Treaty on Intellectual Property in Respect of Integrated Circuits (The Washington Convention)

Article 1 Establishment of a Union

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The Contracting Parties constitute themselves into a Union for the purposes of this Treaty.

Article 2 Definitions

For the purposes of this Treaty:

(i) "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 inter-connections are integrally formed in and/or on a piece of material and which is intended to perform an electronic function,

(ii) "layout-design (topography)" 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,

(iii) "holder of the right" means the natural person who, or the legal entity which, according to the applicable law, is to be regarded as the beneficiary of the protection referred to in Article 6,

(iv) "protected layout-design (topography)" means a layout-design (topography) in respect of which the conditions of protection referred to in this Treaty are fulfilled,

(v) "Contracting Party" means a State, or an Intergovernmental Organization meeting the requirements of item (x), party to this Treaty,

(vi) "territory of a Contracting Party" means, where the Contracting Party is a State, the territory of that State and, where the Contracting Party is an Intergovernmental Organization, the territory in which the constituting treaty of that Intergovernmental Organization applies,

(vii) "Union" means the Union referred to in Article 1,

(viii) "Assembly" means the Assembly referred to in Article 9,

(ix) "Director General" means the Director General of the World Intellectual Property Organization,

(x) "Intergovernmental Organization" means an organization constituted by, and composed of, States of any region of the world, which has competence in respect of matters governed by this Treaty, has its own legislation providing for intellectual property protection in respect of layout-designs (topographies) and binding on all its member States, and has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to this Treaty.

Article 3 The Subject Matter of the Treaty

(1)(a) Each Contracting Party shall have the obligation to secure, throughout its territory, intellectual property protection in respect of layout-designs (topographies) in accordance with this Treaty. It shall, in particular, secure adequate measures to ensure the prevention of acts considered unlawful under Article 6 and appropriate legal remedies where such acts have been committed.

(b) The right of the holder of the right in respect of an integrated circuit applies whether or not the integrated circuit is incorporated in an article.

(c) Notwithstanding Article 2(i), any Contracting Party whose law limits the protection of layout-designs (topographies) to layout-designs (topographies) of semiconductor integrated circuits shall be free to apply that limitation as long as its law contains such limitation.

(2)(a) The obligation referred to in paragraph (1)(a) shall apply to layout-designs (topographies) that are original in the sense that they are the result of their creators' own intellectual effort and are not commonplace among creators of layout-designs (topographies) and manufacturers of integrated circuits at the time of their creation.

(b) A layout-design (topography) that consists of a combination of elements and interconnections that are commonplace shall be protected only if the combination, taken as a whole, fulfills the conditions referred to in subparagraph (a).

Article 4 The Legal Form of the Protection

Each Contracting Party shall be free to implement its obligations under this Treaty through a special law on layout-designs (topographies) or its law on copyright, patents, utility models, industrial designs, unfair competition or any other law or a combination of any of those laws.

Article 5 National Treatment

(1) Subject to compliance with its obligation referred to in Article 3(1)(a), each Contracting Party shall, in respect of the intellectual property protection of layout-designs (topographies), accord, within its territory,

(i) to natural persons who are nationals of, or are domiciled in the territory of, any of the other Contracting Parties, and

(ii) to legal entities which or natural persons who, in the territory of any of the other Contracting Parties, have a real and effective establishment for the creation of layout-designs (topographies) or the production of integrated circuits,

the same treatment that it accords to its own nationals.

(2) Notwithstanding paragraph (1), any Contracting Party is free not to apply national treatment as far as any obligations to appoint an agent or to designate an address for service are concerned or as far as the special rules applicable to foreigners in court proceedings are concerned.

(3) Where the Contracting Party is an Intergovernmental Organization, "nationals" in paragraph (1) means nationals of any of the States members of that Organization.

Article 6 The Scope of the Protection

(1)(a) Any Contracting Party shall consider unlawful the following acts if performed without the authorization of the holder of the right:

(i) the act of reproducing, whether by incorporation in an integrated circuit or otherwise, a protected layout-design (topography) 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 Article 3(2),

(ii) the act of importing, selling or otherwise distributing for commercial purposes a protected layout-design (topography) or an integrated circuit in which a protected layout-design (topography) is incorporated.

(b) Any Contracting Party shall be free to consider unlawful also acts other than those specified in subparagraph (a) if performed without the authorization of the holder of the right.

(2)(a) Notwithstanding paragraph (1), no Contracting Party shall consider unlawful the performance, without the authorization of the holder of the right, of the act of reproduction referred to in paragraph (1)(a)(i) where that act is performed by a third party for private purposes or for the sole purpose of evaluation, analysis, research or teaching.

(b) Where the third party referred to in subparagraph (a), on the basis of evaluation or analysis of the protected layout-design (topography) ("the first layout-design (topography)"), creates a layout-design (topography) complying with the requirement of originality referred to in Article 3(2) ("the second layout-design (topography)"), that third party may incorporate the second layout-design (topography) in an paragraph (1) in respect of the second layout-design (topography) without being regarded as infringing the rights of the holder of the right in the first layout-design (topography).

