



# TITLE 37, CODE OF FEDERAL REGULATIONS

## CHAPTER I

### SUBCHAPTER C—PROTECTION OF FOREIGN MASK WORKS

#### PART 150—REQUESTS FOR PRESIDENTIAL PROCLAMATIONS PURSUANT TO 17 U.S.C. 902(a)(2)

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Authority: 35 U.S.C. 6; E.O. 12504, 50 FR 4049, 3 CFR 1985 Comp. p. 335.

#### 37 CFR 150.1 Definitions.

- (a) “Commissioner” means Assistant Secretary and Commissioner of Patents and Trademarks.
- (b) “Foreign government” means the duly-constituted executive of a foreign nation, or an international or regional intergovernmental organization which has been empowered by its member states to request issuance of Presidential proclamations on their behalf under this part.
- (c) “Interim order” means an order issued by the Secretary of Commerce under 17 U.S.C. 914.
- (d) “Mask work” means a series of related images, however fixed or encoded -
  - (1) Having or representing the predetermined, three-dimensional pattern of metallic, insulating, or semiconductor material present or removed from the layers of a semiconductor chip product; and
  - (2) In which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.
- (e) “Presidential proclamation” means an action by the President extending to foreign nationals, domiciliaries, and sovereign authorities the privilege of applying for registrations for mask works pursuant to 17 U.S.C. 902.
- (f) “Request” means a request by a foreign government for the issuance of a Presidential proclamation.
- (g) “Proceeding” means a proceeding to issue an interim order extending protection to foreign nationals, domiciliaries, and sovereign authorities under 17 U.S.C. Chapter 9.
- (h) “Secretary” means Secretary of Commerce.

[Added 53 FR 24447, June 29, 1988, effective August 1, 1988]

#### 37 CFR 150.2 Initiation of evaluation.

- (a) The Commissioner independently or as directed by the Secretary, may initiate an evaluation of the propriety of recommending the issuance, revision, suspension, or revocation of a section 902 proclamation.
- (b) The Commissioner shall initiate an evaluation of the propriety of recommending the issuance of a section 902 proclamation upon receipt of a request from a foreign government.

[Added 53 FR 24447, June 29, 1988, effective August 1, 1988]



### 37 CFR 150.3 Submission of requests

- (a) Requests for the issuance of a section 902 proclamation shall be submitted by foreign governments for review by the Commissioner.
- (b) Requests for issuance of a proclamation shall include:
  - (1) A copy of the foreign law or legal rulings that provide protection for U.S. mask works which provide a basis for the request.
  - (2) A copy of any regulations or administrative orders implementing the protection.
  - (3) A copy of any laws, regulations, or administrative orders establishing or regulating the registration (if any) of mask works.
  - (4) Any other relevant laws, regulations, or administrative orders.
  - (5) All copies of laws, legal rulings, regulations, or administrative orders submitted must be in unedited, full-text form, and if possible, must be reproduced from the original document.
  - (6) All material submitted must be in the original language, and if not in English, must be accompanied by a certified English translation.

*[Added 53 FR 24447, June 29, 1988, effective August 1, 1988]*

### 37 CFR 150.4 Evaluation.

- (a) Upon submission of a request by a foreign government for the issuance of a section 902 proclamation, if an interim order under section 914 has not been issued, the Commissioner may initiate a section 914 proceeding if additional information is required.
- (b) If an interim order under section 914 has been issued, the information obtained during the section 914 proceeding will be used in evaluating the request for a section 902 proclamation.
- (c) After the Commissioner receives the request of a foreign government for a section 902 proclamation, or after a determination is made by the Commissioner to initiate independently an evaluation pursuant to 150.2(a) of this part, a notice will be published in the Federal Register to request relevant and material comments on the adequacy and effectiveness of the protection afforded U.S. mask works under the system of law described in the notice. Comments should include detailed explanations of any alleged deficiencies in the foreign law or any alleged deficiencies in its implementation. If the alleged deficiencies include problems in administration such as registration, the respondent should include as specifically as possible full detailed explanations, including dates for and the nature of any alleged problems. Comments shall be submitted to the Commissioner within sixty (60) days of the publication of the Federal Register notice.
- (d) The Commissioner shall notify the Register of Copyrights and the Committee on the Judiciary of the Senate and the House of Representatives of the initiation of an evaluation under these regulations.
- (e) If the written comments submitted by any party present relevant and material reasons why a proclamation should not issue. The Commissioner will:
  - (1) Contact the party raising the issue for verification and any needed additional information;
  - (2) Contact the requesting foreign government to determine if the issues raised by the party can be resolved; and,
    - (i) If the issues are resolved, continue with the evaluation; or,
    - (ii) If the issues cannot be resolved on this basis, hold a public hearing to gather additional information.
- (f) The comments, the section 902 request, information obtained from a section 914 proceeding, if any, and information obtained in a hearing held pursuant to paragraph (e)(ii) of this section, if any, will be evaluated by the Commissioner.
- (g) The Commissioner will forward the information to the Secretary, together with an evaluation and a draft recommendation.
- (h) The Secretary will forward a recommendation regarding the issuance of a section 902 proclamation to the President.

