

THE LAYOUT-DESIGNS (TOPOGRAPHIES) ACT

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THE LAYOUT-DESIGNS (TOPOGRAPHIES) ACT

Act
30 of 1999

[3rd September, 1999.]

1. This Act may be cited as the Layout-Designs (Topo- Short title.
graphies) Act.

2.—(1) In this Act—

Interpre-
tation.

“appointed day” means the 3rd day of September, 1999;

“to distribute” includes to sell, lease, bail or otherwise transfer or to offer to sell, lease, bail or otherwise transfer;

“integrated circuit” means a product (whether in a final or 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 or upon a piece of material and which is intended to perform an electronic function;

“infringing integrated circuit” means an integrated circuit embodying a layout-design which is made, imported, distributed or otherwise commercially exploited in violation of the rights conferred by section 6;

“layout-design (commonly known as topography)” means—

- (a) the three-dimensional disposition, however expressed, of the elements of an integrated circuit (at least one of which is an active element) and some or all of the interconnections of such circuit; or

- (b) such three-dimensional disposition as is referred to in paragraph (a) prepared for an integrated circuit intended for manufacture;

“layout-design right” means the right conferred by section 6;

“protected layout-design” means a layout-design in which rights subsist under this Act;

“qualified person”—

(a) in the case of an individual, means a person who is a citizen of, or whose habitual residence is in, Jamaica or a specified country;

(b) in the case of a body corporate, means a body incorporated or established under any written law of Jamaica or a specified country;

“specified country” means a country which—

(a) is a party to a multilateral or bilateral agreement relating to the protection of layout-designs to which Jamaica is also a party; and

(b) specified by the Minister by notice published in the *Gazette*.

(2) References in this Act (however expressed) to the commercial exploitation of layout-design are references to the distribution to the public for commercial purposes of an integrated circuit embodying the layout-design or to any written offer to distribute an integrated circuit embodying a layout-design.

(3) For the purposes of this Act, where an integrated circuit forms part of an article that is imported, distributed or otherwise commercially exploited, the integrated circuit shall be deemed to be imported, distributed or otherwise commercially exploited, as the case may be.

3.—(1) This Act applies to layout-designs which are first commercially exploited on or after the appointed day. Application of Act.

(2) For the purposes of this Act, a layout-design is first commercially exploited when the layout-design or a substantial part of it is commercially exploited for the first time in any place in the world by or with the consent of the person who owns the right to so commercially exploit the layout-design at that time and in that place.

4.—(1) Subject to the provisions of this section, original layout-designs embodied in integrated circuits are eligible for protection under this Act. Protection of layout-designs.

(2) A layout-design shall be regarded as original only if—

- (a) it is the result of the intellectual efforts of its creator; and
- (b) is not, at the time of its creation, commonplace among creators of layout-designs or manufacturers of integrated circuits.

(3) Where a layout-design consists of a combination of elements and interconnections that are commonplace, it shall be eligible for protection only if the combination taken as a whole is original as described in subsection (2).

(4) The protection afforded by this Act does not extend to an idea, concept, process, principle, procedure, system or discovery.

5.—(1) A layout-design qualifies for protection under this Act if the owner is a qualified person on the date on which the layout-design is first commercially exploited anywhere in the world. Qualification for protection.

(2) Where a layout-design is jointly owned by two or more persons it qualifies for protection if any of the owners

satisfies the requirement of subsection (1); but if the layout-design qualifies for protection only under this section, only those owners who satisfy such requirement shall be taken into account for the purposes of sections 6 and 8.

Nature of protection.

6. Subject to the provisions of this section, the owner of the right in a protected layout-design has the exclusive right to do and to authorize another person to do any or all of the following—

- (a) to reproduce the whole or part of the layout-design by any means, whether by its embodiment in an integrated circuit or otherwise, except to the extent that the layout-design is not regarded as original pursuant to section 4 (2);
- (b) to import, distribute or otherwise commercially exploit the layout-design or the integrated circuit in which it is embodied.

Duration of right.

7.—(1) Subject to subsection (2), the enjoyment of layout-design right shall commence on the date on which the layout-design is first commercially exploited and shall subsist for ten years.

(2) The period of protection of a layout-design runs to the end of the calendar year in which the right expires pursuant to subsection (1).

Ownership of right.

8.—(1) The creator of a protected layout-design is the first owner of the layout-design right, unless there is an agreement to the contrary.

(2) Where a protected layout-design is created by two or more persons such persons shall be co-owners of the right.

Transfer of right.

9.—(1) Subject to subsection (2), the rights conferred by this Act in a layout-design may be transferred by the owner

of the right by—

- (a) assignment;
- (b) testamentary disposition; or
- (c) operation of law.

(2) A transfer by way of assignment shall not be effective unless it is in writing and signed by or on behalf of the assignor.

10.—(1) A layout-design may constitute the subject-matter of a licence, whether as to the whole interest in the design or any part of it. Licences.

(2) A licence granted by the owner of the right in a layout-design shall be binding on every successor in title to his interest in the layout-design right, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such person.

(3) The licensee under an exclusive licence has the same rights against a successor in title who is bound by the licence as he has against the person granting the licence.

11. Subject to sections 12 and 13, the rights in a protected layout-design are infringed by any person who, without the consent of the owner of the layout-design right, does any act in relation to the layout-design which such owner has the exclusive right to do pursuant to section 6. Infringement.

12. The following acts are permitted in relation to a protected layout-design without the consent of owner of the layout-design right— Permitted acts.

- (a) the reproduction of the protected layout-design solely for private purposes or for the purpose of research, teaching, analyzing or evaluating the

concept or techniques embodied in the layout-design or the circuitry, logic flow, or organization of the components used in the layout-design; or

- (b) the incorporation of the results of such analysis or evaluation in an original layout-design that is made for distribution;
- (c) the creation, independently, of an original layout-design which is identical to a protected layout-design.

