

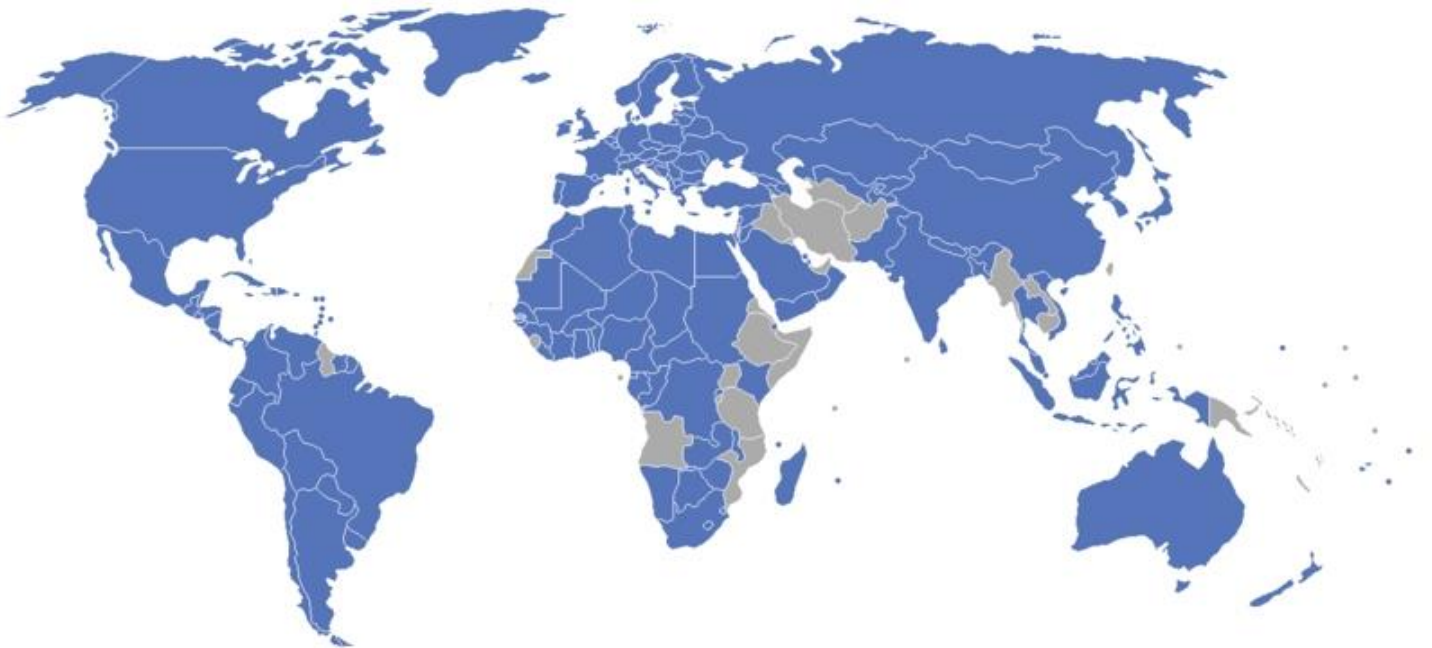


Philippine Army/Air Force in potential camouflage copyright and patent violation

By Guy Cramer, President/CEO of Hyperstealth Biotechnology Corp.
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Hyperstealth created the camouflage pattern CAMOPAT™ in 2007 for a U.S. Special Forces project under the code name "Kherocee™". Hyperstealth then publicized the pattern under the CAMOPAT name on May 12, 2008. International Copyright applies to the developer when the work is developed (in this case 2007). For a court of law to look at a copyright violation case brought about by the developer, there needs to be evidence that the work (in this case a camouflage pattern) was either registered with a country and/or the work was published where the infringing party had the ability to see the work and copy it, (this occurred on May 12, 2008. Image of Camopat right was released publicly on this date). Copyright violation does not need to be an exact copy to be in violation. If the infringing party's work is "Substantially Similar" then it is in violation.

Even without registration, copyright from a signatory of a country belonging to the Berne Convention is applicable to every signatory country of the convention. Countries shown in Blue below, In this case Canada is a member and the Philippines is also a member.



So why register a copyright? Prior to the internet, it was difficult to prove when a new work was created. By registering the work with a government copyright office, this would establish an origin for

the courts as well as offer the creator the ability to recoup all legal fees associated with any legal proceedings if they were successful in proving a violation.