*[Added 53 FR 24448, June 29, 1988, effective August 1, 1988]*



**37 CFR 150.5 Duration of proclamation.**

(a) The recommendation for the issuance of a proclamation may include terms and conditions regarding the duration of the proclamation.

(b) Requests for the revision, suspension, or revocation of a proclamation may be submitted by any interested party. Requests for revision, suspension, or revocation of a proclamation will be considered in substantially the same manner as requests for the issuance of a section 902 proclamation.

*[Added 53 FR 24448, June 29, 1988, effective August 1, 1988]*

**37 CFR 150.6 Mailing address.**

Requests and all correspondence pursuant to these guidelines shall be addressed to: Commissioner of Patents and Trademarks, Box 4, Washington, D.C. 20231.

*[Added 53 FR 24448, June 29, 1988, effective August 1, 1988]*

## CHAPTER II—COPYRIGHT OFFICE, LIBRARY OF CONGRESS

### SUBCHAPTER A—COPYRIGHT OFFICE AND PROCEDURES

#### PART 211—MASK WORK PROTECTION

*Authority: 17 U.S.C. 702 and 908.*

*Source: 50 FR 26719, June 28, 1985, unless otherwise noted.*

**37 CFR 211.1 General provisions.**

(a) Mail and other communications with the Copyright Office concerning the Semiconductor Chip Protection Act of 1984, Pub. L. 98–620, chapter 9 of Title 17 U.S.C., shall be addressed to: Library of Congress, Department MW, Washington, DC 20540.

(b) Section 201.2 of this chapter relating to the information given by the Copyright Office, and parts 203 and 204 of this chapter pertaining to the Freedom of Information Act and Privacy Act, shall apply, where appropriate, to the administration by the Copyright Office of the Semiconductor Chip Protection Act of 1984, Pub. L. 98–620.

(c) For purposes of this part, the terms semiconductor chip product, mask work, fixed, commercially exploited, and owner, shall have the meanings set forth in section 901 of Title 17 U.S.C.

**37 CFR 211.2 Recordation of documents pertaining to mask works.**

The conditions prescribed in § 201.4 of this chapter for recordation of transfers of copyright ownership and other documents pertaining to copyright are applicable to the recordation of documents pertaining to mask works under section 903 of Title 17 U.S.C.

**37 CFR 211.3 Mask work fees.**

(a) The following fees or charges are established by the Register of Copyrights for services relating to mask works:

- (1) For filing an application for registration of a mask work claim, \$20.00;
- (2) For the recordation of a document covering not more than one title, the basic recordation fee is \$20. For additional titles over one, a charge of \$10 is added for each group of not more than 10 titles;
- (3) For a certified copy of a certificate of registration, \$8;
- (4) For certifications of photocopies of other Copyright Office records, \$20 for each hour or fraction of an hour consumed with respect thereto;
- (5) For issuance of a receipt of deposit, \$4;
- (6) For each hour or fraction of an hour consumed in making and reporting a routine search, or for any related services, \$20;
- (7) For special handling of an application for registration of a claim, \$330;

- (8) For any special services not listed above requiring a substantial amount of time or expense, the fees will be fixed on the basis of the cost of providing the service.

(b) Section 201.6 of this chapter on the payment and refund of Copyright Office fees shall apply to mask work fees.

