

Regulations on the Protection of Layout-Designs of Integrated Circuits

(Adopted at the 36th Executive Meeting of the State Council on March 28, 2001, promulgated by Decree No. 300 of the State Council of the People's Republic of China on April 2001, and effective as of the date of October 1, 2001)

Chapter I General Provisions

Article 1. These Regulations are formulated in order to protect the exclusive right of layout-design of integrated circuits, to encourage innovation of integrated circuits technology and to promote the development of science and technology.

Article 2. For the purposes of these Regulations:

(1) "integrated circuit" means semiconductor integrated circuit, that is, a product, in its intermediate or final form, which uses semiconductor material as its chip, in and/or on which two or more elements, at least one of which is an active element, and some or all of the interconnections are integrally formed and which is intended to perform a certain electronic function;

(2) "layout-design of integrated circuit"(hereinafter referred to as layout-design) means the three-dimensional disposition of the two or more elements, at least one of which is an active element, and some or all of the interconnections of an integrated circuit, or such a three-dimensional disposition prepared for the manufacture of an integrated circuit;

(3) "holder of the right of layout-design" means the natural person, the legal person or any other organization that, according to these Regulations, is entitled to the exclusive right of a layout-design;

(4) "reproduction" means the act of reproducing a layout-design or of reproducing an integrated circuit incorporating the layout-design;

(5) "commercial exploitation" means the act of importing, selling or otherwise distributing for commercial purposes a protected layout-design, or an integrated circuit

incorporating such a layout-design, or an article incorporating such an integrated circuit.

Article 3. Any layout-design created by a Chinese natural person, legal person or other organization shall be eligible for the exclusive right of layout-design in accordance with these Regulations.

Any layout-design created by a foreigner shall, where it is first commercially exploited in the territory of the People's Republic of China, be eligible for the exclusive right of layout-design in accordance with these Regulations.

Any layout-design created by a foreigner shall be eligible for the exclusive right of layout-design in accordance with these Regulations, if the country to which the foreigner belongs has concluded an agreement with China to protect layout-designs or both the country to which the foreigner belongs and China are party to an international treaty concerning the protection of layout-designs.

Article 4. Any layout-design which is to be protected shall be original in the sense that the layout-design is the result of the creator's own intellectual effort, and it is not commonplace among creators of layout-designs and manufacturers of integrated circuits at the time of its creation.

Where a layout-design which is to be protected consists of several commonplace layout-designs, the combination of these layout-designs taken as a whole shall be in compliance with the requirements referred to in the preceding paragraph.

Article 5. The protection of layout-designs under these Regulations shall not extend to ideas, procedures, methods of operations or mathematical concepts as such.

Article 6. The intellectual property administration department of the State Council is responsible for the relevant administrative work concerning the exclusive right of layout-design in accordance with these Regulations.

Chapter II Exclusive Right of Layout-design

Article 7. The holder of the right of layout-design shall enjoy the following exclusive right:

(1) reproducing a protected layout-design in its entirety or any part thereof that complies with the requirement of originality;

(2) commercially exploiting a protected layout-design, an integrated circuit

incorporating a protected layout-design, or an article incorporating such an integrated circuit.

Article 8. The exclusive right of layout-design is acquired after its being registered with the intellectual property administration department of the State Council.

Any unregistered layout-design shall not be protected under these Regulations.

Article 9. The exclusive right of layout-design shall belong to its creator, except as otherwise prescribed in these Regulations.

Where a layout-design is created according to the will and under the charge of a legal person or other organization, which shall bear responsibility for such layout-design, that legal person or other organization shall be the creator.

Where a layout-design is created by a natural person, that person shall be the creator.

Article 10. Where a layout-design is created jointly by two or more natural persons, legal persons or other organizations, the ownership of the exclusive right shall be agreed upon by the joint creators; in the absence of such an agreement or where the agreement is not clear, the exclusive right shall be owned jointly by the creators.

Article 11. Where a layout-design is created in execution of a commission, the ownership of the exclusive right shall be agreed upon by the person having commissioned and the person being commissioned; in the absence of such an agreement or where the agreement is not clear, the exclusive right shall be owned by the person being commissioned.

Article 12. The term of protection of the exclusive right of layout-design shall be 10 years counted from the date of filing an application for registration or from the date on which it was first commercially exploited anywhere in the world, whichever expires earlier. However, no matter whether it has been registered or commercially exploited, a layout-design shall no longer be protected under these Regulations 15 years after the date of the completion of its creation.

Article 13. Where the exclusive right of layout-design belongs to a natural person, the exclusive right shall, after the death of the natural person and within the term of protection as prescribed in these Regulations, be transferred in accordance with the provisions of the

Succession Law.