Many copyright works are now established by publishing them on the internet first as we did in 2008.

Even though the work was established in 2007, if a violation took place between the established date and the published date of May 12, 2008 and the violating party had not seen the first work then the courts could determine that the infringing party did not copy as they likely had no knowledge of the original work.

If a secondary party filed a copyright on January 1, 2008 and claimed copyright violation on the creator of the original work that was established in 2007 but not published, the courts would look for evidence of the 2007 work origin and if it was verified that the work was created prior to the plaintiff, then the courts would rule against the plaintiff.

Hyperstealth began working with the Philippine Air Force in 2010 on the CAMOPAT pattern however within a few months, this program was put on hold by the Minister of Defense in 2010, citing lack of funds to change camouflage uniforms at that time.

Hyperstealth registered the copyright for the CAMOPAT pattern in the United States on February 24, 2012. Remember this only helps to establish the date for the courts and provide the creator the ability to recoup legal costs. The actual date that the courts will use in a violation case is a verifiable published internet site that anyone has access to. For CAMOPAT that date is May 12, 2008.

This U.S. registration means that this copyright is also covered in the Philippines under the following conventions or agreements that both the U.S. and Philippines have signed - Bilateral Oct. 21, 1948; Berne (Paris) Aug. 1, 1951; WTO Jan. 1, 1995; WCT Oct. 4, 2002; WPPT Oct. 4, 2002

In 2015 we were asked by the Philippine Army to provide a superior pattern to their current uniform as they had spoken with the Philippine Air Force about the 2010 program we were involved with. I surveyed the Philippine environments for the optimal colors to use with the CAMOPAT Pattern and produced cloth samples to be made into uniforms. Samples were made and Philippine Army soldiers in CAMOPAT were photographed in the same location as their current uniform camouflage and then compared to each other for overall effectiveness. Hyperstealth's CAMOPAT was superior in all aspects. I was asked to fly to the Philippines to make a presentation in November/December of 2015 to LT. GENERAL EDUARDO M. ANO (AFP) Commanding General, Philippine Army and his staff about the CAMOPAT pattern.

During this time, I had provided the graphic file our CAMOPAT Pattern to the Philippine Army to allow them to have the pattern printed at a large printing plant in Vietnam, as there is a MOU (Memorandum of Understanding) between both countries on projects like this. Uniform material was printed was sent to the Philippines to produce uniforms for field trials. The pattern proved effective in those field trials and I was informed that CAMOPAT would be exclusively licensed to the Philippine Military.

I was asked by the Philippine Military to register the CAMOPAT pattern for a Philippine Copyright as well as a Philippine Patent, both of which were submitted the Philippine Ministry of Justice (Copyright) and the Bureau of Patents, Intellectual Property Office (Patent) on June 6, 2016. The Philippine copyright was granted on August 22, 2016.

Under the Berne convention the camouflage pattern copyright was already protected in the Philippines, this Philippine Patent and Philippine Copyright registration was a requirement of the Philippine military to move forward although these are unnecessary to protect the pattern in the Philippines under the Berne Convention.

On August 23, 2016 the Philippine military began to release images of our CAMOPAT pattern on their new Army uniforms on the internet. On September 3rd, 2016 the Philippine Army announced on the Philippine national news that they were switching to our camouflage pattern, showing it on the [T.V. news](#) and in the newspapers.

We were informed of the specifications of the pattern as it would be released in their tender and they were very different then what I submitted and didn't make sense from a printing perspective for pattern repeats as print rollers are specific sizes and this didn't meet that requirement.



Photo source: ABS-CBN News (Danielle Rabolos) released on 23rd August 2016

I knew something was not right, so I flew to the Philippines in September 2016 to attend the release of the Army tender in the Philippines, I was informed that the Philippine Army had come up with their own pattern called PHILARPAT (Philippine Army Pattern). Once they released the pattern, I was able to quickly conclude that they had copied and modified our CAMOPAT pattern as they didn't want to pay the royalties to Hyperstealth, the Army deciding that they could do it themselves. It was determined by the Philippine government that we had a valid concern and that the Army could not proceed with that pattern at the tender. I assumed that they would go back to CAMOPAT.

On September 30, 2016 the Philippine Army released the pattern for the tender but it was not Hyperstealth's CAMOPAT pattern but a new Version (Version 2) of PHILARPAT. I was able to determine that the Army had again taken my pattern and modified it with a Photoshop filter, then overlaid one layer of our competitor's pattern called Multicam developed by Crye Precision in an attempt to make it look different from their Version 1 attempt.