First sale.

13.—(1) Where a protected layout-design is embodied in a particular integrated circuit that has been made by or with the consent of the owner of the layout-design right, the person who owns the integrated circuit may import, distribute or otherwise commercially exploit or use that particular integrated circuit without the consent of the owner of the layout-design right.

(2) Nothing in subsection (1) shall be construed as authorizing the owner of an integrated circuit to reproduce the integrated circuit without the consent of the owner of the rights in the layout-design embodied in it.

Remedies.

14.—(1) An infringement of a layout-design right is actionable at the suit of the owner of the layout-design right or by a licensee of any right in the layout-design, subject to any agreement between the owner and the licensee.

(2) Each owner of a layout-design right shall be or be made a party to any action for infringement of such right.

(3) Subject to the provisions of this section, in any action for such infringement relief by way of damages, injunction, profits, royalties or otherwise shall be available to the plaintiff, as the court thinks fit.

(4) Where in an action under this section an infringement of a layout-design right is proved or admitted, the court, having regard to—

- (a) any benefit accruing to the defendant by reason of the infringement;
- (b) the flagrancy of the infringement; and
- (c) all other material considerations, may award such additional damages as the court considers appropriate in the circumstances.

(5) In an action brought under this section, a person who shows that he was an innocent purchaser—

- (a) shall incur no liability under this Act with respect to the acquisition, importation, distribution or other commercial exploitation of units of the infringing integrated circuit that occurred before the time when he knew or ought reasonably to have known of the rights with respect to the layout-design embodied in the integrated circuit; and
- (b) shall—
 - (i) have the right to dispose of any inventory of the items of which the layout-design forms a part, that was acquired or imported by him before he had that knowledge;
 - (ii) pay a reasonable royalty in respect of that inventory in such amount and at such time as the court may determine.

(6) The amount of royalty referred to in subsection (5) (b) (ii) shall be determined by the court in any action for infringement unless the parties resolve the matter by voluntary negotiation, mediation or binding arbitration.

(7) The provisions of subsection (5) shall apply also to any person who directly or indirectly buys an infringing integrated circuit from an innocent purchaser.

(8) In this section “innocent purchaser” means a person who purchases an integrated circuit in good faith, not knowing or having any reasonable grounds to believe that it was an infringing integrated circuit.

Order for
delivery up.

15.—(1) Subject to the provisions of this section, where in the course of business a person has an infringing integrated circuit in his possession, custody or control, the owner of the layout-design right may apply to the court for an order that the infringing integrated circuit be delivered up to him or to such other person as the court may direct.

(2) The court shall not make an order under this section unless the court also makes, or it appears to the court that there are grounds for making, an order under section 16 for the disposal of the infringing integrated circuit.

(3) An application under subsection (1) may not be made after the end of the period of six years from the date on which the infringing integrated circuit was made, except that, if, during the whole or any part of that period, a person entitled to apply for an order is—

- (a) under a disability; or
- (b) prevented by fraud or concealment from discovering the facts entitling him to apply,

an application may be made by him at any time before the end of the period of six years from the date on which he ceased to be under the disability or, as the case may be, could with reasonable diligence have discovered those facts.

(4) A person to whom an infringing integrated circuit is delivered up pursuant to an order made under this section shall, if an order under section 16 is not made, retain it pending the making of an order or the decision not to make an order under that section.

(5) The owner of the layout-design right shall notify any exclusive licensee having concurrent rights before applying under this section for an order and the court may, on the application of the licensee, having regard to the terms of the licence, make such order as it thinks fit.

16.—(1) An application may be made to the court for—

Order for disposal.

- (a) an order that an infringing integrated circuit delivered up pursuant to an order under section 15 shall be forfeited to the owner of the layout-design right or destroyed or otherwise dealt with as the court may direct; or
- (b) a decision that no order under paragraph (a) be made.

(2) In considering what order (if any) should be made, the court shall have regard to all the circumstances of the case and, in particular, whether other remedies available under this Act for the infringement of the layout-design right would be adequate to compensate any person entitled to the rights and to protect his interests.

(3) Provision shall be prescribed as to the service of notice on persons having an interest in the layout-design embodied in an infringing integrated circuit.

(4) Any person referred to in subsection (3) is entitled—

- (a) to appear in proceedings for an order under this section, whether or not he was served with notice; and
- (b) to appeal against any order made, whether or not he appeared,

and an order 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.

(5) Where there is more than one person interested in a layout-design embodied in an infringing integrated circuit, the court shall make such order as it thinks just and may, in particular, direct that the integrated circuit be sold or otherwise dealt with, and the proceeds divided.

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

(7) References in this section to a person having an interest in an integrated circuit includes references to any person in whose favour an order under this section could be made in respect of that integrated circuit.

Notice.

17.—(1) The owner of a layout-design right may affix notice to the layout-design or any products embodying the design in such a manner and location as may give reasonable notice that the layout-design is protected under this Act.

(2) The affixation of the notice referred to in subsection (1) shall not be a condition of protection under this Act but shall constitute *prima facie* evidence of notice of protection.

(3) Notice shall be any of the following internationally recognized notices—

- (a) the words “mask work”, the symbol *M* or the letter M in a circle and the name of the owner or owners of the mask work or an abbreviation by which the name is recognized or is generally known;
or

- (b) the words "layout design (topography)" or the letter "T", "T", "[T]", "T*" or the letter T in a circle or a square.

18. The Minister may make regulations for giving effect Regulations. to the provisions of this Act and for prescribing anything required by this Act to be prescribed.

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