

Protection of Integrated Circuit Layout Designs Regulations

Implementing Rules

Full text

PART ONE GENERAL PROVISIONS

Article 1 Purpose

These Implementing Rules (Rules) have been formulated pursuant to the Protection of Integrated Circuit Layout Designs Regulations (the Regulations), in order to protect proprietary rights in integrated circuit layout designs (Layout Designs) and promote the development of, and innovations in, integrated circuit technology in China.

Article 2 Registration Authority

For the purposes of the Regulations, the term "administrative authority for intellectual property of the State Council" means the State Intellectual Property Office.

Article 3 Format To Be Used When Carrying out Procedures

The various documents specified in the Regulations and herein shall be in writing or in another format specified by the State Intellectual Property Office.

Article 4 Agencies

When Chinese work units or individuals wish to apply in China to register Layout Designs or handle other matters related to Layout Designs, they may appoint a patent agency to do so on their behalf.

When foreign nationals, foreign enterprises or other foreign organizations without a habitual residence or place of business in China wish to apply in China to register Layout Designs or handle other matters related to Layout Designs, they shall appoint a patent agency designated by the State Intellectual Property Office to do so on their behalf.

Article 5 Application Documents and Determination of Application Date

When applying to register a Layout Design with the State Intellectual Property Office, an application form for the registration of Layout Designs and a reproduction or drawing of the Layout Design shall be submitted. If commercial exploitation of the Layout Design has commenced before the application date, sample integrated circuits containing the Layout Design shall be submitted as well.

The date on which the State Intellectual Property Office receives the application documents for a Layout Design mentioned in the preceding paragraph shall be the application date. If the application documents are sent by mail, the date of the sending post office's postmark shall be the application date.

Article 6 Language of Documents

All documents submitted in accordance with the Regulations and these Rules shall be in Chinese. Where the State has prescribed unified scientific and technical terminology, the standard terms shall be used. If there is no unified Chinese translation for a foreign personal or place name or foreign scientific or technical term, the original term shall be indicated.

If any certificate or supporting document submitted in accordance with the Regulations and these Rules is in a foreign language, the State Intellectual Property Office may require the party concerned to supply a Chinese translation within a prescribed time limit if it considers this to be necessary. If the translation is not supplied within the time limit, such certificate or supporting document shall be deemed not to have been submitted.

Article 7 Delivery and Service of Documents

The postmark date of a document mailed to the State Intellectual Property Office shall be the date of submission. If the postmark date is unclear, the date of receipt of the document by the State Intellectual Property Office shall be the date of submission, unless the party concerned can supply evidence regarding the date of mailing.

Documents of the State Intellectual Property Office may be served on a party by mail, direct delivery or otherwise. If the party has appointed a patent agency, documents shall be delivered to the patent agency. If the party has not appointed a patent agency, documents shall be delivered to the contact person designated in the request.

Documents mailed by the State Intellectual Property Office shall be assumed to have been received by the party concerned after a lapse of 15 days from the date of sending.

The date of service of documents that provisions of the State Intellectual Property Office require to be delivered directly shall be the date of delivery.

If the address to which a document is to be sent is unclear and the document cannot be mailed, the document may be served on the party concerned by public announcement. Such document shall be deemed to have been served after the lapse of one month from the date of the announcement.

Article 8 Calculation of Time Limits

The first day of any time limit provided for in the Regulations or these Rules shall not be calculated as part of the time limit. If a time limit is calculated in years or months, the corresponding day of the last month of such time limit shall be the date of expiration. If there is no corresponding day in such month,

the last day of that month shall be the date of expiration.

If the date of expiration of a time limit is a statutory holiday, the first working day following the holiday shall be the date of expiration.

Article 9 Restoration of Rights and Extension of Time Limits

If, due to an event of force majeure, a party fails to observe a time limit provided for in these Rules or a time limit prescribed by the State Intellectual Property Office, and consequently forfeits his rights, he may within two months from the date of elimination of the obstacle, but not later than within two years from the date of expiration of the time limit, petition the State Intellectual Property Office for restoration of his rights. Such petition shall contain an explanation of the reasons and be accompanied by relevant supporting documents.

