

SEMICONDUCTOR INTEGRATED CIRCUITS LAYOUT DESIGN ACT

Act No. 04526, Promulgated on December 8, 1992
As last amended by Act No. 9183, December 26, 2008

TABLE OF CONTENTS

CHAPTER I : General Provisions

Article 1 Purpose	308
Article 2 Definitions	308
Article 3 Foreigner's Layout Design	308
Article 4 Layout Design Administrators for Nonresidents	309
Article 5 Creator of a Layout Design in Service	309
Article 5bis Mutatis Mutandis Application of the Patent Act	310

CHAPTER II : Layout Design Right

Article 6 Creation of a Layout Design Right	310
Article 7 The Term of a Layout Design Right	310
Article 8 Effects of a Layout Design Right	310
Article 9 Scope to which a Layout Design Right Does Not Extend	311
Article 10 Assignment and Joint Ownership of a Layout Design Right	311
Article 11 Exclusive License	312
Article 12 Nonexclusive License	312
Article 13 Arbitration for Establishment of a Nonexclusive License	313
Article 14 Loss of Effect of an Arbitration	314
Article 15 Cancellation of an Arbitration	314
Article 16 Pledge	314
Article 17 Extinguishment of a Layout Design Right	315
Article 18 Restriction of Abandonment of a Layout Design Right etc.	315

CHAPTER III : Registration Of A Layout Design Right

Article 19 Application for Registration of Establishment of a Layout Design Right	315
Article 20 Rejection of Application	316
Article 21 Registration of Establishment and Public Notice	316
Article 22 Marking of Registration	316
Article 23 Effects of Registration	317
Article 24 Cancellation of Registration of Establishment of a Layout Design Right	317

CHAPTER IV : Layout Design Review And Mediation Committee

Article 25 Layout Design Review and Mediation Committee	318
Article 26 Function of the Committee	318
Article 27 Procedures of Mediation	318
Article 28 Mediation Panel	319
Article 29 Accomplishment of Mediation	319
Article 30 Failure of Mediation	319
Article 31 Fee for Mediation	319
Article 32 Discontinuation of Extinguishment Prescription	319
Article 33 Organization of Committee	320
Article 34 Support for Expenditure	320

CHAPTER V : Remedies For Infringement

Article 35 Right to Demand Cease and Desist from Infringement	320
Article 36 Right to Demand Damages	320
Article 37 Compensation	321
Article 38 Right to Demand Royalties from a Bona Fide Person	321

CHAPTER VI : Supplementary Provisions

Article 39 Hearing	322
Article 40 Fees	322

Article 40bis Reduction or Exemption of Establishment Registration Fees	322
Article 40ter Refund of Fees Paid by Mistake	323
Article 41 Jurisdiction for a Nonresident	323
Article 42 Deleted	323
Article 43 Fostering Layout Design Technology	323
Article 44 Obligation to Preserve Confidentiality	324

CHAPTER VII : Penal Provisions

Article 45 Offense of Infringement etc.	324
Article 46 Offense of False Marking	324
Article 47 Offense of Fraud	324
Article 48 Offense of Divulging Secrets	324
Article 49 Dual Liability	325
Article 50 Deleted	325

CHAPTER I
GENERAL PROVISIONS

Article 1 Purpose

The purpose of this Act is to contribute to the sound development of the national economy by protecting the right of a creator who creates a layout design for semiconductor integrated circuits and by establishing the fair use of layout designs to promote the semiconductor industry and technology.

