

Integrated Circuit Layout Protection Act

Promulgated on Aug. 11, 1995 by the Presidential Order
Enforcement Rules of the Integrated Layout Protection Act
Announced on Feb. 14, 1996 by the Ministry of Economic Affairs Order
Articles 14, 27 and 41 amended and promulgated by Presidential order on June 12, 2002

Chapter I General Provisions Article 1

This Act is enacted to protect integrated circuit layouts, balance societal and public interests, and promote the development of national science, technology and economy.

Article 2

Terms used in this Act are defined as follows:

1. Integrated Circuit:

A finished or intermediate product having electronic circuitry functions and with transistors, capacitors, resistors, or other electronic components and their interconnections integrated onto or within a semiconducting material.

2. Circuit Layout:

A two-dimensional or three-dimensional design of electronic components and interconnecting leads on an integrated circuit.

3. Distribute:

To purchase, sell, license, assign, or display for the purpose of purchasing, selling, licensing or assigning.

4. Commercial Exploitation:

Public distribution of a circuit layout or an integrated circuit containing the said circuit layout for commercial purposes.

5.Reproduce:

To duplicate production of a circuit layout or an integrated circuit containing the circuit layout through optical, electronic or other means.

6.Reverse Engineering:

To design a functionally compatible circuit layout for an integrated circuit based on an original electronic circuit diagram or functions diagram of an integrated circuit obtained through evaluation and analysis.

Article 3

The government competent authority of affairs prescribed under this Act is the Ministry of Economic Affairs.

The Ministry of Economic Affairs shall designate a special agency to administer affairs as stated in the preceding Paragraph. When necessary, such affairs may be delegated to other organizations or legal entities organized for public welfare purposes to administer part of the administrative duties.

Article 4

Any staff of the government competent authority of circuit layout affairs or legal entities organized for public welfare purposes or organizations referred to in Paragraph Two of the preceding Article shall not disclose to others any confidential information obtained through the performance of occupational or official duties.

Article 5

Under any of the following, a foreign owner of a circuit layout shall be eligible for

registration of a circuit layout in accordance with this Act:

1. The foreign owner's home country and the ROC are signatories to an international treaty, or have signed a reciprocal treaty or agreement affording protection to circuit layouts; or an agreement, approved by the Ministry of Economic Affairs, to protect circuit layouts has been executed between organizations or institutions of the foreign country and the ROC; or the foreign country has been verified as providing protection to circuit layouts of ROC nationals; or

2. The first commercial exploitation occurred within the jurisdiction of the ROC. Protection will be extended to the foreign owner only if the foreign owner's home country has been verified as providing protection to ROC nationals under the same conditions.

Chapter II Application for Registration

Article 6

Unless otherwise specified under this Act, the creator of a circuit layout or the creator's successor or assignee may apply for registration for the circuit layout.

With reference to the preceding Paragraph, if there is a plurality of creators, successors or assignees, they shall jointly apply for registration. However, if there is a contract stating otherwise, such contract shall govern.

Article 7

If a circuit layout is created by an employee within the scope of employment, the employer shall have the right to apply for registration; however, if there is a contract to the contrary, such contract shall govern.

The provision set forth in the preceding Paragraph shall apply to one who provides funding and contracts another to create a circuit layout.

The employee or contracted party as set forth in the preceding two Paragraphs shall be

entitled to the right of attribution based on the facts of the creation.

Article 8

An applicant may appoint an agent who resides within the territory of the ROC to apply for circuit layout registrations and handle other related matters.

Where an owner of a circuit layout has no residence or business office within the territory of the ROC, the owner shall appoint an agent who resides within the territory of the ROC to apply for circuit layout registrations and handle other related matters.

Article 9

Where two or more parties jointly apply for, or are joint owners to, circuit layout rights, and unless one party is agreed upon as the representative, all such parties shall jointly sign when prosecuting all related proceedings; a representative shall be designated to receive service of process. If a representative to receive service of process is not designated, the agency in charge of circuit layout affairs shall not only designate the applicant first identified in the application as the representative to receive service, but also notify the remaining parties of matters contained in the served documents.

