profit (without explicit state authorization or structured licensing) the justification for tolerating design rights infringement becomes weaker. In such cases, the blurred line between public necessity and private gain exposes both states and companies to heightened post-war legal risks, including potential claims for compensation or reputational harm. This suggests that enforcement boundaries should be clarified in procurement contracts and licensing models to prevent tolerated illegality from drifting into unregulated commercial exploitation.

Critics may argue that even in wartime, unauthorized reproduction of protected designs undermines incentives for innovation, erodes the integrity of international IP frameworks, and risks setting precedents that persist into peacetime. Others may caution that tolerating illegality, even under exceptional circumstances, could invite opportunistic behavior from private actors who seek to justify infringing practices under the guise of national security. While utilitarian reasoning and pragmatic toleration may justify temporary infringements, the long-term sustainability of the IP system depends on restoring enforcement and ensuring that exceptions remain narrowly confined to genuine emergencies.

These observations highlight the need for a clearer normative framework. Beyond visual similarity and sectoral overlap, the decisive question is whether the reproduction of designs serves a legitimate purpose of national defense or crosses into impermissible commercial exploitation. Accordingly, the discussion must turn from the doctrinal test of similarity toward a broader inquiry into exceptions, proportionality, and the boundaries of tolerated illegality.

The Role of Designs in the IP Strategy of Defense Contractors

Industrial designs, including visual and interface elements, are becoming an integral part of IP strategy in the defense sector²⁸. Their use in warfare ranges from tolerated practices – such as imitation of military equipment (decoys), creation of false interfaces for military applications, and deceptive websites – to more controversial and rarely accepted cases like copying humanitarian aid packaging or forging military uniforms. Despite differing objectives, all

these examples fall within the domain of industrial design and underscore its strategic importance.

One of the key tools in this context is specialized licensing²⁸. These preliminary license agreements, concluded before the start of deliveries, allow for early regulation of access to technical documentation, software, and design elements. Unlike standard provisions, such licenses are tailored to military needs: enabling modification, creation of visual equivalents (including decoys), and integration into open architectures. This reduces the risk of access restrictions, enhances operational flexibility, and strengthens technological sovereignty.

Effective IP management in the defense sector requires a balanced distribution of rights between the state and contractors²⁹. Full transfer of rights to the state can limit the private sector's incentive to innovate and reduce flexibility in future upgrades. Therefore, flexible models of ownership and access are gaining importance, allowing governments to utilize critical components without depriving developers of motivation.

Thus, industrial design in the defense industry can also serve as a tool for strategic management and commercialization³⁰⁻³². Through licensing, franchising, and structured rights allocation, companies can turn design into a source of revenue, quality control, and scalable production³³. This approach transforms visual assets from mere aesthetics into valuable financial and operational resources. A forward-looking strategy should consider the role of industrial design in shaping perception and alliance signaling.

Visual elements of military hardware, such as silhouette, color, and form, have become semiotic tools in contemporary warfare. The deployment of replicas bearing Western visual characteristics may convey symbolic alignment with certain geopolitical blocs. This transforms industrial design from a purely functional or aesthetic domain into a medium of military branding and international signaling. Such use intensifies the importance of visual fidelity and deepens the potential for claims of unauthorized appropriation, even if the decoy lacks underlying technical features. Consequently, design rights enforcement becomes entangled with questions of legitimacy, alliance politics, and public perception.

Success in the defense industry requires more than a formal IP department, it demands deep integration of IP strategy into the company's innovation

process³⁰. Effective management of design rights, alongside patents and copyrights, becomes a cornerstone of resilience and sovereignty in national defense.

A notable and bright example is the strategy of the Czech company Inflattech, which produces realistic inflatable decoys of military equipment. These decoys replicate the visual appearance (probably under license), but add thermal and radar signatures of real systems, effectively deceiving enemy reconnaissance and targeting systems. At the same time, Inflattech patents its technical solutions taking design as a basis, adding technical features, and filing utility patent applications. The company builds a robust IP portfolio derived in part from the design cues of original systems – an illustrative case of intellectual property utilitarianism. This model combines the operational military value of design with the expansion of legal protection.

Conclusion

From the perspective of utilitarian theory, temporary infringements of design rights in wartime may be normatively justified if they generate a greater overall benefit to society. Utilitarianism prioritizes maximizing collective welfare, and in the context of armed conflict, the production of unauthorized decoys can be viewed as a measure that contributes directly to national security. If the replication of protected military designs leads to lives saved, strategic assets preserved, and technological resilience achieved, then the harm to private rights holders may be outweighed by the broader public good. In this sense, the balance shifts toward tolerating short-term limitations on exclusive rights in exchange for immediate and substantial benefits for society at large.

At the same time, such reasoning underscores the importance of proportionality and temporal limitation. The utilitarian framework does not call for abandoning IP protection altogether but rather for narrowly tailoring exceptions to situations where the expected utility, measured in human security, survival, and technological adaptation, exceeds the losses to rights holders.

The issue under consideration holds unique value within the broader context of IP, as it encompasses both the legal production of replicas and their intentional acquisition. We propose that such phenomena may be informally tolerated by rights holders and society, given the lack of enforcement or

public criticism observed to date, when they bring additional and more substantial benefits. At the same time, the niche of weapons decoy development is clearly promising, and legal departments of original equipment manufacturers should ensure appropriate protection and enforcement in the future. Effective IP management in the defense sector requires a specialized structure that includes both legal and technical experts capable of supporting the full lifecycle of a system¹⁴.

If a decoy is created and sold with visual accuracy specifically to deceive automated or human systems, it cannot be ignored as a legal object.

To balance national security with IP protection, it may be appropriate to establish a special ex post compensation mechanism for original equipment manufacturers whose rights are found to have been infringed, provided the infringement occurred within the framework of a defense contract and due to necessity. The potential use of investment arbitration⁵, if an investment agreement was breached, may also take on new significance in the context of military decoys. While there is no data on such disputes in Ukraine, global instability could give rise to them in further armed conflicts. Thus, the issue of copying defense designs may extend beyond the IP regime and enter the domain of international investment law.

IP management in the defense sector requires differentiated approaches for systems already in service and for newly acquired ones¹⁴. This is particularly important given limited access to technical documentation of military aid. In the case of decoys of Western equipment delivered under international aid programs, Ukrainian companies may not always receive complete technical blueprints from the original manufacturers. This creates legal vulnerabilities, especially when decoys are created for commercial purposes. In contrast, for new acquisitions, military customers could negotiate the transfer of certain technical data and rights to visual elements at the contract stage, creating legal certainty for future manufacturing and support. Thus, unlike approaches based on reproducing equipment from open sources, a proactive IP strategy integrated into the procurement phase could mitigate design rights infringement risks in future decoy production.

The inability to ensure a competitive framework for both original equipment and its imitations leads to increased costs and legal exposure⁶. Therefore, on the

scale of a full-scale war, the state must foster a healthy market.

Ukraine's experience demonstrates a high level of innovation, even under extreme resource constraints. The shift from heavy wooden mock-ups to technologically advanced decoys attests to the Ukrainian defense sector's capacity for rapid adoption and development of dual-use solutions. So far, Ukraine has aimed to strike a balance between defense needs and respect for IP rights. In the context of a large-scale war, this highlights the importance of a comprehensive approach to IP management, where legal, ethical, and military aspects are considered together laying the groundwork for the sustainable development of the defense industry and future international cooperation.

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