[50 FR 26719, June 28, 1985, as amended at 56 FR 59886, Nov. 26, 1991]

#### **37 CFR 211.4 Registration of claims of protection in mask works.**

(a) General. This section prescribes conditions for the registration of claims of protection in mask works pursuant to section 908 of Title 17 U.S.C.

(b) Application for registration

- (1) For purposes of registration of mask work claims, the Register of Copyrights has designated "Form MW" to be used for all applications submitted on and after January 7, 1985. Copies of the form are available free upon request to the Public Information Office, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559. Applications submitted before January 7, 1985 will be dated January 7, 1985.
- (2) An application for registration of a mask work claim may be submitted by the owner of the mask work, or the duly authorized agent of any such owner.
- (i) The owner of a mask work includes a party that has obtained the transfer of all of the exclusive rights in the work, but does not include the transferee of less than all of the exclusive rights, or the licensee of all or less than all of these rights.
- (ii) For purposes of eligibility to claim mask work protection pursuant to section 902(a)(1)(A) of 17 U.S.C., the owner of the mask work must be either the initial owner or a person who has obtained by transfer the totality of rights in the mask work under the Act.
- (3) An application for registration shall be submitted on Form MW prescribed by the Register under paragraph (b)(1) of this section, and shall be accompanied by the registration fee and deposit required under 17 U.S.C. 908 and §§ 211.3 and 211.5 of these regulations. The application shall contain the information required by the form and its accompanying instructions, and shall include a certification. The certification shall consist of:
- (i) A declaration that the applicant is authorized to submit the application and that the statements made are correct to the best of that person's knowledge; and
- (ii) The handwritten signature of the applicant, accompanied by the typed or printed name of that person.

(c) One registration per mask work

- (1) Subject to the exception specified in paragraph (c)(2) of this section, only one registration can generally be made for the same version of a mask work fixed in an intermediate or final form of any semiconductor chip product. However, where an applicant for registration alleges that an earlier registration for the same version of the work is unauthorized and legally invalid and submits for recordation a signed affidavit, a registration may be made in the applicant's name.
- (2) Notwithstanding the general rule permitting only one registration per work, owners of mask works in final forms of semiconductor chip products that are produced by adding metal-connection layers to unpersonalized gate arrays may separately register the entire unpersonalized gate array and the custom metallization layers. Applicants seeking to register separately entire unpersonalized gate arrays or custom metallization layers should make the nature of their claim clear at Space 8 of application Form MW. For these purposes, an "unpersonalized gate array" is an intermediate form chip product that includes a plurality of circuit elements that are adaptable to be personalized into a plurality of different final form chip products, in which some of the circuit elements are, or will be, connected as gates.

(d) Registration as a single work. Subject to the exception specified in paragraph (c)(2) of this section, for purposes of registration on a single application and upon payment of a single fee, the following shall be considered a single work.

- (1) In the case of a mask work that has not been commercially exploited: All original mask work elements fixed in a particular form of a semiconductor chip product at the time an application for registration is filed and in which the owner or owners of the mask work is or are the same; and
- (2) In the case of a mask work that has been commercially exploited. All original mask work elements fixed in a semiconductor chip product at the time that product was first commercially exploited and in which the owner or owners of the mask is or are the same.

(e) Registration in most complete form. Owners seeking registration of a mask work contribution must submit the entire original mask work contribution in its most complete form as fixed in a semiconductor chip product. The most complete form means the stage of the manufacturing process which is closest to completion. In cases where the owner is unable to register on the basis of the most complete form because he or she lacks control over the most complete form, an averment of this fact must be made at Space 2 of Form MW. Where such an averment is made, the owner may register on the basis of the most complete form in his or her possession. For applicants seeking to register an unpersonalized gate array or custom metallization layers under paragraph (c)(2), the most complete form is the entire chip on which the unpersonalized gate array or custom metallization layers reside(s), and registration covers those elements of the chip in which work protection is asserted.