Article 2 Definitions

The definitions of terms used in this Act are as follows:

- (i) "semiconductor integrated circuit" means an intermediate product or a final product manufactured to have the function of an electronic circuit, which is simultaneously formed in a state where circuit elements including more than one active element and the wires connecting the elements are inseparable from each other, on the surface of the semiconductor materials or insulating materials or inside the semiconductor materials;
- (ii) "layout design" means a plane or cubic design of the circuit elements and wires that connect the elements that could be used in manufacturing a semiconductor integrated circuit;
- (iii) "creation" means an activity of a person making a layout design that is not ordinarily the result of a person's intellectual efforts; furthermore, an activity that makes a layout design is considered to be creative when the layout design as a whole is not ordinary even if the layout design is composed of a combination of ordinary elements;
- (iv) "use" means any of the following acts:
 - (a) reproduction of a layout design;
 - (b) manufacturing of a semiconductor integrated circuit based on a layout design; or
 - (c) transferring, leasing, displaying (limited to a display for making a transfer or a lease) or importing a layout design, a semiconductor integrated circuit manufactured based on the layout design or an article incorporating the semiconductor integrated circuit (referred to as "a semiconductor integrated circuit and so on");
- (v) "right to a layout design" means the right created by registering a layout design with the Commissioner of the Korean Intellectual Property Office under Article 21(1).

Article 3 Foreigner's Layout Design

(1) A layout design of a foreigner or a foreign corporation is protected under this Act and under treaties to which the Republic of Korea has acceded.

(2) Where a foreigner or foreign corporation's layout design falls under paragraph (1), if the country of the foreigner does not bestow any protective benefits corresponding to this Act for a layout design of a Korean national, the Commissioner of the Korean Intellectual Property Office may limit the protection of this Act or treaties in the same manner.

Article 4 Layout Design Administrators for Nonresidents

(1) Except for a nonresident who is represented by an agent with a residential or business address in the Republic of Korea (referred to as "a layout design administrator"), a person without a residential or business address in the Republic of Korea (referred to as "a nonresident") may not initiate a procedure concerning layout designs or bring a court action against a decision made under this Act or under orders issued in accordance with this Act by administrative agencies unless the nonresident has filed for registration under paragraph (3) of this Article or unless the nonresident is staying in the Republic of Korea.

(2) A layout design administrator is entitled to act on behalf of the nonresident principal in all the procedures that are related to actions empowered and in court actions against dispositions made by administrative agencies under this Act or under orders issued in accordance with this Act.

(3) A nonresident who has registered a layout design under Article 21(1) or under Article 23 may not contest a third party's claim, unless the appointment or change of a layout design administrator, or the authority vested in a layout design administrator or the termination of authority of a layout design administrator has been registered.

(4) When seeking to register a layout design under Article 21(1) or during the term of the right to the layout design under Article 7, a nonresident shall appoint and register a layout design administrator under paragraph (1).

Article 5 Creator of a Layout Design in Service

For the layout design of a person employed by the Government, a corporation, an association or other employer (referred to as "the corporation and so on"), the corporation and so on is deemed to be the creator, unless otherwise provided in an agreement or an employment regulation and so on.

Article 5bis *Mutatis Mutandis* Application of the Patent Act

Articles 28bis to 28quinquies of the Patent Act apply *mutatis mutandis* to an application to register the establishment of a layout design right under Article 21(1) and other procedures. In such cases, "patent-related procedure" reads "application to register the establishment of a layout design right and other procedures", "Korean Intellectual Property Office or Intellectual Property Tribunal" reads "Korean Intellectual Property Office", "Commissioner of the Korean Intellectual Property Office or President of the Intellectual Property Tribunal" reads "Commissioner of the Korean Intellectual Property Office", "application for a patent" reads "application to register the establishment of a layout design right", and "Commissioner of the Korean Intellectual Property Office, President of the Intellectual Property Tribunal, presiding trial examiner, trial examiner, presiding examiner or examiner" reads "Commissioner of the Korean Intellectual Property Office".

**CHAPTER II
LAYOUT DESIGN RIGHT**

Article 6 Creation of a Layout Design Right

A layout design right comes into existence by registration of the establishment of a creative layout design under Article 21(1).

Article 7 The Term of a Layout Design Right

(1) The term of a layout design right is for ten years after the registration date of its establishment.

