

(Unofficial draft)

# Act on the Exclusive Right in the Layout-Design (Topography) of an Integrated Circuit

(Act No. 32 of January 11, 1991, as amended by Act No. 579 of June 26, 1992, Act No. 1036 of November 13, 1992 and Act No. 719 of April 21, 1995)

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## Chapter I General Provisions

### (Definitions)

1. For the purposes of this Act:

- (1) “layout-design” means the three-dimensional pattern of the elements of an integrated circuit, however implemented or expressed, and
- (2) “integrated circuit” means a circuit in which the elements, at least one of which is an active element, and some or all of the interconnections between them, have been placed on a semiconductor substrate to form a functional entity and which is intended to perform electronic circuitry functions.

### (Originality of Layout-Design)

2. This Act shall not apply to a layout-design or a part thereof which is not original.

### (Obtaining an Exclusive Right)

3. Anyone who has created a layout-design, or to whom the right of the creator of a layout-design has been transferred, may obtain an exclusive right in the layout-design by registration.

If a layout-design has been created within the scope of duties in an employment situation, the employer shall be entitled, unless otherwise agreed, to obtain by registration, the exclusive right in the layout-design. This shall also apply *mutatis mutandis* to a layout-design created within the scope of a civil service post.

The provisions in the second paragraph, above, shall not be applied to a layout-design created by a person engaged in teaching or research work in a university-level institution, except for institutions of military education.

### (Applicability of the Act)

4. The exclusive right in a layout-design under the present Act may be obtained:

- (1) by the creator of a layout-design who is a Finnish citizen or a person with a permanent residence in Finland or
- (2) by anyone to whom the right of the creator of a layout-design has been transferred and who is a Finnish citizen or a person with a permanent residence or place of business in Finland or by the creator of a layout-design or anyone to whom the right of the creator of a layout-design has been transferred, if the layout-design was first distributed to the public in Finland or
- (4) by anyone to whom the right of a person referred to in items (1) to (3) has been transferred.

Subject to reciprocity, it may be prescribed by decree that the exclusive right may also be obtained by a person other than the persons referred to in the first paragraph.

For a special reason, other than reciprocity, it may also be prescribed by decree, for a maximum of three years at a time, that the exclusive right may also be obtained by a person other than the persons referred to in the first paragraph.

(Time Limit for Registration)

5. Registration shall be applied for no later than two years from the day on which the layout-design was first distributed to the public.

(Term of the Exclusive Right)

6. The exclusive right shall be enforceable as from the earliest of the following dates:

- (1) the date on which the application for registration was filed, or
- (2) the date on which the layout-design was first distributed to the public, provided that the application for registration was filed within two years from such date.

The exclusive right shall expire when 10 years have elapsed from the year in which the exclusive right began under the first paragraph.

If, within 15 years from the end of the year of creation of a layout-design, registration of the layout-design has not been applied for or the layout-design has not been distributed to the public, an exclusive right may no longer be obtained.

(Scope of the Exclusive Right)

7. The exclusive right in a layout-design shall, subject to the limitations prescribed hereinafter, include the right to:

- (1) produce an integrated circuit or any other copy of the layout-design;
- (2) distribute the layout-design to the public by offering it for sale, lease or loan, or by any other means; and
- (3) import the layout-design for distribution to the public in the manner referred to in item (2).

(Transfer of the Exclusive Right)

8. The exclusive right in a layout-design or the right to use a layout-design in the manner referred to in Section 7 (licence) may be transferred to another party. The transfer of a copy of a layout-design does not include the transfer of the right pertaining to the layout-design.

(Reproduction of a Layout-Design for Certain Purposes)

9. Copies of a layout-design may be produced by anyone for private use, for teaching concerning the layout-design, or for analysis of the layout-design. Such copies shall not be used for other purposes.

(Use of the Results of Analysis)

10. The results of the analysis referred to in Section 9 may be used in an original layout-design. The holder of the exclusive right in the analyzed layout-design shall not have a right in the layout-design thus created.

(Distribution and Importation in Certain Cases)

11. If, at the time of acquiring an integrated circuit, a person did not know, and also did not have reasonable grounds to suspect, that the circuit had been produced illegally, he may redistribute the circuit or import it. However, the holder of the exclusive right in the layout-design of the circuit shall be entitled to fair compensation for any distribution or importation which has taken place after the distributor or importer became aware of the illegal production of the circuit or had reasonable grounds to suspect such illegal production.

(Exhaustion of the Exclusive Right With Respect to Distribution and Importation)

12. An integrated circuit which has been distributed to the public with the consent of the holder of the exclusive right, or in accordance with the provisions of Section 11, may be redistributed and imported.

It may be stipulated by decree that an integrated circuit may be distributed further and be imported only if the distribution referred to in the first paragraph took place in the State referred to in the decree.

