

Layout-Designs of Integrated Circuits Act 1999 (No. 3 of 1999)

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The following Act was passed by Parliament on 20th January 1999 and assented to by the President on 26th January 1999:—

I assent.

Ong Teng Cheong,

President.

26th January 1999.

An Act to provide for the protection of layout-designs of integrated circuits and to make a consequential amendment to the Copyright Act (Chapter 63 of the 1988 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Part I Preliminary

Short Title and Commencement

1. This Act may be cited as the Layout-Designs of Integrated Circuits Act 1999 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Interpretation

2.—(1) In this Act, unless the context otherwise requires—

“commercially exploit” includes—

(a) to sell, let for hire or otherwise distribute by way of trade;

(b) to offer or expose for sale or hire or other distribution by way of trade; or

(c) to import for the purpose of sale, letting for hire or other distribution by way of trade,

and “commercially exploited”, “commercially exploiting” and “commercial exploitation” have corresponding meanings;

“Court” means the High Court;

“creator” , in the case of a computer aided design of a layout-design, means the person who made the arrangements for the creation of the layout-design;

“exclusive licence” means a licence in writing signed by or on behalf of a qualified owner authorising the licensee, to the exclusion of all other persons, including the person granting the licence, to exercise a right that would otherwise be exercisable exclusively by the qualified owner;

“integrated circuit” means a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in and on, or in or on, a piece of material and which is intended to perform an electronic function;

“layout-design” means the 3-dimensional disposition, however expressed, of the elements of an integrated circuit (at least one of which is an active element), and of some or all of the interconnections of an integrated circuit, or such a 3-dimensional disposition prepared for an integrated circuit intended for manufacture;

“protected layout-design” means a layout-design that is protected under section 5;

“qualified owner” means—

(a) a qualified person who, under section 6 (1), is the owner of a layout-design; or

(b) a person who, under section 6 (1), is the owner of a layout-design which was not commercially exploited anywhere else in the world before it was commercially exploited in Singapore or in a qualifying country,

and includes a person, whether or not he is a qualified person, who is a successor in title to a qualified owner of the layout-design;

“qualified person” means—

(a) a natural person—

(i) who is a national of, or is domiciled or ordinarily resident in Singapore or in a qualifying country; or

(ii) who has a real and effective industrial or commercial establishment for the creation of layout-designs or for the production of integrated circuits in Singapore or in a qualifying country; or

(b) a person other than a natural person—

(i) the place of incorporation or place of formation of which is in Singapore or in a qualifying country; or

(ii) which has a real and effective industrial or commercial establishment for the creation of layout-designs or for the production of integrated circuits in Singapore or in a qualifying country,

and includes the Government and the government of a qualifying country;

“qualifying country” means—

(a) a country or territory, other than Singapore, which is a member of the World Trade Organisation; or

(b) a country or territory designated by the Minister under section 31.

(2) A layout-design shall be taken to have been commercially exploited if the layout-design, a copy of the layout-design or an integrated circuit in which the layout-design is incorporated (whether or not the integrated circuit is contained in another article) is commercially exploited.

(3) A reference to doing an act in relation to a layout-design includes a reference to doing that act in relation to a substantial part of the layout-design.

(4) A reference to a copy of a layout-design includes a reference to a copy of a substantial part of the layout-design.

No Protection for Ideas

3. This Act shall not apply in relation to any idea, procedure, process, system, method of operation, concept, principle or discovery, regardless of the form in which it is described, explained, illustrated or embodied in a layout-design.

Act Binds the Government

4. This Act binds the Government.

Part II

Protection of Layout-Designs

Protected Layout-Designs

5.—(1) This Act protects a layout-design that is owned by a qualified owner and—

(a) is original in the sense that it is the result of its creator's own intellectual effort and is not commonplace among creators of layout-designs and manufacturers of integrated circuits at the time of its creation; or

(b) in the case of a layout-design that consists of a combination of elements and interconnections that are commonplace, the combination, taken as a whole, is original in the sense that it is the result of its creator's own intellectual effort and is not commonplace among creators of layout-designs and manufacturers of integrated circuits at the time of its creation.