(f) Section 914 Orders

- (1) For purposes of this section, the terms Commissioner and Order shall have the meaning given them in the Guidelines for the Submission of Applications for Interim Protection of Mask Works Under 17 U.S.C. 914 (49 FR 44517; Nov. 7, 1984) as follows:
  - (i) Commissioner means the Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.
  - (ii) Order means an action by the Commissioner issuing or terminating an Order extending to foreign nationals, domiciliaries and sovereign authorities the privilege of making interim registrations for mask works pursuant to Chapter 9 of title 17, U.S.C.
- (2) In the case of a mask work which is eligible for registration only after issuance of an Order of the Commissioner pursuant to section 914, 17 U.S.C., applications for registration under section 908 may be submitted, along with the proper identifying material and fee, if a request for issuance of an Order has been made in accordance with the Guidelines. The Copyright Office will process and examine the claims, but will not issue a certificate of registration unless and until an Order is issued pursuant to 17 U.S.C. 914.
- (3) The effective date of any registration premised on a section 914, 17 U.S.C. Order shall not be earlier than the effective date of the Order.
- (4) Registration premised on a section 914, 17 U.S.C. Order will be refused unless the Order is given an effective date before, and the proper application, deposit of identifying material, and fee are received in the Copyright Office before:
  - (i) July 1, 1985, in the case of mask works first commercially exploited between July 1, 1983, and November 8, 1984; or
  - (ii) The expiration of two years following first commercial exploitation, in the case of a mask work commercially exploited on or after November 8, 1984.
- (5) Subject to paragraph (e)(4) of this section, registration of a claim premised on a section 914, 17 U.S.C. Order will be made even after the termination or expiration of an Order, provided that a proper application, deposit of identifying material, and fee are received in the Copyright Office while the Order is in effect, and the claim is otherwise entitled to registration under chapter 9 of Title 17 U.S.C.

(g) Corrections and amplifications of prior registration. Except for errors or omissions made by the Copyright Office, no corrections or amplifications can be made to the information contained in the record of a completed registration after the effective date of the registration. A document purporting to correct or amplify the information in a completed registration may be recorded in the Copyright Office for whatever effect a court of competent jurisdiction may later give to it, if the document is signed by the owner of the mask work, as identified in the registration record, or by a duly authorized agent of the owner.

[50 FR 26719, June 28, 1985, as amended at 56 FR 7818, Feb. 26, 1991]

### **37 CFR 211.5I Deposit of identifying material.**

(a) General. This section proscribes rules pertaining to the deposit of identifying material for registration of a claim of protection in a mask work under section 908 of Title 17 U.S.C.

(b) Nature of required deposit. Subject to the provisions of paragraph (c) of this section, the deposit of identifying material to accompany an application for registration of a mask work claim under § 211.4 of these regulations shall consist of:

(1) In the case of a commercially exploited mask work, four reproductions of the mask work fixed in the form of the semiconductor chip product in which it was first commercially exploited. Defective chips may be deposited under this section provided that the mask work contribution would be revealed in reverse dissection of the chips. The four reproductions shall be accompanied by a visually perceptible representation of each layer of the mask work consisting of:

- (i) Sets of plastic color overlay sheets;
- (ii) Drawings or plots in composite form on a single sheet or on separate sheets; or
- (iii) A photograph of each layer of the work fixed in a semiconductor chip product.

The visually perceptible representation of a mask work deposited under this section shall be reproduced on material which can be readily stored in an 8 1/2 x 11 inch format, and shall be reproduced at a magnification sufficient to reveal the basic circuitry design of the mask work and which shall in all cases be at least 20 times magnification.

(2) In the case of a mask work that has not been commercially exploited, one of the following:

- (i) Where the mask work contribution in which registration is sought represents twenty percent or more of the area of the intended final form, a visually perceptible representation of the work in accordance with paragraph (b)(1)(i) or (ii) of this section. In addition to the deposit of visually perceptible representations of the work, an applicant may, at his or her option, deposit four reproductions in the most complete form of the mask work as fixed in a semiconductor product.
- (ii) Where the mask work contribution in which registration is sought represents less than twenty percent of the area of the intended final form, a visually perceptible representation of the work which reveals the totality of the mask work contribution to a person trained in the state of the art. The visually perceptible representations may consist of any combination of plastic color overlay sheets, drawing or plots in composite form, or a photograph or photographs of the entire mask set. If the visually perceptible representation fails to identify all of the elements of the mask work contribution, they may be accompanied by additional explanatory material. The visually perceptible representation of a mask work deposited under this section shall be reproduced on material which can be readily stored in an 8 1/2 x 11 inch format and shall be of sufficient magnification and completeness to reveal all elements of the mask work contribution. In addition to the deposit of visually perceptible representations of the work, an applicant may, at his or her option, deposit four reproductions in the most complete form of the mask work as fixed in a semiconductor chip product.

