Regulations on the Protection of Layout-Designs of Integrated Circuits of the People's Republic of China

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Chapter I — General Provisions

Article 1 — These Regulations are formulated for the purpose of protecting the exclusive rights in layout-designs of integrated circuits, encouraging innovation in integrated circuit technology, and promoting the development of the science, technology and economy.

Article 2 — For the purposes of these Regulations: (1) '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. (2) 'Layout-design' 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 interconnections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture. (3) 'Right holder' means a natural person, legal entity or unincorporated organization that is the creator of the layout-design or has lawfully obtained the exclusive rights in the layout-design in accordance with these Regulations. (4) 'Reproduction' means the act of repeatedly producing a layout-design or an

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integrated circuit incorporating the protected layout-design. (5) ‘Commercial exploitation’ means the act of importing, selling or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit incorporating the protected layout-design, or an article incorporating such an integrated circuit.

Article 3 — The administrative department for intellectual property under the State Council shall be responsible for the administration of the protection of layout-designs throughout the country.

Article 4 — A layout-design shall enjoy exclusive rights under these Regulations only if it is original. The layout-design shall be the result of the creator’s own intellectual effort and not be commonplace among creators of layout-designs and manufacturers of integrated circuits at the time of its creation. A layout-design that consists of a combination of elements and interconnections that are commonplace shall be protected only if the combination, taken as a whole, is original.

Article 5 — The protection granted to layout-designs under these Regulations shall not extend to any idea, process, operating method or mathematical concept embodied in the layout-design.

Article 6 — The exclusive rights in a layout-design shall be created upon the date on which the layout-design is registered with the administrative department for intellectual property under the State Council after examination. No protection shall be granted to a layout-design for which an application for registration has not been filed. Where a layout-design has been commercially exploited anywhere in the world before the filing of the application for registration, the application for registration shall be filed within two years from the date on which the layout-design was first commercially exploited.

Chapter II — Exclusive Rights in Layout-Designs

Article 1 — A right holder of a layout-design shall enjoy the following exclusive rights: (1) the right to reproduce the protected layout-design in whole or in part that is original; and (2) the right to commercially exploit the protected layout-design, an integrated circuit incorporating the protected layout-design, or an article incorporating such an integrated circuit.

Article 2 — The term of protection of the exclusive rights in a layout-design shall be 10 years, which shall commence from the date of filing of the application for registration or the date on which the layout-design was first commercially exploited anywhere in the world, whichever is earlier. However, no layout-design shall be protected after the expiration of 15 years from the date of the completion of its creation, regardless of whether registration has been obtained.

Article 3 — Where a layout-design is created jointly by two or more natural persons, legal entities or unincorporated organizations, the ownership of the exclusive rights shall be determined by a written agreement among the co-creators. In the absence of such an agreement, the exclusive rights shall be jointly owned.

Article 4 — Where a layout-design is created under a commission, the ownership of the exclusive rights shall be determined by a written agreement between the commissioning and the commissioned parties. In the absence of such an agreement, the exclusive rights shall belong to the commissioned party.

Article 5 — The exclusive rights in a layout-design may be transferred or licensed. Where the exclusive rights are transferred, the parties shall enter into a written contract and register the transfer with the administrative department for intellectual property under the State Council. The transfer shall take effect upon registration.

Chapter III — Registration of Layout-Designs

Article 1 — An application for registration of a layout-design shall be filed with the administrative department for intellectual property under the State Council. The application shall include: (1) an application form; (2) a copy or drawing of the layout-design; (3) where the integrated circuit incorporating the layout-design has

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been commercially exploited, a sample of the integrated circuit; and (4) other materials required by the administrative department for intellectual property under the State Council.

Article 2 — Where an application for registration of a layout-design is filed, the administrative department for intellectual property under the State Council shall conduct a preliminary examination. Where the application meets the requirements, it shall be registered and a registration certificate shall be issued and a public announcement shall be made. If it does not meet the requirements, the application shall be rejected with reasons stated.

Article 3 — Any person may, within three months from the date of the public announcement of registration, file a request for reexamination of the registration with the administrative department for intellectual property under the State Council.

Article 4 — The administrative department for intellectual property under the State Council may charge fees for the registration of layout-designs. The fee rates shall be set by the administrative department for intellectual property under the State Council in conjunction with the price administration department of the State Council.

Chapter IV — Exercise and Limitations of Exclusive Rights

Article 1 — The following acts may be performed without the authorization of the right holder and without payment of remuneration: (1) reproduction of a protected layout-design for private purposes or for the sole purpose of evaluation, analysis, research or teaching; and (2) creation of an original layout-design on the basis of an evaluation and analysis of a protected layout-design (reverse engineering).

Article 2 — Where an integrated circuit incorporating a lawfully reproduced layout-design is purchased without knowing and having no reasonable grounds to know that it contains an unlawfully reproduced layout-design, the purchaser may import, sell or otherwise distribute it for commercial purposes. After the purchaser has received sufficient notice that the layout-design was unlawfully reproduced, it may continue to dispose of the stock on hand or ordered before such notice, but shall pay a reasonable royalty to the right holder.

Article 3 — Where the exclusive rights in a layout-design have been exhausted, any acts of commercial exploitation of the layout-design, an integrated circuit incorporating the layout-design, or an article incorporating such an integrated circuit may be performed without the authorization of the right holder and without payment of remuneration. The exclusive rights shall be deemed exhausted where a layout-design, an integrated circuit incorporating the layout-design, or an article incorporating such an integrated circuit has been put on the market by the right holder or with its consent.

Article 4 — Where a non-voluntary license is granted for a layout-design, the provisions of the relevant laws and regulations on non-voluntary licensing of patents shall apply mutatis mutandis.

Chapter V — Legal Liability

Article 1 — Unless otherwise provided in these Regulations, any person who commits any of the following acts without the authorization of the right holder shall bear civil liability such as ceasing the infringement and compensating for losses: (1) reproducing the whole or any original part of a protected layout-design; or (2) importing, selling or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit incorporating the protected layout-design, or an article incorporating such an integrated circuit.

Article 2 — The amount of damages for infringement may be calculated by reference to the losses suffered by the right holder as a result of the infringement or the illegal gains obtained by the infringer. Where the losses of the right holder or the illegal gains of the infringer cannot be determined, the damages may be determined by reference to the royalties for the exploitation of the layout-design.

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Article 3 — Disputes over the infringement of the exclusive rights in a layout-design may be resolved through mediation, or the parties may apply for arbitration to an arbitration institution under an arbitration agreement. Where no arbitration agreement has been reached, the parties may directly bring a lawsuit in a people's court.

Chapter VI — Supplementary Provisions

Article 1 — These Regulations shall be effective as of October 1, 2001.

Article 2 — Where any provision of an international treaty relating to the protection of layout-designs to which China is a party conflicts with the provisions of these Regulations, the provisions of the international treaty shall apply, unless China has made a reservation.

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