Article 10

To apply for a circuit layout registration, a written application accompanied by the specification and drawing(s) or photo(s) of the circuit layout shall be filed with the competent authority of circuit layout affairs. If a circuit layout has been commercially exploited and embodied in an integrated circuit product at the time of application, such product shall also be submitted.

If the drawings, photos or integrated circuit products contain confidential information on the manufacturing process of an integrated circuit, the applicant may state the reasons in writing to the competent authority to apply for a submission of substitute documents.

If an application is filed by an assignee or heir, the name of the creator shall be

indicated in the application accompanied by documentary evidence.

Article 11

The application required in the preceding Article shall describe the following:

1. Name, nationality and domicile or residence of the applicant; in the case of a legal entity, its name, office address and the name of its representative;
2. Name, nationality and domicile or residence of the creator; in the case of a legal entity, its name, office address and the name of its representative;
3. Title and date of creation; and
4. Day, month and year of the first commercial exploitation if commercial exploitation occurred prior to the filing date.

Article 12

The filing date of a circuit layout registration shall be the date on which the registration fee is paid and all the documents prescribed in Article 10 of this Act have been submitted.

Article 13

No application for registration of a circuit layout shall be accepted two (2) years after the date of the first commercial exploitation.

Article 14

When an applicant filing an application for circuit layout registration or for any other matters in connection with circuit layout fails to comply with the prescribed formalities, the competent authority of circuit layout affairs shall notify the applicant

to make corrections within a specific time frame. If the applicant fails to make corrections within the given time frame, the application shall be dismissed, unless such failure has been corrected before an administrative decision is rendered by the said authority.

If an applicant fails to submit or correct within a statutory period due to natural calamities or any other causes not attributable to the applicant, the applicant may, within thirty (30) days after such cause ceases, apply in writing with cause to the competent authority of circuit layout affairs in writing to state the reason(s) for the application of a reinstatement of the original condition. The condition for reinstatement will not apply if one (1) year has elapsed from the expiration of the original statutory period.

While applying for a reinstatement of the original condition, the applicant shall concurrently supplement the act(s) that was required in default.

Chapter III Rights in Circuit Layouts Article 15

Protection shall not be asserted under this Act for a circuit layout not already registered.

A certificate shall be issued upon registration of a circuit layout.

Article 16

A circuit layout protected under this Act shall meet the following requirements:

1. The design is the result of the creator's intellect and efforts, and not plagiarism; and
2. At the time of creation, the circuit layout was not ordinary, common or known to the integrated circuit industry and designers of circuit layouts.

If a circuit layout is designed by combining ordinary, common or known components or interconnections, protection for the circuit layout shall be extended to the

combination as a whole that has met the requirements prescribed in the preceding Paragraph.

Article 17

An owner of circuit layout rights shall have the exclusive rights to preclude others from committing the following unauthorized acts:

1. To reproduce the circuit layout in whole or in part; or
2. To import or distribute for commercial purpose the circuit layout or an integrated circuit containing the circuit layout.

Article 18

Circuit layout rights shall not apply to any of the following:

1. To reproduce a circuit layout of another so as to evaluate or analyze the same for research, educational or reverse engineering purposes;
2. To create a circuit layout conforming to the requirements of Article 16 of this Act, or to produce an integrated circuit embodying said circuit layout by using the results of evaluation or analysis as referred to in the preceding Item;
3. To import or distribute legally possessed circuit layouts or integrated circuits by an owner of legally reproduced circuit layouts or integrated circuits;
4. To import or distribute illegally produced integrated circuits by an owner who obtained without knowledge that the integrated circuits have infringed another's circuit layout rights; or
5. To independently create, by a third party, an identical circuit layout or integrated circuit.

Article 19

The duration of a circuit layout shall be ten (10) years commencing from the earlier of the following:

1. Filing date of the circuit layout registration application; or
2. Date of the first commercial exploitation.

Article 20

If the name or title of a registered owner of circuit layout rights is changed, an application for a change of records shall be made.

Article 21

For circuit layout rights jointly owned by two or more parties, any assignment, grant of license or creation of pledge of the circuit layout rights shall have the unanimous consent of all joint owners.

Without the consent of all joint owners of circuit layout rights, no single joint owner shall assign, license or create a pledge in the joint owner's share of the ownership; no joint owner shall refuse consent without proper reasons.

