ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER L31

LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS ACT

Showing the Law as at 15 December 2002

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises Act 5/2002, in force 12 August 2002

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LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS ACT

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LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS ACT

PART I

PRELIMINARY PROVISIONS

Definitions

1. In this Act—

"Court" means the Eastern Caribbean Supreme Court;

"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/or on a piece of material and which is intended to perform an electronic function;

"layout-design" is synonymous with "topography" and means the three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and some or all of the inter-connections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture;

"Minister" means the Minister to whom responsibility for industrial property law is assigned;

"Register" means the Register of Layout-Designs (Topographies) of Integrated Circuits;

"Registrar" means the Registrar of Companies;

"right holder" means the person who is to be regarded as the beneficiary of the protection referred to in section 4.

PART 2

NATURE AND EXTENT OF PROTECTION

Protection

2. (1) Protection under this Act may be obtained for layout-designs of integrated circuits if and to the extent that they are original within the meaning of section 3.

(2) Registration may only be applied for if the layout-design has not yet been commercially exploited, or has been commercially exploited for not more than 2 years anywhere in the world.

(3) Protection under this Act shall not be available for layout-designs which have been commercially exploited, anywhere in the world, for more than 2 years prior to 12th August 2002.

Originality

3. (1) A layout-design shall be considered to be original if 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) A layout-design consisting of a combination of elements and inter-connections that are commonplace shall be protected only if the combination taken as a whole is original within the meaning of subsection (1).

Right to protection

4. (1) The right to layout-design protection shall belong to the creator of the layout-design and may be assigned or transferred by succession.

(2) Where several persons have jointly created a layout-design, the right to layout-design protection shall belong to them jointly.

(3) Where the layout-design has been created in execution of a commission or an employment contract, the right to layout-design protection shall belong, in the absence of contractual provisions to the contrary, to the person who commissioned the work or to the employer.

Effect of protection

5. (1) Protection under this Act shall not depend upon whether or not the integrated circuit which incorporates the protected layout-design is itself incorporated in an article.

(2) Subject to subsection (3) and to section 13, the protection shall have the effect that the following acts shall be unlawful if performed without the authorisation of the right holder—

(a) reproducing, whether by incorporation in an integrated circuit or otherwise, the protected layout-design in its entirety or any part thereof, except the act of reproducing any part that does not comply with the requirement of originality referred to in section 3;

(b) importing, selling or otherwise distributing for commercial purposes the protected layout-design, an integrated circuit in which the protected layout-design is incorporated, or an article incorporating such an integrated circuit in so far as it continues to contain an unlawfully reproduced layout-design.

(3) The effect of protection of a layout-design under this Act shall not extend to—

(a) the reproduction of the protected layout-design for private purposes or for the sole purpose of evaluation, analysis, research or teaching;

(b) the incorporation in an integrated circuit of a layout-design created on the basis of such analysis or evaluation and which is itself original in the meaning of section 3 or the performance of any of the acts referred to in subsection (2) in respect of that layout-design.

(c) the performance of any of the acts referred to in paragraph (2)(b) where the act is performed in respect of a protected layout-design, or in respect of an integrated circuit

in which such a layout-design is incorporated, that has been put on the market by or with the consent of the right holder.

(d) The performance of any of the acts referred to in paragraph (2)(b) in respect of an integrated circuit incorporating an unlawfully reproduced layout-design or any article incorporating such an integrated circuit where the person performing or ordering such an act did not know and had no reasonable ground to know, when acquiring the integrated circuit or the article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design; however, after the time that such person has received sufficient notice that the layout-design was unlawfully reproduced, that person may perform any of those acts only with respect to the stock on hand or ordered before such time and shall be liable to pay to the right holder a sum equivalent to a reasonable royalty such as would be payable under a freely negotiated licence in respect of such a layout-design; or

(e) the performance of any of the acts referred to in paragraph (2)(b) where the act is performed in respect of an identical layout-design which is original and has been created independently by a third party.

Commencement and duration of protection

6. (1) The protection of a layout-design under this Act shall commence—

(a) on the date of the first commercial exploitation anywhere in the world of the layout-design by or with the consent of the right holder, provided that an application for protection is filed by the right holder with the Registrar within the time limit referred to in section 2(2); or

(b) on the filing date accorded to the application for the registration of the layout-design filed by the right holder, if the layout-design has not been previously exploited commercially anywhere in the world.

(2) Protection of a layout-design under this Act shall terminate at the end of the 10th calendar year after the date of commencement of protection.

PART 3

REGISTRATION

Application

7. (1) An application for the registration of a layout-design shall be made on the prescribed form and shall be filed with the Registrar.