The irony was that the cost of a uniform in their PHILARPAT without a royalty was going to cost the Philippine government about 100 pesos more per uniform (about \$2.00 USD) than a uniform with our CAMOPAT with our royalty included. With 126,465 uniforms, that a lot of extra money for a government that doesn't have much to spend.

In October I flew back down to the Philippines and asked for a meeting with LT. GENERAL EDUARDO M. ANO, Commanding General (CG) of the Philippine Army. His staff contacted me and arranged a meeting but when we arrived his staff informed us the Commanding General was unable to make the meeting and his staff would handle it on his behalf.

I was able to demonstrate at this meeting on October 27, 2016 evidence of infringement in a confidential 16-page report I presented to the staff of the CG in face to face meetings accompanying me was the Canadian Senior Trade Commissioner, Counsellor (Commercial), Embassy of Canada, who was representing Canada's interests on our company's behalf, he also had another Canadian Trade Commissioner with him. My argument was that this PHILARPAT Version 2 violated Hyperstealth's CAMOPAT. It also infringed our Philippine Patent as well as Crye Precision's "Multicam" Copyright.

In the meeting as they realized that their pattern was likely in violation, the Commanding General's staff attempted to cite "National Security" as a way to circumnavigate our copyright and patent claims but I was able to inform them that only applies to Philippine citizens or corporations who developed or invented something that might be critical for Philippine Defense. The Canadian Senior Trade Commissioner agreed with me and warned the CG staff that Canada would not accept their "National Security" citation.

I also stated that if our company wanted the largest return, we would simply wait for them to infringe prior to taking legal action and the penalties alone could amount to a much larger amount than the royalties, plus we would likely be awarded the past, present and future royalties and our legal expenses on top of that. I was attempting to help them out of a much larger mess before it happened.

The next day, October 28, 2016, just prior to awarding the tender, the Philippine Army "Indefinitely Postponed" the tender.

Upon my return to Canada, I was informed on November 25, 2016 that the Philippine Army had authorized 2000 uniforms in PHILARPAT and the Army was claiming that I had granted permission at the October 27th meeting which I had not. This was confirmed by the Canadian Embassy officials that were present that I had not granted them permission.

What we were not told was that the Philippine Army had come up with a third version of their PHILARPAT which was modified from CAMOPAT again, this time they removed the Multicam layer they used in Version 2 and moved around different portions of the pattern to try to claim it as an original work.



Philippine Army in PHILARPAT Version 3 camouflage

Every time I challenged the Philippine Army with copyright violation, they would simply change the pattern again.

In their view they had gotten around the copyright and patent violation by making enough changes which in my view they had not. The key to copyright violation is A) proving they were attempting to copy, which we have already done with PHILARPAT Versions 1 and 2. B) "Substantial Similarity" Version 1 was in violation as per the Philippine Government, Version 2 was in Violation as per my 16-page report and the fact that they postponed the tender the next day after our meeting.

Let's look closer at the similarities between CAMOPAT and PHILARPAT Version 3.



Hyperstealth: CAMOPAT

Copyright 2007, First Published May 12, 2008

U.S. Registered Copyright Feb. 24, 2012

Philippine Registered Copyright Aug. 22, 2016

Philippine Patent filed June 2016



Philippine Army: PHILARPAT Version 3

Philippine Patent filed November 2016

First published November 2016

The only thing I've modified in the image above with their pattern is the scale. They made it about half the scale which completely removes the benefit of the pattern in disrupting the human shape. You can see a similar shapes in both, which is a unique feature with CAMOPAT compared to most of our 14,000 other camouflage patterns, The micropattern (small elements) are not squares or rectangles with sharp corners, they are smooth and the darkest color always is surrounded with a border of the second brightest color, this is called a boundary luminance gradient and is used to trick the brain into seeing more contrast between the darkest color and the second darkest color. In their Version 2 the percentage of colors used versus Camopat was less than 0.1% for both the brightest (tan) and darkest colors (brown/black) which is another indicator that they copied the pattern. After we pointed this out, the difference in Version 3 is they have 2.8% more of the brown/black color and 3.2% less of the tan color which is still close but indicates they modified it slightly. Their color selection is also only a few percentage points from ours.

Copying a pattern and reducing the scale does not constitute a new original pattern. Modifying the pattern while retaining a similar look does not create a new work.