If a joint owner of circuit layout rights abandons the owner's share, the abandoned share shall be allocated to the other joint owners according to the percentage of their respective shares in the joint ownership.

The preceding Paragraph shall apply mutatis mutandis to a case where joint owner dies without an heir or dissolves without a successor.

Article 22

For any of the following events related to circuit layout rights, parties concerned shall jointly sign and apply for recordation, accompanied by contracts or other documentary evidence, with the competent authority of circuit layout affairs; otherwise, these

parties shall have no locus standi against third parties who have no notice of the following:

1. Assignment;
2. License; or
3. Creation, transfer, alteration or extinguishment of a pledge.

For an inheritance of circuit layout rights, an application, accompanied by documentary evidence, shall be filed with the competent authority of circuit layout affairs for an issuance of a replacement certificate of registration.

Article 23

For a creation of a pledge in circuit layout rights, the creditor shall not make use of the circuit layout unless otherwise provided by a contract.

Article 24

For a use to promote nonprofit public interests in a circuit layout, the agency in charge of circuit layout affairs may, upon application, grant to an applicant a compulsory license to the circuit layout rights. The compulsory license shall be granted primarily to supply the demand of the domestic market.

If an owner of the circuit layout rights is found to have engaged in unfair competition, which has been irrevocably confirmed by the court or the Fair Trade Commission of the Executive Yuan, the competent authority of circuit layout affairs may, upon application, grant an applicant a compulsory license to the circuit layout rights, notwithstanding the absence of the condition set forth in the preceding Paragraph.

Upon receipt of an application for a compulsory license, the competent authority of circuit layout affairs shall send a copy of the application to the owner(s) of the circuit layout rights and require the owner(s) to submit a defense statement within three (3) months. If no defense statement is filed after the expiration of said time period, the competent authority may continue with the process.

A grant of a compulsory license right shall not preclude others from obtaining another compulsory license for the same circuit layout rights.

The licensee(s) of a compulsory license right shall pay the owner(s) of the circuit layout rights appropriate compensation. If there is a dispute, the amount of compensation shall be set by the competent authority of circuit layout affairs.

A compulsory license right shall not be assigned, licensed, or the subject of a creation of a pledge unless the compulsory license is transferred together with the related business.

Upon the termination of the reason(s) for compulsory license as set forth in Paragraphs One and Two of this Article, the competent authority of circuit layout affairs may, upon application, terminate the compulsory license.

If a licensee of a compulsory license right acts contrary to the purpose of the compulsory license, the competent authority of circuit layout affairs may, upon application by the owner of the circuit layout rights or by virtue of the official authority, revoke the compulsory license.

Article 25

Unless otherwise prescribed in this Act, the rights in a circuit layout shall extinguish under any one of the following:

1. If the term of the circuit layout right expires, the right shall extinguish from the day after the expiration date;
2. If an owner of the circuit layout rights dies without an heir, the circuit layout rights shall extinguish on the date when the rights are vested with the laws;
3. If a legal entity dissolves, the circuit layout rights are vested with the local governing body in accordance with the laws; or
4. If the rights in a circuit layout are abandoned by the owner, the rights shall

extinguish from the date on the written declaration.

Article 26

An owner of circuit layout rights shall not abandon the circuit layout rights without obtaining the consent of the owner's licensee(s) or creditor(s) of the pledge.

Circuit layout rights shall not be abandoned in part.

Article 27

Under any of following circumstances, the competent authority of circuit layout affairs shall, ex officio or upon application by an interested party, revoke the registration of a circuit layout, and recall the registration certificate within a designated period after the revocation has become irrevocable; if the certificate cannot be recalled, it shall be announced as void through public notice.

1. A final judgment has been rendered, holding that circuit layout right shall not be accorded;
2. Registration of a circuit layout is in violation of Articles 5 to 7, 10, 13, 38 or 39; or
3. Circuit layout rights are in violation of Article 16 of this Act.

Under the circumstances as set forth in the preceding Paragraph, the competent authority of circuit layout affairs shall serve the right owner or its agent with a copy of the application or a copy of the ex officio examination statement and require that a defense statement be submitted within thirty (30) days; if the defense statement fails to be submitted within the given time period, the competent authority of circuit layout affairs shall proceed with the examination.