(2) A separate application shall be filed for each layout-design.

(3) The application shall—

(a) contain a request for registration of the layout-design in the Register and a brief and precise designation of the layout-design;

(b) indicate the name, address, nationality of the applicant and if different from the address, the habitual residence of the applicant;

(c) be accompanied by the authorisation of the agent appointing the representative of the applicant, if any;

(d) be accompanied by a copy or drawing of the layout-design together with information defining the electronic function which the integrated circuit is intended to perform but the application may omit such parts of the copy or drawing that relate to the manner of manufacture of the integrated circuit, provided that the parts submitted are sufficient to allow the identification of the layout-design;

(e) specify the date of first commercial exploitation of the layout-design anywhere in the world or indicate that such exploitation has not commenced; and

(f) provide particulars establishing the right to protection under section 4.

(4) Where an application does not duly comply with the requirements of subsection (3), the Registrar shall immediately notify the applicant of the defects and invite him to correct them within 2 months.

(5) Where the defects are corrected within the time limit under subsection (4), the Registrar shall accord as the filing date the date of original receipt of the application, provided that, at the time of original receipt, the application contained—

(a) an express or implicit indication that the registration of a layout-design is requested;

(b) indications allowing the identity of the applicant to be established; and

(c) was accompanied by a copy or drawing of the layout-design.

(6) Where the requirements of subsection (5) were not complied with at the date of original receipt of the application but are complied with within the time limit, the date of receipt of the required correction shall be deemed to be the filing date of the application.

(7) The Registrar shall confirm the filing date and communicate it to the applicant.

(8) Where the defects are not corrected within the time limit, the application shall be deemed not to have been filed.

(9) Each application for protection of a layout-design shall be subject to the payment of the prescribed fee.

(10) Where the fee is not paid, the Registrar shall notify the applicant that the application will be deemed not to have been filed unless payment is made within 2 months from the date of the notification and where the application fee is not paid within that time limit, the application shall be deemed not to have been filed.

Register; registration and publication

8. (1) The Registrar shall maintain a register in which he shall record all matters required by this Act to be recorded.

(2) Where an application complies with the requirements of section 7, the Registrar shall register the layout-design in the Register without examination of the originality of the layout-design, the applicant's entitlement to protection or the correctness of the facts stated in the application.

(3) The Register shall contain the number, title, filing date and, where indicated in the application under section 7(3)(e), the date of first commercial exploitation, anywhere in the world, of the layout-design as well as the name and address of the right holder and other prescribed particulars.

(4) Any person may consult the Register and obtain extracts therefrom, subject to the payment of the prescribed fee.

(5) The registration of a layout-design shall be published in the G*azette*.

Right to transfer, rectification of register

9. (1) Where the essential content of the application has been taken from the layout-design of another person without his consent, that other person may, in writing, request the Registrar to transfer the application to him.

(2) Where the application has already resulted in a registration, that other person may, within 3 years from the publication of the registration, in writing, request the Registrar to transfer the registration to him and to rectify the entry in the Register accordingly.

(3) The Registrar shall send forthwith a copy of the request in subsection (2) to the right holder, and, within the prescribed period and in the prescribed manner, the right holder may send to the Registrar a counter-statement of the grounds on which he relies.

(4) Where the right holder sends a counter-statement, the Registrar shall furnish a copy thereof to the other person requesting the transfer and, after hearing the parties, if either or both wish to be heard, and considering the merits of the case, shall decide whether the application or registration should be transferred and, where applicable, whether the Register should be rectified.

Changes in ownership; contractual licences

10. (1) Any change in the ownership of a protected layout-design shall be in writing.

(2) Once the layout-design has been registered, the change in ownership shall, at the request of any interested party, be made to the Registrar, and thereby be recorded and published by the Registrar; and such change shall have no effect against third parties until it has been recorded.

(3) Any licence contract concerning a layout-design shall, upon registration of the layout-design, be submitted to the Registrar who shall keep its contents confidential but shall publish a reference thereto and the licence contract shall have no effect against third parties until such submission has been made.

Cancellation

11. (1) Any interested person may apply to the Court for the cancellation of the registration of a layout-design on the grounds that—

(a) the layout-design is not protectable under sections 2 and 3;

(b) the right holder is not entitled to protection under section 4; or

(c) where the layout-design has been commercially exploited, anywhere in the world, before the filing of the application for registration of the layout-design, the application was not filed within the time limit referred to in sections 2(2) and 6(1)(a).

(2) Where the grounds for cancellation are established with respect only to a part of the layout-design, only the corresponding part of the registration shall be cancelled.

(3) Any cancelled layout-design registration, or part thereof, shall be regarded as null and void from the date of the commencement of protection.

