

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 2, 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 rights of layout-designs of integrated circuits, encourage innovation of integrated circuit technologies and promote 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, in which semiconductor is used as its chip, the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in and/or on the chip and which is intended to perform an electronic function;

(2) "layout-design of integrated circuit" (hereinafter referred to as layout-design) means the three-dimensional disposition of the 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 an integrated circuit intended for manufacture;

(3) "right holder 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 layout-design;

(4) "reproduction" means the act of reproducing a layout-design or of reproducing an integrated circuit in which the layout-design is incorporated;

(5) "commercial exploitation" means the act of importing, selling or providing in any other form, for commercial purposes, a protected layout-design, an integrated circuit in which the layout-design is incorporated, 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 accorded the exclusive rights 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 accorded the exclusive rights of layout-design in accordance with these Regulations.

Any layout-design created by a foreigner shall be accorded the exclusive rights 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-design or the country to which the foreigner belongs and China are both parties to an international treaty concerning the protection of layout-design.

Article 4 Any layout-design under protection shall be original, that is, the layout-design is the intellectual achievement of the creator himself, and it is not commonplace among creators of layout-designs and manufacturers of integrated circuit at the time of its creation.

Where a layout-design under protection consists of several commonplace layout-designs, the combination of these layout-designs taken as a whole shall be in compliance with the conditions referred to in the preceding paragraph.

Article 5 Protection to layout-designs under these Regulations shall not extend to ideas, processing methods, operations and mathematics concepts.

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

Chapter II Exclusive Rights of Layout-designs

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

- (1) reproducing the protected layout-design in its entirety or for any creative part thereof;
- (2) commercially exploiting the protected layout-design, an integrated circuit in which the layout-design is incorporated, or an article incorporating such an integrated circuit.

Article 8 The exclusive rights of layout-designs take effect upon their registration 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 rights of layout-designs shall belong to their creators, except as otherwise provided for 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 also bear responsibility therefrom, such legal person or other organization shall be the creator.

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

Article 10 Where a layout-design is created by the cooperating efforts of two or more natural persons, legal persons or other organizations, the ownership of the exclusive rights shall be agreed upon by the co-operators; in absence of such an agreement or explicit agreement, the exclusive rights shall be owned jointly by the co-operators.

Article 11 Where a layout-design is created in execution of a commission, the ownership of the exclusive rights shall be agreed upon between the commissioning and the commissioned parties; in absence of such an agreement or explicit agreement, the exclusive rights shall be owned by the commissioned party.

Article 12 The protection term of the exclusive rights of layout-designs shall be 10 years, counting from the date of filing the application for registration or from the date on which it is 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 at the expiration of 15 years from the date of the completion of its creation.

Article 13 Where the exclusive rights of a layout-design belong to a natural person, the exclusive rights shall, after the death of the natural person and within the term of protection as provided for in these Regulations, be transferred in accordance with the provisions of the Succession Law.

Where the exclusive rights of a layout-design belong to a legal person or other organization, the exclusive rights shall, after the change or the termination of the legal person or other organization and within the term of protection as provided for in these Regulations, be owned by the legal person or other organization which succeeds to its rights and obligations; where there is no such a legal person or other organization to succeed to its rights and obligations, the layout-design shall enter into public ownership.

Chapter III Registration of Layout-design

Article 14 The intellectual property administration department of the State Council is responsible for the registration of layout-designs and the acceptance of 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 the layout-design registration is applied for, the following shall be submitted:

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

Article 17 For any layout-design, if no application for registration has been filed with the intellectual property administration department of the State Council within two years from the date on which it is first commercially exploited anywhere in the world, it 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 layout-design registration, it is found that there is no reason for rejection, the intellectual property administration department of the State Council shall have it registered, issue the registration certificate and make an announcement.

Article 19 Where an applicant for layout-design registration is not satisfied with the decision of the intellectual property administration department of the State Council rejecting the application, 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 the 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 lawsuit before the people's court.

Article 20 Where, after the registration of a layout-design has been granted, the intellectual property administration department of the State Council finds that the registration does not comply with the provisions of these Regulations, it shall have it revoked, notify the right holder of the layout-design and make an announcement. Where the right holder of the layout-design is not satisfied with the decision of the intellectual property administration department of the State Council revoking the

layout-design registration, it or he may, within three months from receipt of the notification, bring a lawsuit before the people's court.

Article 21 Until the announcement of a 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 Exploitation Of Exclusive Rights Of Layout-Designs

Article 22 The right holder of a layout-design may have its or his exclusive rights assigned or license other persons to use its or his layout-design.