(c) Trade secret protection. Where specific layers of a mask work fixed in a semiconductor chip product contain information in which trade secret protection is asserted, certain material may be withheld as follows:

- (1) Mask works commercially exploited. For commercially exploited mask works no more than two layers of each five or more layers in the work. In lieu of the visually perceptible representations required under paragraph (b)(1) of this section, identifying portions of the withheld material must be submitted. For these purposes, identifying portions shall mean
  - (i) a printout of the mask work design data pertaining to each withheld layer, reproduced in microform, or
  - (ii) visually perceptible representations in accordance with paragraph (b)(1)(i), (ii), or (iii) of this section with those portions containing sensitive information maintained under a claim of trade secrecy blocked out,provided that the portions remaining are greater than those which are blocked out.
- (2) Mask work not commercially exploited. For mask works not commercially exploited falling under paragraph (b)(2)(i) of this section, any layer may be withheld. In lieu of the visually perceptible representations required under paragraph (b)(2) of this section, “identifying portions” shall mean
  - (i) a printout of the mask work design data pertaining to each withheld layer, reproduced in microform, in which sensitive information maintained under a claim of trade secrecy has been blocked out or stripped, or
  - (ii) visually perceptible representations in accordance with paragraph (b)(2)(i) with those portions containing sensitive information maintained under a claim of trade secrecy blocked out,provided that the portions remaining are greater than those which are blocked out. The identifying portions shall be accompanied by a single photograph of the top or other visible layers of the mask work fixed in a semiconductor chip product in which the sensitive information maintained under a claim of trade secrecy has been blocked out, provided that the blocked out portions do not exceed the remaining portions.

(d) Special relief. The Register of Copyrights may decide to grant special relief from the deposit requirements of this section, and shall determine the conditions under which special relief is to be granted. Requests for special relief under this paragraph shall be made in writing to the Chief, Examining Division of the Copyright Office, Washington, D.C. 20559, shall be signed by the person signing the application for registration, shall set forth specific reasons why the request should be granted and shall propose an alternative form of deposit.

(e) Retention and disposition of deposits

- (1) Any identifying material deposited under this section, including material deposited in connection with claims that have been refused registration, are the property of the United States Government.
- (2) Where a claim of protection in a mask work is registered in the Copyright Office, the identifying material deposited in connection with the claim shall be retained under the control of the Copyright Office, including retention in Government storage facilities, during the period of protection. After that period, it is within the joint discretion of the Register of Copyrights and the Librarian of Congress to order its destruction or other disposition.

**37 CFR 211.6 Methods of affixation and placement of mask work notice.**

(a) General

- (1) This section specifies methods of affixation and placement of the mask work notice that will satisfy the notice requirement in section 909 of title 17 U.S.C. A notice deemed “acceptable” under this regulation shall be considered to satisfy the requirement of that section that it be affixed “in such manner and location as to give reasonable notice” of protection. As provided in that section, the examples specified in this regulation shall not be considered exhaustive of the methods of affixation and positions giving reasonable notice of the claim of protection in a mask work.



- (2) The acceptability of a mask work notice under these regulations shall depend upon its being legible under normal conditions of use, and affixed in such manner and position that, when affixed, it may be viewed upon reasonable examination.
- (b) Elements of mask work notice. The elements of a mask work notice shall consist of:
  - (1) The words mask work, the symbol “\*M\*”, or the symbol “(the letter M in a circle)”; and
  - (2) The name of the owner or owners of the mask work or an abbreviation by which the name is recognized or is generally known.
- (c) Methods of affixation and placement of the notice. In the case of a mask work fixed in a semiconductor chip product, the following locations are acceptable:
  - (1) A gummed or other label securely affixed or imprinted upon the package or other container used as a permanent receptacle for the product; or
  - (2) A notice imprinted or otherwise affixed in or on the top or other visible layer of the product.