## **Chapter II**

### **Application for Registration and the Processing of Applications**

(Registration Authority)

13. The registration authority shall be the National Board of Patents and Registration of Finland.

(Application for Registration)

14. The application for registration shall be made in writing to the registration authority.

The application for registration shall contain all materials necessary for the identification of the layout-design. More detailed stipulations regarding the form and content of the application shall be issued by decree.

The applicant shall pay the prescribed registration fee.

(Subject Matter of the Application)

15. Registration of two or more layout-designs may not be applied for in one and the same application.

(Agent)

16. An applicant for or holder of an exclusive right who is not domiciled in Finland shall require an agent resident in Finland who is empowered to represent him before the registration authority in all matters concerning the application and concerning the registered layout-design.

(Processing of Application for Registration)

17. When processing an application for registration, the registration authority shall check that:

- (1) the application relates to the layout-design of an integrated circuit and
- (2) the application fulfills the requirements of Sections 4 and 5, the third paragraph of Section 6, and Sections 14 and 15.

(Correction of Deficiencies)

18. If the applicant has not complied with the regulations concerning applications or if the registration authority finds other obstacles to the registration of the layout-design, the applicant shall be directed, by an official action, to submit a statement or to correct the deficiency within a prescribed period of time.

If the applicant fails, within the period prescribed in the official action, to submit a statement or to take steps to correct the deficiency that has been noted, the application shall be dismissed. The official action issued under the first paragraph, above, shall include notice of such consequence.

A dismissed application shall be reinstated if, within two months from the expiration of the period specified in the official action, the applicant so requests and submits a statement or takes steps to correct the deficiency and, within the same period, pays the prescribed reinstatement fee. Reinstatement may be afforded once only.

(Rejection of Application)

19. If, after a statement has been submitted by the applicant, there still exists an obstacle to the registration of the layout-design and the applicant has had an opportunity to submit a statement regarding the obstacle, the application shall be rejected, unless there are grounds for issuing to the applicant a new official action.

(Claim to Better Title)

20. If anyone claims to the registration authority that he and not the applicant has superior title to the layout-design and if the case is deemed unclear, the registration authority may in an official action direct him to bring a suit before a court of law within a prescribed period. If a suit is not brought within the prescribed period, the claim shall be dismissed; this is to be pointed out in the official action.

If an action regarding better title to the layout-design is pending before a court, the processing of the application for registration may be suspended until the case has been finally settled.

(Transfer of Application)

21. If a person proves to the registration authority that he and not the applicant has superior title to a layout-design, the registration authority shall, upon the request of such person, transfer the application to him. At the same time, he shall pay a new registration fee.

Before the request for transfer has been finally settled, the application may not be dismissed, rejected, granted or withdrawn.

(Entering a Layout-Design in the Register)

22. When a layout-design is entered in the Register of Layout-Designs, the registration shall be publicly announced and a certificate of registration shall be issued to the applicant.

(Entering a Transfer in the Register and the Legal Effects of Such Entry)

23. Whenever the exclusive right in a layout-design has been transferred to another party, or a licence therein has been assigned, an appropriate entry shall be made, on request, and against a prescribed fee, in the Register of Layout-Designs. The same shall apply to a mortgage right granted to the exclusive right. If it is proved that a licence or a mortgage right entered in the Register has expired, the entry shall be deleted from the Register.

The provisions of the first paragraph shall be applied *mutatis mutandis* to the right referred to in the third paragraph of Section 30. In lawsuits and other cases pertaining to an exclusive right in a layout-design, the party who has last been entered in the Register of Layout-Designs as the holder of the exclusive right shall be deemed to be the holder of the exclusive right.

Whenever a person has requested that an entry be made in the Register to the effect that the exclusive right in a layout-design has been transferred to him or that he has received the licence or the mortgage right therein and if, at that time, he was in good faith with regard to his right, any previous assignment to another person of the exclusive right or the licence or the mortgage right in the layout-design shall not be valid against him unless the other person had previously requested his own right to be entered in the Register of Layout-Designs.

(Publicity)

24. The documents pertaining to an application shall be public as from the date of the registration. It may be prescribed by decree that some of the documents be maintained confidential in order to protect a trade secret.

## Chapter III Invalidation of Registration

(Request for Invalidation of Registration)

25. If the registration of a layout-design does not fulfill the requirements specified in Sections 2 or 17, anyone may submit a request for the invalidation of the registration of the layout-design in its entirety or in part.

The request shall be submitted to the registration authority in writing and the grounds for the request shall be presented therein. The party submitting the request shall pay the prescribed fee. If the fee is not paid, the request shall not be considered.

A request for the invalidation of the registration of a layout-design shall not be handled if a dispute is pending with respect to transfer of the registration.