If, for legitimate reasons, a party fails to observe a time limit provided for in the Regulations or these Rules or a time limit prescribed by the State Intellectual Property Office, and consequently forfeits his rights, he may within two months from the date of receipt of a notice from the State Intellectual Property Office petition such authority for restoration of his rights. Such petition shall contain an explanation of the reasons.

If a party petitions for extension of a time limit prescribed by the State Intellectual Property Office, he shall explain the reasons to the State Intellectual Property Office and carry out the relevant procedure prior to the expiration of the time limit.

No petition may be filed for the extension of time limits specified in the Regulations.

Article 10 Joint Ownership

If a Layout Design is created in cooperation between two or more work units or individuals, the creators shall jointly apply for registration of the Layout Design. If there are contractual stipulations in respect thereof, such stipulations shall prevail.

With regard to proprietary rights in a Layout Design that involve joint ownership, no party with joint rights in the Layout Design may assign or pledge, or conclude a contract for a sole or exclusive licence with a third party in respect of the part of the rights that he holds without the consent of the other parties with joint rights in the Layout Design.

Article 11 Assignment of Proprietary Rights to Foreigners

When a Chinese work unit or individual assigns the proprietary rights in a Layout Design to a foreigner, it/he shall, when it/he registers the assignment with the State Intellectual Property Office, submit the document attesting that the competent State Council authority has permitted the assignment.

When the proprietary rights in a Layout Design are transferred, the party concerned shall carry out the procedures for the amendment of bibliographic items with the State Intellectual Property Office on the

strength of the relevant supporting documents or legal instruments.

PART TWO APPLICATION AND EXAMINATION FOR THE REGISTRATION OF LAYOUT DESIGNS

Article 12 Application Documents

If an application for the registration of a Layout Design is made in writing, an application form for the registration of a Layout Design (in duplicate) and a reproduction or drawing of the Layout Design shall be filed with the State Intellectual Property Office.

If an application for the registration of a Layout Design is made in another format specified by the State Intellectual Property Office, such format shall comply with the specified requirements.

If an applicant has appointed a patent agency to apply to the State Intellectual Property Office to register a Layout Design or carry out another procedure, the power of attorney specifying the scope of the power entrusted shall be submitted at the same time.

If there are two or more applicants and they have not appointed a patent agency, the first applicant indicated on the application form shall be their representative, unless otherwise stated in the application form.

Article 13 Application Form

Each of the following particulars shall be indicated on the application form for the registration of the Layout Design:

1. The name and address or residence of the applicant;
2. The applicant's nationality;
3. The title of the Layout Design;
4. The name of the creator of the Layout Design;
5. The date of completion of the creation of the Layout Design;
6. The type of integrated circuit on which the Layout Design is used;
7. if the applicant has appointed a patent agency, the relevant particulars that are to be indicated; if the applicant has not appointed a patent agency, the name, address, postal code and contact telephone number of his contact person;
8. if the Layout Design has been exploited commercially as mentioned in Article 17 of the Regulations,

the date on which such commercial exploitation commenced;

9. if the application for the registration of the Layout Design contains confidential information, the page numbers and total number of pages of the reproductions or drawings of the drawing layers that contain the confidential information;

10. the signature or seal of the applicant or patent agency;

11. the list of application documents;

12. the list of appended documents and samples; and

13. other particulars that need to be indicated.

Article 14 Reproductions or Drawings

The reproduction or drawing of the Layout Design submitted in accordance with Article 16 of the Regulations shall satisfy the following requirements:

1. the paper version of the reproduction or drawing shall be enlarged at least 20 times the size of the integrated circuit produced using the Layout Design; the applicant may additionally provide an electronic version of the reproduction or drawing; a reproduction or drawing submitted in electronic form shall include all the information on the Layout Design and indicate the document's data format;

2. if the paper version of the reproduction or drawing is multi-page, the pages shall be numbered sequentially and a table of contents attached thereto;

3. the paper version of the reproduction or drawing shall be on A4-size paper; if the paper version is larger than A4-size, it shall be folded into A4-size; and

4. The reproduction or drawing may carry a brief textual description, describing the integrated circuit Layout Design's structure, technology, function and other particulars requiring explanation.