A design patent is infringed if an ordinary observer would think that the accused design is substantially the same as the patented design when the two designs are compared in the context of the prior art.

Copyright violation in art (in this case a camouflage pattern) is defined as “Substantially Similar”, it does not need to be exact. If the look is very similar, then it is in violation.

The Army is not just in violation of international IP but their own country's IP as they had us register both the Copyright and the Patent with the Philippines Government. The Philippine Army is now producing PHILARPAT (Version 3) in large quantities for the Philippine Army.

The sad part in all of this is that I was able to provide an effective pattern at tactical distances, their modifications, especially in reduction of scale has removed most of pattern's ability to disrupt the human shape making acquisition by the enemy much easier. Their change in colors even though they are small has a large impacted the effectiveness in the Near Infrared (Night Vision).



Lt. General Rey Guerrero October 26, 2017 wearing our CAMOPAT. The AFP branch (Philippine Armed Forces, Head Quarters) is authorized by Hyperstealth and under a Hyperstealth license to use our CAMOPAT pattern for their uniforms.



Secretary of National Defense (SND) Delfin Lorenzana wears Hyperstealth's CAMOPAT camouflage uniform November 30, 2016

There is a branch of the Philippine military that has been using our CAMOPAT pattern with our permission and under license since 2016 and that is the PAF branch which is the Headquarters that oversees all the branches.

In 2018 the Philippine Navy implemented our CAMOPAT pattern in Grays which I developed for their uniforms that closely matched their ship colors. Again this was done with our permission and under license.

The Philippine Air Force had us develop a CAMOPAT version in darker grays which was approved as their new uniform but they have suddenly decided to follow

the Philippine Army and changed the Army logo embedded in the PHILARPAT Version 3 pattern and copied our CAMOPAT Philippine Air Force colors for the new Philippine Air Force version.

The AFP (HQ Branch) continues to use our CAMOPAT pattern we recolored for the Philippine Air Force with our permission, Philippine Air Force CAMOPAT below image on right.



Brigadier General Rolando S Acop AFP, Commander, Air Force Reserve Command as Presiding Officer January 14, 2019. The AFP is authorized by Hyperstealth to use the Air Force colored version of CAMOPAT developed by Hyperstealth for the Philippine Air Force and the AFP is under a Hyperstealth license to use CAMOPAT for their uniforms. The Philippine Air Force has decided not to use the Hyperstealth CAMOPAT but instead use the royalty free PHILARPAT Version 3 used by the Army to avoid paying royalties. The camouflage pattern in the middle and left in the photo are the old Philippine Army/Air Force camouflage.

There have been some soldiers in the Army that have worn uniforms made with our CAMOPAT pattern with our permission and under license but these are not in large numbers.

Hyperstealth is considering our options and reminding the Philippine Army and Philippine Air Force that the Philippines have signed the following agreements which protect Intellectual Property which include Patents, Copyrights and Trademarks produced outside of the Philippines for use within the Philippines; the Bilateral agreement between the U.S. and the Philippines for IP protection signed and

in force on October 21, 1948, the Berne Convention signed by the Philippines and in force August 1, 1951, The World Trade Organization (WTO) signed by the Philippines and in force January 1, 1995. The WIPO Copyright Treaty (WCT) is a special agreement under the Berne Convention which deals with the protection of works and the rights of their authors in the digital environment. In addition to the rights recognized by the Berne Convention, they are granted certain economic rights, signed by the Philippines on July 4, 2002 and in force October 4, 2002.

Hyperstealth continues to work with the Philippine Headquarters (PAF) branch and Philippine Navy which have both adhered to International IP agreements and their own country's IP.

I have had the pleasure of traveling to the Philippines a number of times and the people for the most part are a wonderful group who are polite, gracious and friendly, some have become like family to me. In a country that doesn't have a lot in comparison to many developed countries, ignoring IP is not the way to modernize to achieve the desired results. This could limit future business with Hyperstealth and other companies that have IP to protect and leave the country lagging in modernization.

**Sincerely,
Guy Cramer, President/CEO,
Hyperstealth Biotechnology Corp.
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"Camopat" and "Kherocee" are Trademarks of Guy Cramer and Timothy R. O'Neill

"Multicam" is a Trademark of Crye Precision

"PHILARPAT" is a trademark of the Philippine Armed Forces

"Hyperstealth" is a Registered Trademark of Hyperstealth Biotechnology Corp.

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