With respect to the time period referred to in the preceding Paragraph, the right owner may apply for an extension by filing a written statement providing the reasons for such the extension in advance. However, extension shall only be permitted once.

Article 28

Applications for circuit layout registrations that conform to provisions of this Act shall be entered into the official Register of Rights in Circuit Layouts and published in an official gazette by the competent authority of circuit layout affairs.

The preceding Paragraph shall apply to revocations, extinguishments or abandonments of circuit layout rights.

CHAPTER IV REMEDIES FOR INFRINGEMENT

Article 29

In a case of an infringement of circuit layout rights, the owner of the circuit layout rights may request compensation for damages and request for a removal of the infringement; if a threat of infringement can be proved, a prevention of infringement may be requested.

An exclusive licensee of circuit layout rights may also make a request as in the preceding Paragraph. However, this is limited to where the owner of the integrated circuit rights, after having been notified, does not make a request as in the preceding Paragraph and there is no contrary provision in the contract.

Provisions of the preceding two Paragraphs shall apply to a third party who knew or should have known from sufficient provable facts that the products, which were imported or distributed for commercial purpose, contained integrated circuits produced from illegally reproduced circuit layouts. However, this does not apply if the infringer has separated the integrated circuit from the products.

When taking actions pursuant to the preceding Paragraph, an owner or exclusive licensee of circuit layout rights shall submit an infringement assessment report.

Where two or more infringers jointly infringe circuit layout rights, they shall be jointly liable to compensate for damages.

Article 30

To calculate the amount of damages claimed under the preceding Article, one of the following may be chosen:

1. In accordance with Article 216 of the Chinese Taipei Civil Code. If the injured party is unable to provide evidence to prove damages, the inference between the profits normally expected through exploiting the infringed circuit layout and the profits actually earned after the infringement may be claimed as damages;
2. An amount equal to the profits earned by the infringer from the infringement. If the infringer is unable to present proof of production costs and necessary expenses, the infringer's profits shall be the entire proceeds from the sale of infringing circuit layouts or integrated circuits containing said circuit layouts; or
3. Request the court, as according to the facts of the infringement(s), for an amount not more than five million New Taiwan dollars (NT\$ 5,000,000).

Article 31

If an owner as referred to under Item 4, Article 18 of this Act continues to import or distribute for commercial purposes after having received from the owner of the integrated circuit layout rights a written notice stating the facts of infringement and accompanied by an infringement assessment report of integrated circuits originally procured without notice of infringements, the owner of the integrated circuit layout rights may claim damages based on the usual royalties charged to use the infringed circuit layout.

Article 32

An injured party as set forth in Paragraph 1, Article 29 of this Act may request for the destruction of integrated circuits containing the infringing circuit layouts, and the publication of the contents of the court judgment, in whole or in part, in a newspaper with costs to be borne by the losing party.

Article 33

A foreign legal entity or organization, whether or not recognized by Chinese Taipei government, may institute civil actions regarding matters regulated by Act.

Article 34

The court may establish a special tribunal or designate judge(s) to handle litigations involving circuit layout rights.

CHAPTER V SUPPLEMENTAL PROVISIONS

Article 35

This Act shall not affect the rights and interests of circuit layout owners or third parties obtained legally through other laws.

Article 36

The competent authority of circuit layout affairs may establish an Assessment and Mediation Committee to handle assessment, dispute resolution and compulsory licensing matters related to circuit layout rights.

Regulations governing the establishment of the Committee shall be prescribed separately by the competent authority.

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Article 37

The competent authority of circuit layout affairs shall permanently retain the Register of Rights in Circuit Layouts and the files, all of which may be stored on microfilm,

magnetic discs, magnetic tapes, or laser discs.

Article 38

The competent authority shall prescribe the fees for various applications as set forth under this Act.

Article 39

If the first commercial exploitation of a circuit layout occurred within two years prior to the date on which this Act comes into force, the registration of such circuit layout may be applied for within six months from the date on which this Act comes into force.

Article 40

Enforcement rules of this Acts shall be prescribed by the competent authority.

Article 41

This Act shall come into force six (6) months after promulgation.

The amendments made to this Act shall take effect from the date of promulgation.

Note

In case of any discrepancy between the English version and the Chinese text of the Law, the Chines text shall prevail.