Where the exclusive right of a layout-design belongs to a legal person or other organization, the exclusive right shall, after the legal person or other organization is reorganized or ceases to exist and within the term of protection as prescribed in these Regulations, be owned by the legal person or other organization which succeeds to its rights and obligations; where there is no such legal person or other organization to succeed to its rights and obligations, the layout-design shall enter into the public domain.

Chapter III Registration of Layout-design

Article 14. The intellectual property administration department of the State Council is responsible for the registration of layout-design and receives applications for layout-design registration.

Article 15. Where a layout-design for which registration is applied relates to the security or other vital interests of the State and is required to be kept secret, the application shall be handled in accordance with the relevant provisions of the State.

Article 16. Where an application for registration of layout-design is filed, the following shall be submitted:

- (1) an application form for registration of layout-design;
- (2) a copy or drawing of the layout-design;
- (3) where the layout-design has been put into commercial exploitation, a sample of that integrated circuit incorporating the layout-design;
- (4) other materials required by the intellectual property administration department of the State Council.

Article 17. Any layout-design, if no application for its registration has been filed with the intellectual property administration department of the State Council within two years from the date on which it was first commercially exploited anywhere in the world, shall no longer be registered by the intellectual property administration department of the State Council.

Article 18. Where, after preliminary examination of an application for registration of layout-design, it is found that there is no cause for rejection of the application, the

intellectual property administration department of the State Council shall register it, issue the registration certificate and announce it.

Article 19. Where the applicant for layout-design registration is not satisfied with the decision of the intellectual property administration department of the State Council rejecting its or his application for registration, it or he may, within three months from the date of receipt of the notification, request the intellectual property administration department of the State Council to make a reexamination. The intellectual property administration department of the State Council shall, after reexamination, make a decision and notify the applicant for layout-design registration. Where the applicant for layout-design registration is still not satisfied with the decision of reexamination of the intellectual property administration department of the State Council, it or he may, within three months from the date of receipt of the notification, bring a law suit before the people's court.

Article 20. Where, after the registration of a layout-design, the intellectual property administration department of the State Council finds that the registration does not comply with the provisions of these Regulations, it shall revoke the registration, notify the holder of the right of layout-design and announce it. Where the holder of the right of layout-design is not satisfied with the decision of the intellectual property administration department of the State Council revoking the registration of layout-design, it or he may, within three months from receipt of the notification, bring a law suit before the people's court.

Article 21. Until the announcement of the layout-design registration, staff members of the intellectual property administration department of the State Council have the duty to keep its contents secret.

Chapter IV Exercise of Exclusive Right of Layout-design

Article 22. The holder of the right of layout-design may assign its or his exclusive right or give other persons a license to exploit its or his layout-design.

Where the exclusive right of layout-design is assigned, the parties concerned shall conclude a written contract and register it with the intellectual property administration

department of the State Council. The intellectual property administration department of the State Council shall announce the registration. The assignment of the exclusive right of layout-design shall take effect as of the date of registration.

Where a license to exploit a layout-design is given to others, the parties shall conclude a written contract.

Article 23. Any of the following acts may be performed without the authorization of the holder of the right of layout-design and without any payment of remuneration:

(1) reproducing a protected layout-design for private purposes or for the sole purpose of evaluation, analysis, research or teaching;

(2) creating a layout-design with originality on the basis of the evaluation or analysis of a protected layout-design referred to in the preceding sub-paragraph;

(3) reproducing or commercially exploiting a layout-design that is identical with the layout-design of another person but is created independently by oneself.

Article 24. Where a protected layout-design, an integrated circuit incorporating such a layout-design, or an article incorporating such an integrated circuit has been put on the market by, or with the consent of, the holder of the right of layout-design, anyone may exploit it for commercial purposes without the authorization of, nor payment of remuneration to, the holder of the right of layout-design.

Article 25. In the case of a national emergency, or in any extraordinary state of affairs, or for the purposes of public interests, or where it is determined according to the law by the people's court or the supervision and inspection department against unfair competition that there is unfair competition on the part of the holder of the right of layout-design and there is a need to give remedy, the intellectual property administration department of the State Council may grant a non-voluntary license to exploit the layout-design.

Article 26. Any decision made by the intellectual property administration department of the State Council granting a non-voluntary license to exploit a layout-design shall be notified promptly to the holder of the right of layout-design.

In the decision granting a non-voluntary license to exploit a layout-design, the scope and duration of the exploitation shall be specified on the basis of the reasons justifying the grant. The scope shall be limited to non-commercial use for public purposes,

or to remedy an act of the holder of the right of layout-design determined according to the law by the people's court or the supervision and inspection department against unfair competition to be one of unfair competition.

When the circumstances which led to such non-voluntary license cease to exist and are unlikely to recur, the intellectual property administration department of the State Council shall, after reviewing upon the request of the holder of the right of layout-design, make a decision to terminate the non-voluntary license.