(2) Act protects all independently created layout-designs referred to in subsection (1), even if they are identical and, subject to section 7, regardless of when they are, on or after the commencement of this Act, created.

(3) This Act does not protect a layout-design that is created before the commencement of this Act.

(4) A layout-design shall be deemed not to have been created until it has been recorded in documentary form or incorporated into an integrated circuit, whichever is earlier.

Ownership of Layout-Design

6.—(1) Subject to any agreement to the contrary, the owner of a layout-design shall be determined as follows:

(a) where the layout-design is not created in pursuance of a commission or in the course of employment, the creator of a layout-design is the owner;

(b) where the layout-design is created in pursuance of a commission, the person who commissioned the layout-design is the owner; and

(c) where the layout-design is not created in pursuance of a commission but is created by an employee in the course of his employment, the employer is the owner.

(2) A qualified person can be a qualified owner even if he shares ownership with a person who is not a qualified person.

(3) Where a layout-design is owned by more than one person, references in the Act to the owner are to all the owners and references in the Act to the qualified owner are to all the qualified owners so that in particular, any requirement of the consent of a qualified owner requires the consent of all the qualified owners.

Duration of Protection

7. A layout-design ceases to be a protected layout-design—

(a) if it is first commercially exploited within 5 calendar years after the calendar year in which it was created, at the end of the tenth calendar year after the calendar year in which it was first commercially exploited;

(b) in any other case, at the end of the period of 15 calendar years after the calendar year in which it was created.

Part III **Layout-Design Rights and Infringement Action**

Rights of Qualified Owner

8. A qualified owner has the following rights:

(a) to copy, and to authorise the copying of, all or part of his protected layout-design, whether by incorporation into an integrated circuit or otherwise;

(b) to commercially exploit, and to authorise the commercial exploitation of, his protected layout-design.

Infringement

9. Subject to the provisions of this Act, it is an infringement of a qualified owner's right in a protected layout-design for any person to do any of the acts referred to in section 8 without the consent of the qualified owner.

Non-Infringing Acts

10. It is not an infringement of a qualified owner's right in a protected layout-design—

(a) if the copying is of any part of a protected layout-design that does not comply with the requirement of originality referred to in section 5 (1);

(b) if the copying is done for a private purpose and not for the purpose of commercial exploitation;

(c) if the copying is done for the sole purpose of evaluation, analysis, research or teaching;

(d) to use the results of such evaluation, analysis or research to create a different layout-design that complies with the requirement of originality referred to in section 5 (1);

(e) to do any of the acts referred to in section 8 in respect of the layout-design referred to in paragraph (d);

(f) for a qualified owner of another protected layout-design—

(i) that is identical to the first-mentioned protected layout-design; and

(ii) that is independently created,

to do any of the acts referred to in section 8 in respect of that other layout-design; or

(g) to commercially exploit a copy of the protected layout-design, an integrated circuit in which the layout-design is incorporated or an article that contains an integrated circuit in which the layout-design is incorporated after the copy, integrated circuit or article has been commercially exploited, whether in Singapore or elsewhere, by or with the consent of, the qualified owner.

Innocent Infringement

11.—(1) The rights of a qualified owner in a protected layout-design are not infringed by a person who commercially exploits, or authorises the commercial exploitation of—

(a) a copy of the protected layout-design;

(b) an unauthorised integrated circuit, being an integrated circuit in which the protected layout-design is incorporated; or

(c) an article that contains such an integrated circuit,

if, at the time when the person acquired the copy, integrated circuit or article, the person did not know, and could not be reasonably expected to have known, that the copy was unauthorised, the integrated circuit was unauthorised or that the article contained an unauthorised integrated circuit, as the case may be.

(2) Where a person referred to in subsection (1) becomes aware or could reasonably be expected to become aware that the copy was unauthorised, the integrated circuit was unauthorised or that the article contains an unauthorised integrated circuit, as the case may be, that subsection continues to apply to any subsequent commercial exploitation of the copy, integrated circuit or article if and only if he pays to the qualified owner such remuneration—

(i) as is agreed;

(ii) as is determined by a method agreed between the person and the qualified owner; or

(iii) in default of agreement, as is determined by the Court on an application made by either of them.