(2) The term of a layout design right under paragraph (1) may not exceed ten years after the date of the initial commercial use of the layout design or fifteen years after the date of its creation.

Article 8 Effects of a Layout Design Right

A person who registers a layout design under Article 21(1) or the person's successor in title (referred to as "a holder of a layout design right") is entitled to have the right to exclusively use the layout design for business purposes. However, this does not apply when the exclusive licensee has the right to exclusively use the layout design under Article 11(1) and (2).

Article 9 Scope to which a Layout Design Right Does Not Extend

(1) The effect of a layout design right under Article 8 does not extend to any of the following:

- (i) the reproduction of a layout design for education, research, analysis or evaluation, or for noncommercial use by an individual, or vicarious reproduction for these purposes;
- (ii) a creative layout design made as a result of research, analysis or evaluation as provided in subparagraph (i); or
- (iii) a layout design that is the same as a layout design independently created by another person.

(2) Where a person to whom a lawfully made semiconductor integrated circuit and so on has been transferred commits the acts stipulated in Article 2(iv)(c) for a commercial purpose in relation to the semiconductor integrated circuit and so on, the layout design right under Article 8 is not effective.

(3) Where a person to whom an unlawfully made semiconductor integrated circuit and so on that reproduces another person's registered layout design has been transferred in good faith and without negligence (referred to as "a bona fide person") commits an act stipulated under Article 2(iv)(c) for a commercial purpose in relation to the semiconductor integrated circuit and so on, the layout design under Article 8 is not effective.

Article 10 Assignment and Joint Ownership of a Layout Design Right

(1) A layout design right may be assigned.

(2) A layout design right created jointly by two or more persons is jointly owned by the persons who create it, and the share of each owner is considered to be equal unless the joint creators specifically agree otherwise.

(3) Where a layout design right is jointly owned, the owners may not assign or pledge their individual share without the consent of the other owners.

(4) Where a layout design right is jointly owned, and unless otherwise agreed in a contract of the owners, an owner may use the layout design without the consent of the other owners.

(5) Where a layout design right is jointly owned, an owner may not grant an exclusive license on the layout design under Article 11(1) or a nonexclusive license under Article 12(1) without the consent of the other owners.

Article 11 Exclusive License

- (1) The holder of a layout design right may establish for another person a right to exclusive use of the layout design (referred to as "an exclusive license").
- (2) A person for whom an exclusive license has been established under paragraph (1) (referred to as "an exclusive licensee") has the exclusive right to use the layout design for business purposes within the scope set forth by the establishment.
- (3) An exclusive licensee may only transfer an exclusive license if:
 - (i) the exclusive license is transferred with the underlying business;
 - (ii) the exclusive license is transferred through inheritance or other general succession;or
 - (iii) the transfer is permitted by the holder of the layout design right.
- (4) An exclusive license may not establish a pledge on the exclusive license without the consent of the holder of the layout design right.
- (5) Where an exclusive license is jointly owned, an owner may not grant a nonexclusive license under Article 12(1) to a third party without the consent of the other owners.
- (6) Article 10(3) and (4) applies *mutatis mutandis* to an exclusive license. In such cases, "layout design right" reads "exclusive license".

Article 12 Nonexclusive License

- (1) The holder or exclusive licensee of a layout design right may grant a nonexclusive license to another person. Provided, however, that a consent of the holder is necessary for a grant of nonexclusive license by an exclusive licensee.
- (2) The person to whom a nonexclusive license under paragraph (1) has been granted (referred to as "a nonexclusive licensee") is entitled to use the layout design for business purposes within the scope set forth by the license.
- (3) A nonexclusive licensee may only transfer a nonexclusive license if:
 - (i) the nonexclusive license is transferred with the underlying business;
 - (ii) the nonexclusive license is transferred through inheritance or other general succession; or
 - (iii) the transfer is permitted by the holder (if the nonexclusive license is granted by an exclusive licensee, the right holder or exclusive licensee) of the layout design right.