Article 27. Any natural person, legal person or other organization that is granted a non-voluntary license to exploit a layout-design shall not have an exclusive right to exploit it and shall not have the right to authorize exploitation by any other person.

Article 28. Any natural person, legal person or other organization that is granted a non-voluntary license shall pay to the holder of the right of layout-design a reasonable remuneration, the amount of which shall be fixed by both parties in consultations; where the parties fail to reach an agreement, the intellectual property administration department of the State Council shall make an adjudication.

Article 29. Where the holder of the right of layout-design is not satisfied with the decision of the intellectual property administration department of the State Council granting a non-voluntary license to exploit the layout-design, or where the holder of the right of layout-design or, the natural person, legal person or other organization that is granted the non-voluntary license is not satisfied with the ruling made by the intellectual property administration department of the State Council regarding the remuneration payable for exploitation, it or he may, within three months from the date of receipt of notification, bring a law suit before the people's court.

Chapter V Legal Liability

Article 30. Except as otherwise prescribed in these Regulations, where any person commits any of the following acts without the authorization of the holder of the right of layout-design, he or it must stop the acts immediately and bear liability to compensate for the damage:

- (1) reproducing a protected layout-design in its entirety or any part thereof that

complies with the requirement of originality;

(2) importing, selling, or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit incorporating such a layout-design, or an article incorporating such an integrated circuit.

The amount of compensation for the damage caused by an infringement of the exclusive right of layout-design shall be the profits which the infringer has earned through the infringement or the losses suffered by the person whose right was infringed, including the reasonable expenses paid by the infringed person for the purposes of stopping the infringement.

Article 31. Where a dispute arises as a result of the exploitation of a layout-design without the authorization of the holder of the right of layout-design, that is, the infringement of the exclusive right of layout-design, it shall be settled through consultation by the parties concerned. Where the parties are not willing to consult with each other or where the consultation fails, the holder of the right of layout-design or any interested party may bring a law suit before the people's court, or request the intellectual property administration department of the State Council to handle the matter. When the intellectual property administration department of the State Council handling the matter considers that the infringement is established, it may order the infringer to stop the infringing act immediately, and confiscate or destroy the infringing products or articles. If the party concerned is not satisfied with the decision, he may, within 15 days from the date of receipt of the notification, bring a law suit before the people's court in accordance with the Administrative Procedure Law of the People's Republic of China. If, within the said time limit, the infringer does not institute legal proceedings and refuses to stop the infringing act, the intellectual property administration department of the State Council may apply to the people's court for compulsory enforcement. The intellectual property administration department of the State Council may, upon the request of the parties, mediate in the amount of compensation for the damage caused by the infringement of the exclusive right of layout-design. If the mediation fails, the parties may bring a law suit before the people's court in accordance with the Civil Procedure Law of the People's Republic of China.

Article 32. Where any holder of the right of layout-design or interested party has evidence

to prove that another person is infringing or will soon infringe its or his exclusive right and that if such infringing act is not checked or prevented from occurring in time, it is likely to cause irreparable harm to its or his `legitimate rights, it or he may, before any legal proceedings are instituted, request the people's court to adopt measures for ordering the suspension of relevant acts and the preservation of property.

Article 33. Where any person commercially exploits an integrated circuit which is incorporated an unlawfully reproduced layout-design, or an article which is incorporated an integrated circuit with unlawfully reproduced layout-design, and if at the time of acquiring the said integrated circuit or article, that person did not know and had no reasonable ground to know that the said integrated circuit incorporated an unlawfully reproduced layout-design, or the said article incorporated an integrated circuit with unlawfully reproduced layout-design, the commercial exploitation of such integrated circuit or article by that person shall not be deemed as infringing the right of layout design.

After being notified that the integrated circuit or the article is incorporated with an unlawfully-reproduced layout-design, the person referred to in the preceding paragraph may, subject to payment of reasonable remuneration to the holder of the right of layout-design, continue to commercially exploit the stock on hand or ordered before the notification.

Article 34. Where any staff member of the intellectual property administration department of the State Council, in the work of layout-design administration, neglects his duty, abuses his power or commits illegalities for personal gains or by fraudulent means shall be investigated for criminal liability in accordance with law if a crime is constituted, if the case is not serious enough to constitute a crime, he shall be given administrative sanction in accordance with law.

Chapter VI Supplementary Provisions

Article 35. When applying for layout-design registration and going through other formalities, fees shall be paid as prescribed. The standard of the fees shall be fixed by the price administration department of the State Council and the intellectual property administration department of the State Council, and shall be announced by the intellectual

property administration department of the State Council.

Article 36. These Regulations shall enter into force as of October 1, 2001.