(3) In this section—

(a) a copy of a protected layout-design is unauthorised if it is made without the consent of the qualified owner of the layout-design;

(b) an integrated circuit which incorporates a protected layout-design is unauthorised if such incorporation is done without the consent of the qualified owner of the layout-design.

Remedies for Infringement

12.—(1) A qualified owner may take whatever proceedings and seek whatever remedy by way of damages, injunctions, accounts or otherwise with respect to an infringement of his rights in a protected layout-design as are available with respect to any other property rights.

(2) In any proceedings in which damages may be awarded, the Court may, having regard to all of the circumstances of the case including the flagrancy of the infringement and any benefit accruing to the defendant by reason of the infringement, award additional damages.

Order for Delivery Up

13.—(1) Where a person has in his possession, custody or control—

(a) for commercial exploitation purposes an integrated circuit in which a protected layout-design is incorporated; or

(b) any article which the person knows or has reason to believe has been or is to be predominantly used to make integrated circuits in which a protected layout-design is incorporated,

a qualified owner of the protected layout-design may apply to the Court for an order that the integrated circuit or article referred to in paragraph (b) be delivered to the qualified owner or to another person that the Court specifies.

(2) The Court shall not make an order for delivery up unless it also makes, or it appears to the Court that there are grounds for making, an order under section 14.

(3) A person to whom an integrated circuit or an article referred to in subsection (1) (b) is delivered up shall, if an order under section 14 is not made at the time of the order under this section, retain the integrated circuit or article pending the making of an order, or a decision not to make an order, under section 14.

Order for Disposal

14.—(1) An application may be made to the Court for—

(a) an order that the integrated circuit or article delivered up under section 13 be forfeited to the qualified owner, destroyed or disposed of as the Court specifies; or

(b) a decision that no order be made under paragraph (a).

(2) In deciding what order or decision to make under subsection (1), the Court shall have regard to whether other remedies available to the plaintiff would be adequate to compensate the plaintiff and protect the interests of the plaintiff.

(3) The Court shall issue directions as to the service of notice on persons having an interest in the integrated circuit or article delivered up.

(4) Any person having an interest in the integrated circuit or article delivered up is entitled—

(a) to appear in proceedings for an order under this section, whether or not the person is served with notice; and

(b) to appeal against any order made, whether or not that person appears in the proceedings.

(5) An order made under this section shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

(6) Where there is more than one person interested in the integrated circuit or article delivered up, the Court may direct that the integrated circuit or article be sold, or otherwise dealt with, and the proceeds divided, and shall make any other order as it thinks fit.

(7) If the Court decides that no order should be made under this section, the person in whose possession, custody or control the integrated circuit or article was before being delivered up is entitled to its return.

Presumption of Protection and Ownership

15. In any proceedings to enforce a qualified owner's rights under this Part, it shall be presumed, unless a defendant puts the matter in issue, that in respect of the layout-design that is the subject-matter of the proceedings—

- (a) the plaintiff is a qualified owner of the layout-design; and
- (b) the layout-design is a protected layout-design.

Affidavit Evidence

16.—(1) In any proceedings to enforce a qualified owner's rights under this Part, evidence may be submitted by affidavit asserting facts relevant to show that—

- (a) the plaintiff is a qualified owner of the layout-design; and
- (b) the layout-design is a protected layout-design.

(2) Where the Court considers, on the application of a party, that the deponent to an affidavit should be available to be cross-examined with respect to matters asserted in the affidavit, it shall exclude the admission of the affidavit without the appearance of the deponent.

Groundless Threat of Infringement Proceedings

17.—(1) Where a person, by means of circulars, advertisements or otherwise, threatens another person with proceedings in respect of an infringement of a right under this Part, then, whether or not the person making the threat is a qualified owner, the Court may, on the application of a person aggrieved, do one or more of the following:

- (a) declare that the threat is unjustified;
- (b) grant an injunction against the continuance of the threat;
- (c) award compensation for damage sustained.

(2) The Court shall not make any order under subsection (1) if the defendant satisfies the Court that the acts in respect of which the proceeding was threatened constituted, or would constitute, an infringement of a qualified owner's right under this Part.

(3) The mere notification of the existence of a right under this Part does not constitute a threat of a proceeding for the purposes of subsection (1).