(4) The Master and Registrar of the Court shall notify the Registrar of the decision of the Court or the decision on any appeal therefrom and the Registrar shall record it and publish a reference thereto as soon as possible.

PART 4

MISCELLANEOUS

Representation

12. Where an applicant's ordinary residence or principal place of business is outside Anguilla, he shall be represented by a legal practitioner resident and practising in Anguilla.

Infringement; enforcement of exclusive right

13. (1) Infringement shall consist of the performance of any act which is unlawful under section 5(2).

(2) On the request of the right holder, or of his licensee if the latter has requested the right holder to institute court proceedings for a specific relief and the right holder has refused or failed to do so within a reasonable time, the Court may grant an injunction to prevent infringement or an imminent infringement, award damages and grant any other remedy available in law.

(3) Proceedings under subsection (2) may be initiated only after an application for registration of the layout-design has been filed with the Registrar.

Offences

14. (1) Any person who, without authorisation, knowingly performs any act which is unlawful under section 5(2) commits an offence and shall, on conviction, be liable to a fine of $10,000 or to imprisonment for a term of 1 year or to both.

(2) The Court may also order the seizure, forfeiture and destruction of the layout-designs, integrated circuits or articles concerned and of any materials or implements, the predominant use of which has been in the commission of the offence.

Exploitation by a Government agency or third person

15. (1) Where—

(a) the public interest, in particular, national security, nutrition, health or the development of other vital sectors of the national economy requires the exploitation of a protected layout-design for public non-commercial use; or

(b) a judicial or administrative body has determined that the manner of exploitation of a protected layout-design, by the right holder or his licensee, is anti-competitive, and the Minister is satisfied that the exploitation of the layout-design in accordance with this section would remedy such practice;

the Minister may decide that, even without the authorisation of the right holder, a Government agency or a third person designated by the Minister may exploit the layout-design.

(2) The exploitation of the layout-design under this section shall be—

(a) limited in scope and duration, to the purpose for which it was authorised;

(b) predominantly for the supply of the domestic market;

(c) non-exclusive; and

(d) subject to the payment to the right holder of an adequate remuneration therefor, taking into account the economic value of the Minister's authorisation, as determined in the Minister's decision and, where applicable, the need to correct anti-competitive practices.

(3) Upon request of the right holder or of the beneficiary of the authorisation, the Minister may, after hearing the parties, if either or both wish to be heard, vary the terms of the decision authorising the exploitation of the layout-design to the extent that changed circumstances justify such variation.

(4) Upon the request of the right holder or of the beneficiary of the authorisation, the Minister shall terminate the non-voluntary licence if he is satisfied that the circumstances which led to his decision have ceased to exist and are unlikely to recur or that the beneficiary of the authorisation has failed to comply with the terms of the authorisation.

(5) Notwithstanding subsection (4), the Minister shall not terminate an authorisation if he is satisfied that the adequate protection of the legitimate interests of the beneficiary of the authorisation justifies the maintenance of the authorisation.

(6) Where a third person has been designated by the Minister in accordance with subsection (1), the authorisation may only be transferred with the enterprise or business of the beneficiary of the authorisation or with the part of the enterprise or business within which the layout-design is being exploited.

(7) A request for the Minister's authorisation shall be accompanied by evidence that the right holder has received, from the person seeking the authorisation, a request for a contractual licence but that that person has been unable to obtain such a licence on reasonable commercial terms and conditions and within a reasonable time.

(8) Decisions of the Minister under this section may be the subject of an appeal to the Court by any interested party within 2 months of the date of the decision.

Exercise of discretionary powers; extension of time

16. (1) The Registrar shall, before exercising any discretionary power vested in him by this Act adversely to any party to a proceeding before him, give that party an opportunity to be heard.

(2) Where the Registrar is satisfied that the circumstances justify it, he may, upon receiving a written request therefor, extend the time for doing any act, other than the time limit set out in sections 2(2) and 6(1)(a), for filing an application, or taking any proceeding under this Act, upon notice to the parties concerned and upon such terms as he may direct and such extension may be granted notwithstanding the time for doing the act or taking the proceeding has expired.

Competence of Court; appeals

17. (1) The Court shall have jurisdiction in cases of dispute relating to the application of this Act and in matters which, under this Act, are to be referred to the Court.

(2) Any decision taken by the Registrar under this Act, in particular the registration of a layout-design, may be the subject of an appeal by any interested party to the Court and such appeal shall be filed within 2 months of the date of the decision.

Regulations

18. The Governor in Council may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

Citation

19. This Act may be cited as the Layout-Designs (Topographies) of Integrated Circuits Act, Revised Statutes of Anguilla, Chapter L31.

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