Article 15 Applications Involving Confidential Information

An application for the registration of a Layout Design that had not been commercially exploited before the application date may contain confidential information; however, the ratio of such confidential information may not exceed 50% of the total area of the integrated circuit Layout Design. The page numbers and total number of pages of the reproductions or drawings of the drawing layers that contain confidential information shall be consistent with those filled out on the application form for the registration of the Layout Design.

If an application for the registration of a Layout Design contains confidential information, the paper version of the reproductions or drawings of the drawing layers containing confidential information shall be submitted in a separate confidential file pouch. No person may consult or photocopy the said

confidential information, except if required for an infringement action or administrative handling procedure.

Article 16 Sample Integrated Circuits

If a Layout Design has been commercially exploited before the application date, four sample integrated circuits containing the Layout Design shall be submitted when applying for registration and such samples shall satisfy the following requirements:

1. the four submitted sample integrated circuits shall be placed in special containers that can ensure the samples are not damaged and shall be accompanied by a completed State Intellectual Property Office prepared standard form;
2. the applicant's name, the application number and the name of the integrated circuits shall be indicated on the surface of the containers; and
3. an appropriate method shall be used to immobilize the sample integrated circuits in the containers, keeping them free from damage and able to be stored in a desiccator for a minimum of 10 years.

Article 17 Refusal of Acceptance

The State Intellectual Property Office shall refuse to accept an application to register a Layout Design and notify the applicant thereof if:

1. the applicant fails to submit an application form for the registration of the Layout Design, or a reproduction or drawing of the Layout Design or (where the Layout Design has been commercially exploited) sample integrated circuits, or there is a discrepancy among the afore-mentioned submitted items;
2. the home country of a foreign applicant has not entered into an agreement for the protection of Layout Designs with China or has not acceded to a relevant international treaty to which China has acceded;
3. the Layout Design involved is not eligible for protection as per Article 12 of the Regulations;
4. the Layout Design involved is not eligible for registration as per Article 17 of the Regulations;
5. the application documents are not in Chinese;
6. the application type is unclear or it is difficult to determine that the application pertains to a Layout Design;
7. no agency was appointed in accordance with provisions; or
8. the application form for registration of a Layout Design was not filled out completely.

Article 18 Supplementation, Correction and Revision of Documents

If an application document fails to satisfy the conditions specified in the Regulations and herein but is not refused acceptance as per Article 17 hereof, the applicant shall supplement and/or correct the document within two months from the date of receipt of the notice of the State Intellectual Property Office's opinion reached upon examination. The supplementation and/or correction shall be effected in accordance with the requirements of the notice of opinion reached upon examination. If the applicant fails to respond within the time limit, the application shall be deemed to have been withdrawn.

If the application document still fails to satisfy the provisions of the Regulations or these Rules after the applicant supplements and/or corrects the document in accordance with the opinion reached by the State Intellectual Property Office upon examination, the State Intellectual Property Office shall render a decision to reject the application.

The State Intellectual Property Office may of its own motion revise obvious textual and punctuation errors in Layout Design application documents. If the State Intellectual Property Office makes revisions itself, it shall notify the applicant thereof.

Article 19 Rejection of Applications

Unless otherwise provided in the second paragraph of Article 18 hereof, the State Intellectual Property Office shall render a decision to reject an application and indicate the grounds therefor if a Layout Design for which a registration application is made is characterized by either of the following circumstances:

1. it clearly does not satisfy the provisions of Item (1) or (2) of Article 2 of the Regulations; or
2. it clearly does not satisfy the provisions of Article 5 of the Regulations.

Article 20 Entry Into Effect of Proprietary Rights in a Layout Design

If no grounds for rejecting an application for the registration of a Layout Design are discovered after a preliminary examination, the State Intellectual Property Office shall issue a Layout Design Registration Certificate and publicly announce the same on the State Intellectual Property Office's website and in China Intellectual Property News. The proprietary rights in the Layout Design shall enter into effect on the application date.

Article 21 Registration Certificate

The Layout Design Registration Certificate issued by the State Intellectual Property Office shall include the following particulars:

1. the name and address of the holder of the rights in the Layout Design;

2. the title of the Layout Design;
3. if commercial exploitation of the Layout Design commenced before the application date, the time when it was first exploited commercially;
4. the application date and the date of completion of the creation of the Layout Design;
5. the date of issuance of the certificate for the Layout Design;
6. the Layout Design's registration number; and
7. the seal of the State Intellectual Property Office and the signature of the person in charge.