(4) A nonexclusive licensee may not establish a pledge on the nonexclusive license without the consent of the holder of the layout design right.

(5) Article 10(3) and (4) applies *mutatis mutandis* to a nonexclusive license. In such cases, "layout design" reads "nonexclusive license".

Article 13 Arbitration for Establishment of a Nonexclusive License

(1) A person seeking to use a registered layout design under Article 21(1) may request the holder of the layout design right or the exclusive licensee to hold a consultation for granting a nonexclusive license if:

(i) the layout design has not been used in Korea for more than two consecutive years in absence of natural disaster, or other force majeure or other justifiable reasons determined by Presidential Decree; or

(ii) the layout design has not been used in Korea on a substantial business scale without justifiable reasons for more than two consecutive years or the holder has failed to satisfy the demand in Korea or abroad for the layout design on an appropriate level and condition without justifiable reasons for more than two consecutive years.

(2) A person who has requested a consultation under paragraph (1) may file an application with the Commissioner of the Korean Intellectual Property Office for an arbitration on the establishment of a nonexclusive license when it was not possible to hold the consultation within a reasonable period or when an agreement on establishing a nonexclusive license has not been made as a result of the consultation, notwithstanding that the reasonable terms that may arise in the ordinary course of business have been proposed.

(3) Notwithstanding paragraphs (1) and (2), a person seeking to use a registered layout design under Article 21(1) may file an application directly with the Commissioner of the Korean Intellectual Property Office for arbitration on the establishment of a nonexclusive license under a state of national emergency or other emergency situations.

(4) The Commissioner of the Korean Intellectual Property Office may arbitrate for the establishment of a nonexclusive license (referred to as "arbitration") for an applicant after a review by the Layout Design Review and Mediation Committee under Article 25 if an application for arbitration under paragraphs (2) or (3) falls under either of the following:

(i) the use of the layout design is necessary for satisfying the national demand for the accomplishment of noncommercial public purposes; or

(ii) the causes as provided by Presidential Decree for securing free competition or preventing a rights abuse by the holder of a layout design right or an exclusive licensee have occurred.

- (5) The results of an arbitration under paragraph (4) must be in writing and must explain the following matters:
- (i) the scope of the nonexclusive license; and
 - (ii) the amount of compensation, and the method and time for making the compensation.
- (6) Matters necessary for the procedures of applying for arbitration under paragraphs (2) and (3) and others are prescribed by Presidential Decree.

Article 14 Loss of Effect of an Arbitration

An arbitration loses its effect if the person for whom an arbitration was granted fails to pay or deposit the compensation (or the first payment of the compensation when the compensation is to be paid periodically or in installments) by the due date for the payment as provided in Article 13(5)(ii).

Article 15 Cancellation of an Arbitration

- (1) The Commissioner of the Korean Intellectual Property Office may, on application by an interested party or *ex officio*, cancel an arbitration when:
- (i) a person for whom an arbitration was granted fails to use the layout design; or
 - (ii) the grounds for the arbitration under Article 13(4) have been terminated without possibility of recurrence.
- (2) A nonexclusive license is extinguished on the date of cancellation when an arbitration is canceled under paragraph (1).
- (3) Matters necessary for the procedures of cancellation of arbitration and others under paragraph (1) are prescribed by Presidential Decree.

Article 16 Pledge

- (1) The pledgee of a layout design right, an exclusive license or a nonexclusive license may not use the layout design unless otherwise agreed.
- (2) A pledge of a layout design right, exclusive license or nonexclusive license may be exercised against compensation made under this Act, or against payments or articles payable to the holder of the layout design right, the exclusive licensee or the nonexclusive licensee (including the nonexclusive licensee under Article 13(4)), in consideration for the use of the registered layout design. In this case, an attachment must be effected before the payment or delivery.

Article 17 Extinguishment of a Layout Design Right

A layout design right is extinguished in either of the following circumstances:

- (i) the layout design right reverts to the State under the Civil Act or other Acts because a corporation, association and so on that owns the layout design right is dissolved; or
- (ii) the layout design right reverts to the State under the Civil Act or other Acts because an individual who owns the layout design right dies without leaving heirs.

