



[L.S.]

I Assent,

James B. Carlisle,
Governor-General.

18th December, 2003.

ANTIGUA AND BARBUDA

No. 20 of 2003

AN ACT to provide for the protection of topographical (layout-
designs) of integrated circuits.

[31st December, 2003]

ENACTED by the Parliament of Antigua and Barbuda as follows —

1. This Act may be cited as the Integrated Circuits Topography Act 2003 and comes into force on such date as the Minister may fix by notice published in the *Gazette*.

short title and
commencement.

2. In this Act —

Interpretation.

"Court" means the High 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 intercon-

nections are integrally formed in 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 of 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 intellectual property is assigned;

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

"Registrar" means ~~the~~ Registrar of the Intellectual Property Office appointed under Registrar of Intellectual Property **Office Act, 2003** and any reference to the Registrar shall be construed as including a reference to any officer discharging the functions of the Registrar;

"right holder" means the person who is to be regarded as the beneficiary of the protection referred to in section 6.

Protection.

3. (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 4.

(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 two 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 two **years** prior to the entry into force of this Act.

Originality.

4. (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).

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

Right to protection.

(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.

6. (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.

Effect of protection.

(2) Subject to subsection (3) and to section 14, the protection shall have the effect that the following acts shall be unlawful if performed without the authorization 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 4;
- (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 within the meaning of section 4 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 subsection (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 subsection (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 subsection (2)(b) where the act is performed in respect of an identical layout-design which is original and has been made independently by a third party.

Commencement
and duration of
protection.

7. (1) 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 3(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 tenth calendar year after the date of commencement of protection.

8. (1) An application for the registration of a layout-design shall be in writing and shall be filed with the Registrar.

Filing requirements.

(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 and, if different from the address, the habitual residence of the applicant;
- (c) accompanied by the authorization of 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 5.

(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 two 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 receipt of the application, provided that, at the time of receipt, the application contained an express or implicit indication that the registration of a layout-design is requested and indications allowing the identity of the applicant to be established and 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 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 two 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**.

9. (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 8, 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 8(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 prescribed manner.

10. (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.

**Right to transfer;
rectification of
register.**

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

(3) The Registrar shall send forthwith a copy of such a request 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 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.

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

**Changes in
ownership;
contractual
licences.**

(2) Once the layout-design has been registered, the change in ownership shall, at the request of any interested party, made to the Registrar, 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.

12. (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 3 and 4;
- (b) the right-holder is not entitled to protection under section 5; 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 3(2) and 7(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 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.

Representation.

13. Where an applicant's ordinary residence or principal place of business is outside Antigua and Barbuda, he shall be represented by a registered agent resident and practising in Antigua and Barbuda before the Registrar of the Intellectual Property Office. The procedure for the registration of an agent shall be prescribed in the regulations.

**Infringement;
enforcement of
exclusive right.**

14. (1) **Infringement** shall consist of the performance of any act which is **unlawful** under section 6.

(2) On the request of the right-holder, or of his licensee if the latter has requested the right-holder to institute court **proceed-**

ings 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 provided for in the general 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.

15. (1) Any person who, without authorization, knowingly performs any act which is unlawful under section 6, shall be guilty of an offence and is liable on summary conviction to a **fine** of ten thousand dollars (\$10,000.00) and to imprisonment for five years and 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.

Offences.

16. (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,

Exploitation by a Government agency or third person.

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

(2) Exploitation of the layout-design shall be —

- (a) limited, in scope and duration, to the purpose for which it was authorized;
- (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 authorization, as determined in the Minister's decision and, where applicable, the need to correct anticompetitive practices.

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

(4) Upon the request of the right-holder, the Minister shall terminate the authorization 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 authorization has failed to comply with the terms of the authorization.

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

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

(7) A request for the Minister's authorization shall be accompanied by evidence that the right-holder has received, from the person seeking the authorization, 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 with a reasonable time.

(8) Decisions of the Minister under this section may be the subject of an appeal to the Court.

17. (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.

Exercise of
discretionary
powers,
extension of
time

(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 **3(2)** and **7(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.

18. (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.

Competence of
Court; appeals.

(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 two **months** of the date of the decision.

19. The provisions of any **international** treaty in respect of intellectual property to which **Antigua** and Barbuda is a party shall apply to matters dealt with by this Act and, in case of conflict with provisions of this Act, shall prevail over the latter.

Application of
international
treaties.

20. The Minister may make Regulations prescribing all **mat-
ters** 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.

Regulations

Passed the House of Representatives
this 8th day of September, 2003.

Passed the Senate this 25th day
of September, 2003.

B. Harris,
Speaker.

M. Percival,
President.

S. Walker,
Clerk to the House of Representatives:

S. Walker,
Clerk to the Senate.

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