Article 22 Corrections

If the State Intellectual Property Office makes an error in the public announcement for a Layout Design, it shall correct such error promptly upon discovery and publicly announce such correction.

PART THREE RE-EXAMINATION AND REVIEW OF APPLICATIONS FOR THE REGISTRATION OF LAYOUT DESIGNS AND REVOCATION OF PROPRIETARY RIGHTS

Article 23 Re-examination and Revocation Authority

The Patent Re-examination Board of the State Intellectual Property Office (the Patent Re-examination Board) is responsible for examining petitions for re-examination submitted by applicants dissatisfied with the State Intellectual Property Office's decision to reject their applications for the registration of Layout Designs and the examination of cases concerning the revocation of proprietary rights in Layout Designs.

Article 24 Petition for Re-examination

When petitioning the Patent Re-examination Board for re-examination, a written petition for re-examination, stating the reasons therefor shall be submitted accompanied, if necessary, by the relevant evidence. If the written petition for re-examination fails to satisfy the relevant provisions of Article 19 of the Regulations, the Patent Re-examination Board shall not accept such petition.

If a petition for re-examination is not in the prescribed format, the party petitioning for the re-examination shall correct it within the time limit prescribed by the Patent Re-examination Board. If correction is not made within the time limit, no petition for re-examination shall be deemed to have been submitted.

Article 25 Amendment of Re-examination Procedure Documents

When submitting the petition for re-examination or responding to the re-examination notice issued by the Patent Re-examination Board, the petitioner may amend his Layout Design application documents,

provided that the amendments are limited to eliminating the defects indicated in the rejection decision or the re-examination notice.

The amended application documents shall be submitted in duplicate.

Article 26 Re-examination Decision

If, after re-examination, the Patent Re-examination Board considers that a petition for re-examination of an application for the registration of a Layout Design does not conform to the relevant provisions of the Regulations or these Rules, it shall notify the petitioner and require him to state his comments within a prescribed time limit. If no response is made within the time limit, the petition for re-examination shall be deemed to have been withdrawn. If, after comments have been stated or amendments made, the Patent Re-examination Board still considers that the application does not conform to the relevant provisions of the Regulations and these Rules, it shall render a re-examination decision sustaining the original rejection decision.

If, after re-examination, the Patent Re-examination Board considers that the original rejection decision does not conform to the relevant provisions of the Regulations and these Rules or that the amendments made to the application documents have eliminated the defects indicated in the original rejection decision, it shall quash the original rejection decision and notify the original examination authority to register the application and make a public announcement to that effect.

The re-examination decision of the Patent Re-examination Board shall indicate the grounds for the re-examination decision and the applicant for the registration of the Layout Design shall be notified thereof.

Article 27 Withdrawal of Petitions for Re-examination

A party petitioning for re-examination may withdraw such petition before the Patent Re-examination Board renders its decision.

The re-examination procedure shall terminate if the party petitioning for re-examination withdraws his petition before the Patent Re-examination Board renders its decision.

Article 28 Petition for Review

If a party is dissatisfied with, or objects to, any of the specific administrative acts set forth below performed by the State Intellectual Property Office, he may petition for review to the administrative review department of the State Intellectual Property Office:

1. it refuses to accept an application for a Layout Design;
2. it deems an application for a Layout Design to have been withdrawn;

3. it rejects a petition for the restoration of relevant rights; or
4. it performs another specific administrative act that infringes the lawful rights or interests of the party.

Article 29 Revocation Procedures

After the public announcement of the registration of a Layout Design, if it is discovered that the registered proprietary rights in the Layout Design fail to satisfy the provisions of Item (1) or (2) of Article 2, Article 3, Article 4, Article 5, Article 12 or Article 17 of the Protection of Integrated Circuit Layout Designs Regulations, the Patent Re-examination Board shall revoke the proprietary rights in the Layout Design.

If the proprietary rights in a Layout Design are to be revoked, the holder of the rights in the Layout Design shall be notified first and he shall be required to state his opinion within a designated time limit. Failure by the party to respond within the time limit shall not affect the decision to revoke the proprietary rights in the Layout Design rendered by the Patent Re-examination Board.