(4) An application may not be brought under this section where the threat is to bring a proceeding for an infringement that is alleged to consist of making or importing anything.

(5) Nothing in this section shall render an advocate and solicitor liable to an action under this section in respect of an act done by him in his professional capacity on behalf of a client.

Part IV
Dealings with a Layout-Design Right

Assignments and Licences of Layout-Design

18.—(1) A right in a layout-design is movable property and is transmissible by any means by which such property may be lawfully transmitted including assignment, licence, testamentary instrument and operation of law.

(2) An assignment or transmission may be total or partial.

(3) An assignment is ineffective unless it is in writing and signed by or on behalf of the assignor.

(4) A licence granted in respect of a layout-design right by a qualified owner binds each successor in title to his interest in the right, except a purchaser in good faith for value without notice (actual or constructive) of the licence and a person who derives title from the purchaser.

Prospective Ownership of Layout-Design

19.—(1) Where, by an agreement made in relation to a future right in a layout-design that is signed by or on behalf of the person who would be the owner of the right on its coming into existence, the person purports to assign the future right in the layout-design, wholly or partially, to an assignee, the right, on coming into existence, vests in the assignee or his successor in title.

(2) Where, at the time when a layout-design right comes into existence, the person who would be entitled to the right is dead, the right devolves as if, immediately before the person's death, the person had been the owner of the right.

(3) A licence granted in respect of a future layout-design right by a prospective qualified owner binds each successor in title to his interest (or prospective interest) in the right, except a purchaser in good faith for value without notice (actual or constructive) of the licence and a person who derives title from the purchaser.

Exclusive Licensee

20.—(1) An exclusive licensee has the same rights against a successor in title to the qualified owner as he has against the grantor of the licence.

(2) An exclusive licensee has, except against the qualified owner, the same rights and remedies in respect of matters occurring after the grant of the exclusive licence as if the licence had been an assignment.

(3) An exclusive licensee's rights and remedies are concurrent with those of the qualified owner.

(4) In any proceedings brought by an exclusive licensee, a defendant may avail himself of any defence that would have been available to him if the proceedings had been brought by the qualified owner.

Exercise of Concurrent Rights

21.—(1) Where any proceedings for infringement of a qualified owner's right in a layout-design is brought by a qualified owner or an exclusive licensee and the proceedings relate wholly or partly to an infringement in respect of which they have concurrent rights of action, neither of them, without leave of the Court, may continue with the proceedings unless the other is joined as a plaintiff or added as a defendant.

(2) A qualified owner shall, by post or otherwise, notify any exclusive licensee who has concurrent rights of action in respect of an infringement of a layout-design before applying for an order for delivery up under section 13, and the Court may, on the application of the exclusive licensee, make a delivery up order that it considers just having regard to the terms of the licence.

(3) Subsection (1) shall not apply to an application by a qualified owner or exclusive licensee for interlocutory relief.

(4) A qualified owner or exclusive licensee who is added as a defendant pursuant to subsection (1) is not liable for costs in the proceedings unless he takes part in the proceedings.

(5) Where any proceedings for infringement of a qualified owner's right in a layout-design is brought and the proceedings relate wholly or partly to an infringement in respect of which a qualified owner and an exclusive licensee have concurrent rights of action—

(a) the Court shall, in assessing damages, take into account the terms of the licence and any pecuniary remedy previously awarded or available to either of them in respect of the infringement;

(b) the Court shall, if an account of profits is directed, apportion the profits between them as the Court considers just, subject to any agreement between them; and

(c) the Court shall not, if an award of damages has been made or an account of profits has been directed in favour of either of them, direct that an account of profits be made in favour of the other in respect of the infringement.

(6) Subsection (5) shall apply whether or not the qualified owner and the exclusive licensee are both parties to the proceedings.

Part V Compulsory Licensing

Interpretation of this Part

22. Where an exclusive licence is in force in relation to any layout-design rights, the provisions of this Part shall apply as if references to the qualified owner of the layout-design rights were references to the exclusive licensee.

Use by Government for Public Non-Commercial Purpose

23.—(1) An act done by the Government, or by a person authorised in writing by the Government, in relation to a protected layout-design is not an infringement of the rights of the qualified owner in the layout-design if the act is done for a public non-commercial purpose.

