

Appendix S

GATT/Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement, Part II¹

Section 6: Layout-Designs (Topographies) of Integrated Circuits

Article 35 · Relation to IPIC Treaty

Members agree to provide protection to the layout-designs (topographies) of integrated circuits (hereinafter referred to as “layout-designs”) in accordance with Articles 2–7 (other than paragraph 3 of Article 6), Article 12 and paragraph 3 of Article 16 of the Treaty on Intellectual Property in Respect of Integrated Circuits and, in addition, to comply with the following provisions.

Article 36 · Scope of the Protection

Subject to the provisions of paragraph 1 of Article 37 below, Members shall consider unlawful the following acts if performed without the authorization of the right holder:² importing, selling, or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated, or an article incorporating such an integrated circuit only insofar as it continues to contain an unlawfully reproduced layout-design.

Article 37 · Acts Not Requiring the Authorization of the Right Holder³

1. Notwithstanding Article 36 above, no Member shall consider unlawful the performance of any of the acts referred to in that Article 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 acts did not know and had no reasonable ground to know, when acquiring the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design. Members shall provide that, after the time that such person has received sufficient notice that the layout-design was unlawfully reproduced, he may perform any of the acts with respect to the stock on hand or ordered before such time, but 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 license in respect of such a layout-design.

2. The conditions set out in sub-paragraphs (a)–(k) of Article 31 above shall apply *mutatis mutandis* in the event of any nonvoluntary licensing of a layout-design or of its use by or for the government without the authorization of the right holder.

Article 38 · Term of Protection

1. In Members requiring registration as a condition of protection, the term of protection of layout-designs shall not end before the expiration of a period of ten years counted from the date of filing an application for registration or from the first commercial exploitation wherever in the world it occurs.

2. In Members not requiring registration as a condition for protection, layout-designs shall be protected for a term of no less than ten years from the date of the first commercial exploitation wherever in the world it occurs.

3. Notwithstanding paragraphs 1 and 2 above, a Member may provide that protection shall lapse fifteen years after the creation of the layout-design.

Appendix S · Notes

1. For an explanation of the relationship of this section of TRIPs to Title 17 of the *United States Code*, see the second paragraph of note 8, chapter 9, *supra*.

2. Article 36 includes footnote 9 that states, “The term ‘right holder’ in this Section shall be understood as having the same meaning as the term ‘holder of the right’ in the IPIC Treaty.” The IPIC Treaty, which was signed in Washington, D.C., on May 26, 1989, is also known as the Treaty on Intellectual Property in Respect of Integrated Circuits.

3. See note 2, *supra*.