A decision of the Patent Re-examination Board to revoke the proprietary rights in a Layout Design shall indicate the grounds on which the decision is based and the holder of the rights in the Layout Design shall be notified thereof.

Article 30 Announcement of Revocation Decisions

The State Intellectual Property Office shall publicly announce a decision by the Patent Re-examination Board to revoke the proprietary rights in a Layout Design on the State Intellectual Property Office's website and in the China Intellectual Property News if no action has been instituted against the decision in a people's court within the specified time limit or after a judgment of the people's court sustaining the Patent Re-examination Board's decision to revoke the proprietary rights in the Layout Design has entered into effect.

Proprietary rights in a Layout Design that have been revoked shall be deemed not to have existed ab initio.

PART FOUR PROTECTION OF PROPRIETARY RIGHTS IN LAYOUT DESIGNS

Article 31 Abandonment of Proprietary Rights in Layout Designs

A holder of rights in a Layout Design may submit a written declaration to the State Intellectual Property Office abandoning his proprietary rights in the Layout Design before the term of protection of his proprietary rights in the Layout Design expires.

If the proprietary rights in a Layout Design have been licensed to a third party or pledged, the licensee's or the pledgee's consent to the abandonment shall be obtained.

The abandonment of proprietary rights in a Layout Design shall be registered and publicly announced by

the State Intellectual Property Office.

Article 32 Conditions for Acceptance of Infringement Disputes by the State Intellectual Property Office

To submit a petition to the State Intellectual Property Office for the handling of an infringement dispute concerning the proprietary rights in a Layout Design pursuant to Article 31 of the Regulations, the following conditions shall be satisfied:

1. the Layout Design has been registered and a public announcement to that effect has been made;
2. the petitioner is the holder of rights in the Layout Design or a work unit or individual with a direct material interest in the infringement dispute;
3. there is a clearly identified respondent;
4. there are clearly defined claims and specific facts and grounds; and
5. none of the parties concerned has instituted an action in a people's court concerning the infringement dispute.

Article 33 Stay and Resumption of Relevant Procedure

If a dispute over the ownership of a Layout Design application right or proprietary rights in a Layout Design arises and a party has instituted an action in a people's court, the State Intellectual Property Office may be petitioned to stay the relevant procedure.

To petition for a stay of the relevant procedure pursuant to the preceding paragraph, a written petition accompanied by a duplicate of the acceptance document issued by the people's court shall be submitted to the State Intellectual Property Office.

After the judgment of the people's court has entered into effect, the concerned party shall carry out formalities with the State Intellectual Property Office for resumption of the relevant procedure. If the dispute over the ownership of the Layout Design application right or the proprietary rights in the Layout Design cannot be resolved within one year of the date of the suspension petition and it is necessary to continue the stay of the relevant procedure, the petitioner shall petition for an extension of the stay within the said time limit. If at the expiration of the time limit no petition for extension has been filed, the State Intellectual Property Office shall resume the relevant procedure of its own motion.

If, during the hearing of a civil case, the people's court rules that preservation measures be taken in respect of proprietary rights in a Layout Design, the State Intellectual Property Office shall, while assisting in enforcement, stay the relevant procedure in which the proprietary rights are involved. If, upon expiration of the term of preservation, the people's court has not ruled that the preservation measures be continued, the State Intellectual Property Office shall resume the relevant procedure of its own motion.

PART FIVE FEES

Article 34 Payable Fees

When application for registration of a Layout Design is made to, or other procedures are carried out with, the State Intellectual Property Office, the following fees shall be paid:

1. Layout Design registration fee;
2. fee for alteration of bibliographic items, petitioning fee for time limit extension or petitioning fee for restoration of rights;
3. petitioning fee for re-examination;
4. petitioning fee for a non-voluntary licence or petitioning fee for a ruling on non-voluntary licence royalties.

The amounts of the fees set forth in the preceding paragraph shall be separately specified by the State Council's price administration authority together with the State Intellectual Property Office.

Article 35 Procedures for the Payment of Fees

The fees provided for in the Regulations and these Rules may be paid directly to the State Intellectual Property Office, remitted through a post office or a bank or paid by another method specified by the State Intellectual Property Office.