(2) An authorisation referred to in subsection (1) may be given before or after the acts in respect of which it is given have been done.

(3) prejudice to the generality of the expression “public non-commercial purpose”, an act is done for a public non-commercial purpose if it is done—

(a) for the defence or national security of Singapore; or

(b) to assist in the exercise of powers and the implementation of civil defence measures during a state of emergency or state of civil defence emergency under the Civil Defence Act (Cap. 42).

Scope and Nature of Right Under Section 23

24.—(1) The right to do an act in relation to a protected layout-design pursuant to section 23—

(a) is both non-exclusive and non-assignable;

(b) is limited to a public non-commercial purpose;

(c) is subject to the terms of any authorisation referred to in that section;

(d) does not permit the sale of the layout-design a copy of the layout-design, or an integrated circuit in which the layout-design is incorporated (whether or not the integrated circuit is contained in another article) to the public; and

(e) is limited to the doing of the act predominantly in Singapore.

(2) An act done under section 23 in relation to a protected layout-design is not to be taken into account in calculating the duration of protection of the layout-design referred to in section 7.

Duty to Inform Qualified Owner

25.—(1) Where an act has been done under section 23 in relation to a protected layout-design, the Government shall—

(a) if the act had been done in situations of national emergency or other circumstances of extreme urgency, as soon as reasonably practicable inform the qualified owner that the act has been done; or

(b) in any other case, inform the qualified owner promptly that the act had been done.

(2) The Government shall give to the qualified owner such information about the act as the qualified owner from time to time requires.

(3) Nothing in subsection (1) or (2) requires the Government to inform the qualified owner or disclose information to the qualified owner if doing so would or might reasonably be expected to prejudice the defence or security of Singapore.

Qualified Owner Entitled to Remuneration

26. Where an act is done under section 23 in relation to a protected layout-design, the Government shall pay such remuneration to the qualified owner of the protected layout-design—

- (a) as is agreed;
- (b) as is determined by a method agreed between the Government and the qualified owner; or
- (c) in default of agreement, as is determined by the Court on the application of either of them.

Licence to Remedy Anti-Competitive Practice

27.—(1) A person who claims that he requires a licence to do any act referred to in section 8 in relation to a protected layout-design may apply to the Court for the grant of a licence upon the ground that the grant of the licence is necessary to remedy an anti-competitive practice.

(2) If the Court is satisfied that the ground referred to in subsection (1) is established, the Court may make an order for the grant of a licence in accordance with the application upon such terms as the Court thinks fit.

(3) The Court shall specify in the order such remuneration to be paid to the qualified owner for the licence as the Court considers reasonable.

Scope and Nature of Licence

28.—(1) A licence granted under section 27 is—

- (a) both non-exclusive and non-assignable;
- (b) subject to the payment to the qualified owner of the remuneration specified in the Court order under section 27 (3).

(2) An act done pursuant to a licence granted under section 27 in relation to a protected layout-design is not to be taken into account in calculating the duration of protection of the layout-design referred to in section 7.

Court May Determine Licence

29. Any licence granted under section 27 may, on the application of any interested party, be terminated by the Court where the Court is satisfied that the ground upon which the licence was granted ceased to exist.

Part VI Miscellaneous

Rules

30. The Minister may make rules for the purpose of carrying into effect the provisions of this Act.

Designation of Qualifying Countries

31.—(1) The Minister may, by notification in the *Gazette*, designate a country or territory as a qualifying country if he considers that provisions have been or will be made under the laws of that country or territory that will give to a qualified owner adequate

protection in that country or territory in respect of a protected layout-design in which he has rights.

(2) subsection (1), “qualified owner” means a person who is a qualified owner by virtue of a relationship to Singapore under the definition of “qualified person” in section 2.

Consequential Amendment

32. Section 7 (1) of the Copyright Act (Cap. 63) is amended by deleting paragraph (c) of the definition of “artistic work” and substituting the following paragraph:

(c) a work of artistic craftsmanship to which neither paragraph (a) nor (b) applies, but does not include a layout-design or an integrated circuit within the meaning of section 2 of the Layout-Designs of Integrated Circuits Act 1998.