Article 18 Restriction of Abandonment of a Layout Design Right etc.

(1) The holder of a layout design right may not abandon the right without the consent of the exclusive licensee, the nonexclusive licensee (other than a nonexclusive licensee under Article 13(4)) or the pledgee under Article 16(1) of this Act.

(2) An exclusive licensee may not abandon the exclusive license right without the consent of the nonexclusive licensee or the pledgee.

(3) A nonexclusive licensee may not abandon the nonexclusive license without the consent of the pledgee.

(4) Where a layout design right, an exclusive license or a nonexclusive license is abandoned, the right is extinguished immediately upon the abandonment.

**CHAPTER III
REGISTRATION OF A LAYOUT DESIGN RIGHT**

**Article 19 Application for Registration of Establishment of a
Layout Design Right**

(1) A person who creates a layout design or the person's successor in title (referred to as "a creator") may file an application to register the establishment of a layout design right with the Commissioner of the Korean Intellectual Property Office within two years of the date on which the layout design was first used commercially.

(2) A person who applies to register establishment under paragraph (1) shall file an application and other documents (referred to as "an application and so on") prescribed by Presidential Decree.

Article 20 Rejection of Application

(1) The Commissioner of the Korean Intellectual Property Office shall reject an application to register the establishment of a layout design if it falls under any of the following:

- (i) when the applicant is not the creator;
- (ii) when the layout design right is jointly owned by two or more persons, and the application is not made in the name of the joint owners;
- (iii) when the period prescribed in Article 19(1) has elapsed; or
- (iv) when certain conditions prescribed by Presidential Decree are met, for example, when additional documents necessary for the application of layout design right registration..

(2) When the Commissioner of the Korean Intellectual Property Office dismisses a registration application under paragraph (1), the Commissioner shall immediately notify the applicant in writing of the specific reasons for the dismissal.

Article 21 Registration of Establishment and Public Notice

(1) Where an application to register the establishment of a layout design right is filed under Article 19(1), the Commissioner of the Korean Intellectual Property Office shall register the layout design unless the application is dismissed under Article 20(1).

(2) The registration of establishment under paragraph (1) is made when the Commissioner of the Korean Intellectual Property Office records it in the layout design register.

(3) The Commissioner of the Korean Intellectual Property Office shall issue a layout design registration certificate to the holder of a layout design right upon registration of the establishment of the layout design under paragraph (1), and publicize the registration.

(4) Necessary matters concerning registration of the establishment of a layout design such as the items to be mentioned in an application or issuance of the registration certificate, public notice of registration, or the contents, public reading or copying of the register are prescribed by Presidential Decree.

Article 22 Marking of Registration

The holder, the exclusive licensee or nonexclusive licensee of a layout design may mark on a semiconductor integrated circuit made using the layout design, or its packaging or both, the registration of the layout design as prescribed by the Commissioner of the Korean Intellectual Property Office.

Article 23 Effects of Registration

(1) None of the following may be contested against a third party unless registered with the Commissioner of the Korean Intellectual Property Office:

- (i) the assignment of a layout design right (except through inheritance or general successions, which is treated the same in this Article), or restrictions on the disposition of the layout design right;
- (ii) the establishment, transfer, change, extinguishment or restriction of the disposition of an exclusive license;
- (iii) the transfer, change, extinguishment or restriction of the disposition of a non-exclusive license; or
- (iv) the establishment, transfer, change, extinguishment or restriction of the disposition of a pledge on a layout design right, an exclusive license or nonexclusive license.

(2) Where a nonexclusive license is registered before the Commissioner of the Korean Intellectual Property Office, the license may be asserted against the holder of the layout design right or the exclusive licensee who acquired the right after the registration of the nonexclusive license.