If such payments are remitted through a post office or a bank, at minimum the correct application number and the description of the fee being paid shall be written on the remittance slip sent to the State Intellectual Property Office. If the provisions of this paragraph are not complied with, no payment procedures shall be deemed to have been carried out.

If such fee payments are made directly to the State Intellectual Property Office, the date on which payment is made shall be the date of payment. If such fee payments are made by postal remittance, the postal remittance postmark date shall be the date of payment. If such fee payments are made by bank remittance, the actual bank remittance date shall be the date of payment. However, if the State Intellectual Property Office receives such payment more than 15 days after the date of remittance, the date of receipt by the State Intellectual Property Office shall be the date of payment, unless the post office or bank issues proof to the contrary.

If fees for the registration of a Layout Design are overpaid, paid more than once or paid in error, parties may request a refund from the State Intellectual Property Office, provided that such request is made within one year from the fee payment date.

Article 36 Time Limit for Payment

An applicant shall pay the fee for the registration of a Layout Design within two months of receipt of the notice of acceptance. If payment is not made or not made in full within the time limit, the application shall be deemed to have been withdrawn.

If a party petitions for the restoration of rights or for re-examination, the fee shall be paid within the relevant time limit provided for in the Regulations or these Rules. If payment is not made or not made in full within the time limit, the petitioner shall be deemed not to have filed a petition.

Fees for alteration of bibliographical items, petitioning fees for non-voluntary licences and petitioning fees for a ruling on non-voluntary licence royalties shall be paid in accordance with provisions within one month of the date of filing the petition. Petitioning fees for time limit extensions shall be paid by the date on which the relevant time limit expires. If payment is not made or not made in full within the time limit, no petition shall be deemed to have been filed.

PART SIX SUPPLEMENTARY PROVISIONS

Article 37 Register of Layout Designs

The State Intellectual Property Office shall establish a Register of Layout Designs, in which the following particulars shall be recorded:

1. the names, nationalities and addresses of holders of rights in Layout Designs and amendments thereto;
2. registrations of Layout Designs;
3. the transfer of, and succession to, proprietary rights in Layout Designs;
4. the abandonment of proprietary rights in Layout Designs;
5. the pledge or preservation of proprietary rights in Layout Designs and the termination thereof;
6. the revocation of proprietary rights in Layout Designs;
7. the termination of proprietary rights in Layout Designs;
8. the restoration of proprietary rights in Layout Designs;
9. non-voluntary licences of proprietary rights in Layout Designs.

Article 38 Public Announcement of Layout Designs

The State Intellectual Property Office shall periodically publish an official report of the registration of Layout Designs on its website and in the China Intellectual Property News, in which report it shall publish or publicly announce the following particulars:

1. the particulars recorded in the Register of Layout Designs;
2. notices to concerned parties whose addresses are unknown;
3. corrections effected by the State Intellectual Property Office;
4. other relevant particulars.

Article 39 Consultation and Photocopying by the Public

After a Layout Design has been registered and a public announcement to that effect made, the public may request to consult the relevant entry in the Register of Layout Designs or request that the State Intellectual Property Office provide a copy thereof. The public may also request to consult the paper version of the reproduction or drawing of the Layout Design.

No person may consult or reproduce the electronic version of the duplicate or drawing mentioned in Article 14 hereof, except where required for an infringement action or administrative handling procedure.

Article 40 Disposal of Dossiers That Have Become Void

Where an application for the registration of a Layout Design is withdrawn, is deemed to have been withdrawn or is rejected, or where proprietary rights in a Layout Design have been declared abandoned, have been revoked or terminated, the dossier pertaining to the application or proprietary rights shall no longer be kept after the lapse of three years of the date the application or the proprietary rights became void.

Article 41 Mailing of Documents

Documents concerning applications or proprietary rights in Layout Designs that are mailed to the State Intellectual Property Office shall be sent as registered letters. A letter shall contain only documents relating to the same application. Electronic versions of reproductions or drawings and sample integrated circuits shall be mailed in such a manner as to ensure that they are not damaged in the mail.

Article 42 Interpretation of These Rules

The State Intellectual Property Office is in charge of interpreting these Rules.

Article 43 Implementation Date of These Rules

These Rules shall be implemented as of 1 October 2001