(Hearing the Holder of the Registration)

26. The registration authority shall notify the holder of the registration regarding a request submitted under Section 25 and provide for him an opportunity to submit a statement within a prescribed period. If he does not oppose the request within the allowed period, the registration shall be invalidated in its entirety.

If the holder of the registration opposes the request, the registration authority shall investigate the request which has been submitted.

(Invalidation of Registration)

27. If, as a result of a request, the registration authority notes that the registration of a layout-design does not fulfill the requirements specified in Sections 2 or 17, the registration shall be invalidated in its entirety or in part.

If a registration is invalidated, the decision shall be announced publicly upon its taking legal effect.

## Chapter IV Appeal

(Right of Appeal)

28. An appeal from a final decision concerning the registration of a layout-design or the invalidation of the registration of a layout-design may be brought by the applicant or the holder of the registration if the decision is against him. An appeal from a decision by which a request for the invalidation of a registration has been rejected may be brought by the party who has submitted the request.

An appeal from a decision by which a request referred to in the third paragraph of Section 18 for reinstatement of an application has been rejected or by which a request referred to in Section 21 regarding the transfer of an application has been granted, may be made by the applicant. An appeal from a decision by which a request for the transfer of an application has been rejected may be filed by the party who submitted the request.

(Filing an Appeal)

29. An appeal from a decision taken by the registration authority under the present Act shall be brought by filing an appeal with the Board of Appeal of the National Board of Patents and Registration of Finland. Separate provisions shall apply to the appeal procedure and the proceedings in the Board of Appeal.

## **Chapter V**

### **Expiration of the Exclusive Right and Obligation to Notify Regarding the Exclusive Right**

(Transfer of Registration)

30. If a layout-design has been registered in the name of anyone other than the person entitled under Section 3, a court of law shall, upon a suit brought by the person entitled to the right in the layout-design, transfer the registration to that person.

The suit shall be filed within a year from the date on which the person filing the suit gained knowledge of the registration and of any other factors on which the suit is based. If the holder of the registration acted in good faith at the time the layout-design was registered or the exclusive right in the registered layout-design was transferred to him, a suit may not be filed more than three years after the registration of the layout-design.

If the person from whom the registration is transferred was acting in good faith at the time of his beginning to use the layout-design in Finland in the manner referred to in Section 7, or at the time of taking steps essential therefor, he may for a reasonable consideration or on otherwise reasonable conditions continue the use of the layout-design or begin the intended use while retaining unchanged its general character. Such right shall belong, where the necessary conditions are met, to the holder of a licence entered in the Register. The right referred to in the third paragraph, above, may be transferred to another party only together with the business, or part of the business, in which it is used or in which it is intended to be used.

(Renunciation of Registration)

31. If the holder of the exclusive right in a layout-design declares in writing that he renounces the registration, the registration authority shall delete the layout-design from the Register and announce that the exclusive right has terminated.

If the exclusive right in a layout-design has been distrained, or if there exists therein a mortgage right entered in the Register, or if a dispute is pending regarding the transfer of the registration to another party, the layout-design shall not be deleted from the Register, on the request of the holder, for as long as the distraint or the mortgage right subsists or the dispute has not been finally settled.

(Public Announcement in Certain Cases)

32. Whenever the registration of a layout-design has been transferred by a court decision which has taken legal effect or the registration authority has declared that the exclusive right has terminated, the registration authority shall make public announcement thereof.

(Obligation to Notify Regarding the Exclusive Right)

33. If the applicant for registration invokes his application, when asserting a claim to another party before the application documents have become public under Section 24, he shall on request give his consent to the other party acquainting himself with the documents.

Anyone who directly addresses other parties in an advertisement, on the packaging of a product or in any other manner by declaring that registration has been applied for or that it has been granted, without at the same time giving the number of the application or the registration, shall be required on request to provide such information without delay. If it is not explicit in the advertisement that registration has been applied for or that registration has been granted, but the advertisement tends to create such an impression, the party concerned shall on request declare without delay whether registration has been applied for or whether it has been granted.

## Chapter VI

### Provisions Regarding Penalties and Payment of Damages

(Reference provision)

34. Penalties for industrial property right offences against rights referred to in this Act are laid down in the second Section of Chapter 49 of the Penal Code.

(Violation of a right in a layout-design)

35. Anyone who willfully or out of gross negligence infringes the provisions laid down by this Act for the protection of layout-designs shall be sentenced, unless his action is punishable as an industrial property right offence under the second Section of Chapter 49 of the Penal Code, to a fine for a violation of a right in a layout-design.

(Failure to Fulfill the Obligation to Notify)

36. Anyone who willfully or out of other than minor negligence fails to fulfill the obligation to notify under Section 33 regarding a layout-design shall be sentenced to a fine for failure to fulfill the obligation to notify. Anyone who, in cases referred to in that Section, provides false information shall also be sentenced to the same penalty, unless a penalty for such act has been prescribed in the Penal Code.