(3) Registration under paragraphs (1) or (2) is made when the Commissioner of the Korean Intellectual Property Office records it in the layout design register.

Article 24 Cancellation of Registration of Establishment of a Layout Design Right

Where a layout design is registered under any of the following circumstances, the Commissioner of the Korean Intellectual Property Office may revoke the registration as prescribed by Presidential Decree; however, the Commissioner shall revoke the registration if the registered layout design falls under subparagraphs (iii) or (v) of this Article:

- (i) the registration violates a treaty under Article 3(1)
- (ii) the registration of establishment under Article 21(1) was made fraudulently or by any other unlawful means;
- (iii) the registered layout design does not constitute a creative layout design as required in Article 6; or
- (iv) the registered layout design falls under any of subparagraphs (i) to (iii) of Article 20(1).

CHAPTER IV
LAYOUT DESIGN REVIEW AND MEDIATION COMMITTEE

Article 25 Layout Design Review and Mediation Committee

- (1) A review and mediation committee (referred to as "the committee") must be established to review matters concerning layout design rights, or an exclusive or nonexclusive license, and to mediate the disputes regarding the rights protected under this Act (referred to as "a dispute").
- (2) The committee must be composed of ten to fifteen review and mediation members (referred to as "members"), including a chair and a vice-chair.
- (3) The members of the committee are appointed by the Commissioner of the Korean Intellectual Property Office, and the chair and vice-chair are elected by the members.
- (4) The members serve a three-year renewable term.
- (5) Where a vacancy arises on the committee, a member is appointed to fill the vacancy in accordance with paragraph (3), and the term of the member is the remaining period of the predecessor. However, if the committee comprises more than ten members, the appointment is not required.

Article 26 Function of the Committee

In addition to mediating disputes, the committee shall review the following:

- (i) matters concerning arbitration under Article 13(4) and cancellations of arbitration under Article 15;
- (ii) matters concerning an appeal against cancellation of a registration of establishment under Article 24; and
- (iii) matters requested by the Commissioner of the Korean Intellectual Property Office or by more than three members.

Article 27 Procedures of Mediation

- (1) A person who seeks mediation of a dispute may request the committee to mediate the dispute by clarifying a request and the reason for the request.
- (2) The committee shall mediate a dispute within six months of the date of the request under paragraph (1).

(3) The Act of Civil Mediation applies *mutatis mutandis* to mediation procedures that are not specifically provided in this Act.

Article 28 Mediation Panel

A mediation panel consisting of three members, one of whom must be qualified as an attorney-at-law or a patent attorney, must be established in the committee to effectively carry out the affairs of dispute mediation of the committee.

Article 29 Accomplishment of Mediation

(1) Mediation must be accomplished by recording in a protocol the matters agreed to by the concerned parties.

(2) The protocol under paragraph (1) has the same effect as a court settlement except for matters outside the scope of the authority of the concerned parties.

Article 30 Failure of Mediation

Mediation is treated as a failure when either of the following occurs:

- (i) when the party requested to present or submit the related documents from the committee fails to respond without good cause more than twice; or
- (ii) when the term under Article 27(2) lapses.

Article 31 Fee for Mediation

(1) A party requesting mediation shall bear the mediation expenses and pay the mediation fees in advance. However, where the mediation is accomplished, each of the concerned parties shall bear the expenses equally unless otherwise agreed.

(2) The committee shall determine the amount of the fees for mediation under paragraph (1).

Article 32 Discontinuation of Extinguishment Prescription

(1) A request for mediation has the effect of suspending the bar of the statute of limitations.

(2) When a mediation fails, if a lawsuit is not commenced within one month of the failure of the mediation, the suspension of the bar of the statute of limitations does not take effect.

Article 33 Organization of Committee

The organization and work of the committee and other necessary matters for the committee are prescribed by Presidential Decree.

Article 34 Support for Expenditure

The Government may support the expenditures necessary for the operation of the committee within the limit of the budget.