Where the exclusive rights of a layout-design are assigned, the parties concerned shall conclude a written contract and have it registered with the intellectual property administration department of the State Council. The intellectual property administration department of the State Council shall make an announcement. The assignment of the exclusive rights of a layout-design shall take effect as of the date of registration.

Where a layout-design is licensed to be used by other persons, the parties concerned shall conclude a written contract.

Article 23 A layout-design may be used without the authorization of its right holder and without any payment of remuneration under any of the following circumstances:

(1) reproducing the 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 the protected layout-design referred to in the preceding paragraph;

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

Article 24 For any protected layout-designs, integrated circuits in which the layout-designs are incorporated, or articles incorporating such integrated circuits, so long as they have been put on the market by the right holders of the layout-designs or with their authorization, anyone may exploit them for commercial purposes without the authorization of, nor payment of remuneration made to, the right holders of the layout-designs.

Article 25 In situations of national emergency, or in any extraordinary state of affairs, or for the purposes of public interests, or where it is determined according to law by the people's court or the

supervision and inspection department for unfair competition that there is unfair competition practice on the part of the right-holder 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 to remedy the unfair competition practice.

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 right holder of the 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 granting. The scope shall be limited to non-commercial use for public purposes or to the remedy required as determined according to law by the people's court or the supervision and inspection department for unfair competition of the right holder of layout-design.

Where the circumstances leading 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 right holder 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 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 non-voluntary license shall pay to the right holder of layout-design a reasonable exploitation fee, the amount of which shall be fixed by both parties through consultation; 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 right holder of a 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 right holder of a layout-design, the natural person, legal person or other organization that is granted non-voluntary license is not satisfied with the adjudication made by the intellectual property administration department of the State Council regarding the fee payable for exploitation, it or he may, within three months from the date of receipt of notification, bring a lawsuit before the people's court.

Chapter V Legal Liability

Article 30 Except as otherwise provided in these Regulations, without the authorization of the right holder of a layout-design, anyone committing any one of the following acts must stop the infringing act, and shall be liable for compensation for the damage:

- (1) reproducing the whole or any original part of a protected layout-design;
- (2) importing, selling or providing in any other form, for commercial purposes, any protected layout-design, integrated circuit in which the layout-design is incorporated, or article incorporating such an integrated circuit.

The amount of compensation for the damage caused by the infringement of the exclusive rights of a layout-design shall be assessed on the basis of the profits which the infringer has made from the infringement or the losses which the right holder of the layout-design has suffered, including the reasonable expenses of the infringed party for stopping the infringing act.

Article 31 Where a dispute arises as a result of the exploitation of a layout-design without the authorization of the right holder of the layout-design, that is, the infringement of the exclusive rights of the layout-design, it shall be settled through consultation by the parties concerned. Where they are not willing to or fail to settle the dispute through consultation, the right holder of the layout-design or any interested party may bring a lawsuit 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, he may, within 15 days from the date of receipt of the notification, bring a lawsuit before the people's court in accordance with the Administration Procedure Law of the People's Republic of China; if, after the expiration of the time limit, the infringer fails to bring a lawsuit 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 concerned, mediate on the amount of compensation for the damage caused by the infringement of the exclusive rights of a layout-design; if the mediation fails, the parties concerned may bring a lawsuit before the people's court in accordance with the Civil Procedure Law of the People's Republic of China.

Article 32 Where the right holder of a layout-design or an interested party has evidence to prove that another person is committing, or will soon commit, an infringement of its or his exclusive rights and that if such an infringement is not prevented from occurrence in time, it is likely to cause

irreparable harm to its or his legitimate rights, it or he may, before bring a lawsuit, make an application to the people's court for the adoption of measures to order the suspension of relevant acts and the preservation of property.

Article 33 Where anyone commercially exploits an integrated circuit in which a protected layout-design is incorporated or an article incorporating such an integrated circuit without knowing or without reasonable grounds to be expected to know at the time when it or he obtains the integrated circuit or the article that they incorporated an unlawfully reproduced layout-design, it or he shall not be deemed as infringing the exclusive rights of a layout-design.

After having received definite notice that the integrated circuit or the article incorporates unlawfully reproduced layout-design, the person referred to in the preceding paragraph may continue the commercial exploitation with respect to the stock on hand or ordered before the notice, but shall be liable to pay reasonable remuneration to the right holder of the layout-design.

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 commit 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 thereof 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.