(Right to Institute Criminal Proceedings)

37. The public prosecutor shall not raise charges for a criminal act referred to in Sections 34 and 36, unless an injured party refers the criminal act for prosecution.

(Compensation Liability)

38. Anyone who willfully or out of negligence produces an integrated circuit or any other copy of a layout-design, or distributes or imports a layout-design, in violation of the provisions of the present Act, shall be liable to pay to the holder of the exclusive right reasonable compensation and damages for any prejudice he has caused.

Compensation or damages may be claimed in respect of an infringement of the exclusive right in a layout-design only for the period of the last five years before the raising of the charges.

The relevant parts of the provisions of the Law on Damages and Tort Liability (412/74) shall additionally apply for the compensation and damages referred to in the first paragraph, above.

(Prevention of Continued Infringement)

39. If anyone produces an integrated circuit or other copy of a layout-design or distributes or imports a layout-design in violation of the provisions of the present Act, a court of law may, at the request of the



holder of the exclusive right, order, to the extent deemed reasonable, for the purpose of preventing the continuance of the infringement, that the integrated circuit or other copy of the layout-design shall be destroyed or altered or be surrendered, against payment, to the holder of the exclusive right. The foregoing shall not apply to a party who has acquired the integrated circuit or other copy of a layout-design, or a special right therein, in good faith.

An integrated circuit or other copy of a layout-design may be seized if the industrial property right offence can be assumed to have occurred. In such case, whatever has been provided regarding seizure in the Coercive Criminal Investigation Means Act (450/87) shall be applied.

On application and if there is special reason, a court of law may grant permission, instead of issuing an order under the first paragraph, for the integrated circuit or other copy of a layout-design referred to in the first paragraph to be distributed to the public or otherwise used for the intended purpose against specific compensation to be paid to the holder of the exclusive right and under the conditions stipulated by the court.

(Effect of Invalidation) of a Registration)

40. If the registration of a layout-design has been invalidated by a registration authority decision which has taken legal effect, no penalty, compensation, damages or other consequence referred to in Sections 35, 38 and 39 and in the second Section of Chapter 49 of the Penal Code may be adjudicated.

Whenever it is alleged in a case concerning an infringement of the exclusive right in a layout-design that the registration is in violation of this Act, the court of law may, at the request of the defendant, suspend examination of the case or its decision until the request for invalidation of the registration has been finally settled. If no request has been submitted to the registration authority, the court shall, at the time of suspending the case, set the defendant a time limit within which the request is to be submitted.

## Chapter VII Special Provisions

(Obligation to Notify).

41. Anyone who wishes to bring a suit regarding the transfer of the registration of a layout-design shall notify the registration authority thereof and give notice to each holder of a licence or of a mortgage right entered in the Register of Layout-Designs. Whenever a holder of a licence wishes to bring a suit regarding an infringement of the exclusive right in a layout-design, he shall notify the holder of the exclusive right thereof.

The obligation to notify referred to above in the first paragraph shall be deemed to have been fulfilled when the notification has been handed to the post office as registered mail for delivery to the address entered in the Register of Layout-Designs.

If it is not proved at the time of bringing a suit that notification has been made or notice given in compliance with the provisions of the first and second paragraphs, the necessary time therefor shall be allowed for the plaintiff. If he fails to observe such time limit, the suit shall not be heard.

(Jurisdiction)

42. The court competent in cases relating to rights in layout-designs and to any infringement of such rights shall be the District Court of Helsinki.

(Experts)

43. The provisions on experts in Sections 66 and 67 of the Patents Act (550/67), shall be complied with *mutatis mutandis* in processing cases referred to in Section 42 of the present Act.



(Notifications to the Registration Authority)

44. The court shall send to the registration authority a notification of any judgment given in a case referred to in Section 42 and at the same time state whether the judgment has become final.

(Prescription of Fees)

45. Separate provisions shall apply to the amounts of the fees to be paid under the present Act.

(Detailed Provisions)

46. Detailed provisions regarding the enforcement of this Act shall be issued by decree. The registration authority may issue detailed regulations regarding applications for registration and their processing.

## **Chapter VIII**

### **Entry Into Force**

(Entry Into Force and Transitional Provisions)

47. The present Act shall enter into force on July 1, 1991.

The present Act shall also be applied to a layout-design created before it enters into force. If a layout-design has been distributed to the public before the present Act enters into force, the exclusive right therein under the present Act may be obtained through registration, provided that the application for registration is filed within two years of the entry into force of the Act. However, notwithstanding the provisions of this Act, such a layout-design may be distributed to the public and be imported.