**CHAPTER V
REMEDIES FOR INFRINGEMENT**

Article 35 Right to Demand Cease and Desist from Infringement

(1) The holder of a layout design right or an exclusive licensee may demand that a person who has infringed or is likely to infringe the layout design right either cease the infringement or take measures to prevent the infringement.

(2) In making a demand under paragraph (1), the holder of the layout design right or the exclusive licensee may demand that a semiconductor integrated circuit and so on made through the infringement be destroyed or that other measures be taken that are necessary for preventing the infringement.

Article 36 Right to Demand Damages

(1) The holder of a layout design right or the exclusive licensee may demand the payment of damages against a person who has intentionally or negligently infringed their rights.

(2) Where the holder of a layout design right or the exclusive licensee makes a demand under paragraph (1) and if the infringer has profited by the infringement, the amount of profit earned by the infringer is presumed to be the amount of the loss by the holder of the layout design right or the exclusive licensee.

(3) The holder of a layout design right or an exclusive licensee who makes a demand under paragraph (1) may demand as damages an amount that is payable for using the layout design.

(4) Where the amount of loss suffered exceeds the amount presumed under paragraph (3), payment of the excess amount may be demanded.

(5) Deleted.

Article 37 Compensation

(1) The creator of a layout design who has commercially used the layout design before the registration of establishment of the layout design is entitled to compensation equivalent to an amount that is payable for using the layout design from a person who has used a reproduced item from the layout design for business purposes from the date of the creator's use of the layout design to the registration date of the layout design knowing that the used layout design was made by reproducing the layout design. However, the creator may not demand compensation from a person who received in a transfer, in good faith and without negligence, the semiconductor integrated circuit and so on that were made using the reproduced layout design.

(2) The right to demand payment of compensation under paragraph (1) may not be exercised until the registration of establishment of a layout design right has been made.

(3) Where the registration of establishment of a layout design is canceled under Article 24 of this Act, the right to demand compensation under paragraph (1) of this Article is deemed not to have come into force *ab initio*.

(4) Articles 760(1) to (2) and 766 of the Civil Act apply *mutatis mutandis* to enforcement of the right to demand under paragraph (1) of this Article. In this regard, "the date on which the victim or his statutory agent has come to know the damages and/or the tortfeasor" under Article 766 of the Civil Act is "the date of the registration of establishment of the layout design right" if the owner of the right to demand the compensation knew that the layout design was reproduced and the identity of the person who used the reproduced layout design before the registration of establishment of the layout design.

Article 38 Right to Demand Royalties from a Bona Fide Person

(1) Notwithstanding Article 9(3) of this Act, the holder of a layout design right or an exclusive licensee may demand payment of an ordinary amount of royalties (referred to as "royalties") when a bona fide person commits an act under Article 2(iv)(c) related to a semiconductor integrated circuit and so on for profit or retains or transports the semiconductor integrated circuit and so on after knowing that the semiconductor integrated circuit and so on is an unlawful reproduction of the registered layout design.

(2) The royalties must be a reasonable amount determined by consultation between the holder of the layout design right or the exclusive licensee and the bona fide person.

(3) Articles 760 (1) to (2) and 766 of the Civil Act apply *mutatis mutandis* to the exercise of the right to demand under paragraph (1).

CHAPTER VI SUPPLEMENTARY PROVISIONS

Article 39 Hearing

The Commissioner of the Korean Intellectual Property Office shall hold a hearing for disposition corresponding to either of the following:

- (i) cancellation of an arbitration under Article 15(1); or
- (ii) cancellation of a registration of establishment of a layout design right under Article 24.

Article 40 Fees

(1) A person shall pay the fees when:

- (i) the person requests a grant of nonexclusive license under Article 13(2) or (3) or requests a cancellation of the nonexclusive license under Article 15(1);
- (ii) the person seeks to register a layout design right under Article 21(1);
- (iii) the person seeks to register under Article 23(1) or (2);
- (iv) the person request an appeal against a cancellation of a layout design right under Article 24: or
- (v) the person requests the issuance of various types of certificates on a layout design right.

(2) The items and the amounts of fees under paragraph (1) are determined by ordinance of the Ministry of Knowledge Economy.

Article 40bis Reduction or Exemption of Establishment Registration Fees

(1) Notwithstanding Article 40(1) of this Act, when a person, including a small and medium-sized enterprise, applies to register the establishment of a layout design right as prescribed by ordinance of the Ministry of Knowledge Economy, the Commissioner of the Korean Intellectual Property Office may grant a reduction or exemption of fees for the registration of establishment of a layout design right as prescribed by ordinance of the Ministry of Knowledge Economy.

(2) Any person seeking a reduction or exemption of fees for the registration of establishment of a layout design right in accordance with the paragraph (1) of this Article shall submit to the Commissioner of the Korean Intellectual Property Office documents prescribed by ordinance of the Ministry of Knowledge Economy.

Article 40~~ter~~ Refund of Fees Paid by Mistake

(1) Fees that had been paid shall not be refunded. Provided, however, that a fee paid by mistake shall be refunded on request by the payor.

(2) The Commissioner of the Korean Intellectual Property Office shall notify the payor of a fee paid by mistake.

(3) The refund under paragraph (1) may not be requested when three years have passed after the date of receiving a notice under paragraph (2).

Article 41 Jurisdiction for a Nonresident

Where a layout design administrator has been appointed for a registered layout design right held by a nonresident, the residential or business address of the layout design administrator is deemed to be *the situs of the res* under Article 9 of the Civil Procedure Act; however, when a layout design administrator has not been appointed, the location of the Supreme Court is deemed to be *the situs of the res*.

Article 42 Deleted

Article 43 Fostering Layout Design Technology

(1) The Commissioner of the Korean Intellectual Property Office shall provide measures necessary for improving technology and promoting development of domestic layout designs and shall also establish supporting policies for taxation, finance and administration.

(2) The Commissioner of the Korean Intellectual Property Office may support and foster research institutions or organizations for technology development and training of personnel concerning layout designs.

Article 44 Obligation to Preserve Confidentiality

An official engaged in the registration of a layout design, a person who was engaged in the registration of a layout design under Articles 19 to 24 and a committee member or a person who has worked on the committee to mediate under Article 25(2) may not divulge the secrets learned in the course of their duties.

**CHAPTER VII
PENAL PROVISIONS**

Article 45 Offense of Infringement etc.

(1) A person who infringes a layout design right or an exclusive license is liable to imprisonment with labor not exceeding three years or to a fine not exceeding 50 million won, or both.

(2) An offense under paragraph (1) of this Article is prosecuted only upon the filing of a complaint.

Article 46 Offense of False Marking

A person who makes a false marking of a registration under Article 22 on a semiconductor integrated circuit containing an unregistered layout design under Article 21(1) or on the packaging and so on, or a person who assigns or leases a semiconductor integrated circuit bearing a false marking of a registration, is liable to imprisonment with labor not exceeding one year or to a fine not exceeding 3 million won.

Article 47 Offense of Fraud

A person who fraudulently or unjustly obtains a registration of establishment of a layout design under Article 21(1) is liable to imprisonment with labor not exceeding one year or to a fine not exceeding 3 million won.

Article 48 Offense of Divulging Secrets

A person who violates Article 44 of this Act is liable to imprisonment with labor not exceeding five years or to a fine not exceeding 50 million won.

Article 49 Dual Liability

Where a representative of a corporation, an agent representing a corporation or an individual, an employer or an employee of a corporation violates Articles 45(1), 46 or 47 concerning the acts of the corporation or the individual, the corporation or the individual person is liable to the fine prescribed in each of the corresponding Articles of this Act, and the violator must also be punished. However, this provision shall not apply where the legal or natural person exercised reasonable care and supervision with regard to the business to prevent the acts of violation.

Article 50 Deleted