(c) The holder of the right may not exercise his right in respect of an identical original layout-design (topography) that was independently created by a third party.

(3)(a) Notwithstanding paragraph (1), any Contracting Party may, in its legislation, provide for the possibility of its executive or judicial authority granting a non-exclusive license, in circumstances that are not ordinary, for the performance of any of the acts referred to in paragraph (1) by a third party without the authorization of the holder of the right ("non-voluntary license"), after unsuccessful efforts, made by the said third party in line with normal commercial practices, to obtain such authorization, where the granting of the non-voluntary license is found, by the granting authority, to be necessary to safeguard a national purpose deemed to be vital by that authority; the non-voluntary license shall be available for exploitation only in the territory of that country and shall be subject to the payment of an equitable remuneration by the third party to the holder of the right.

(b) The provisions of this Treaty shall not affect the freedom of any Contracting Party to apply measures, including the granting, after a formal proceeding by its executive or judicial authority, of a non-voluntary license, in application of its laws in order to secure free competition and to prevent abuses by the holder of the right.

(c) The granting of any non-voluntary license referred to in subparagraph (a) or subparagraph (b) shall be subject to judicial review. Any non-voluntary license referred to in subparagraph (a) shall be revoked when the conditions referred to in that subparagraph cease to exist.

(4) Notwithstanding paragraph (1)(a)(ii), no Contracting Party shall be obliged to consider unlawful the performance of any of the acts referred to in that paragraph iln respect of an integrated circuit incorporating an unlawfully reproduced layout-design (topography) where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the said integrated circuit, that it incorporates an unlawfully reproduced layout-design (topography).

(5) Notwithstanding paragraph (1)(a)(ii), any Contracting Party may consider lawful the performance, without the authorization of the holder of the right, of any of the acts referred to in that paragraph where the act is performed in respect of a protected layout-design (topography), or in respect of an integrated circuit in which such a layout-design (topography) is incorporated, that has been put on the market by, or with the consent of, the holder of the right.

Article 7 Exploitation; Registration, Disclosure

(1) Any Contracting Party shall be free not to protect a layout-design (topography) until it has been ordinarily commercially exploited, separately or as incorporated in an integrated circuit, somewhere in the world.

(2)(a) Any Contracting Party shall be free not to protect a layout-design (topography) until the layout-design (topography) has been the subject of an application for registration, filed in due form with the competent public authority, or of a registration with that authority; it may be required that the application be accompanied by the filing of a copy or drawing of the layout-design (topography) and, where the integrated circuit has been commercially exploited, of a sample of that integrated circuit, along with information defining the electronic function which the integrated circuit is intended to perform; however, the applicant may exclude 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 (topography).

(b) Where the filing of an application for registration according to subparagraph (a) is required, the Contracting Party may require that such filing be effected within a certain period of time from the date on which the holder of the right first exploits ordinarily commercially anywhere in the world the layout-design (topography) of an integrated circuit; such period shall not be less than two years counted from the said date.

(c) Registration under subparagraph (a) may be subject to the payment of a fee.

Article 8 The Duration of the Protection

Protection shall last at least eight years.

Article 9 Assembly

(1)(a) The Union shall have an Assembly consisting of the Contracting Parties.

(b) Each Contracting Party shall be represented by one delegate who may be assisted by alternate delegates, advisors and experts.

(c) Subject to subparagraph (d), the expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation.

(d) The Assembly may ask the World Intellectual Property Organization to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations.

(2)(a) The Assembly shall deal with matters concerning the maintenance and development of the Union and the application and operation of this Treaty.

(b) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General for the preparation of such diplomatic conference.

(c) The Assembly shall perform the functions allocated to it under Article 14 and shall establish the details of the procedures provided for in that Article, including the financing of such procedures.

(3)(a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.

(b) Any Contracting Party that is an Intergovernmental Organization shall exercise its right to vote, in place of its member States, with a number of votes equal to the number of its member States which are party to this Treaty and which are present at the time the vote is taken. No such Intergovernmental Organization shall exercise its right to vote if any of its member States participates in the vote.

(4) The Assembly shall meet in ordinary session once every two years upon convocation by the Director General.

(5) The Assembly shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions.

Article 10 International Bureau

(1)(a) The International Bureau of the World Intellectual Property Organization shall:

(i) perform the administrative tasks concerning the Union, as well as any tasks specially assigned to it by the Assembly;

(ii) subject to the availability of funds, provide technical assistance, on request, to the Governments of Contracting Parties that are States and are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations.

(b) No Contracting Party shall have any financial obligations; in particular, no Contracting Party shall be required to pay any contributions to the International Bureau on account of its membership in the Union.

(2) The Director General shall be the chief executive of the Union and shall represent the Union.

Article 11 Amendment of Certain Provisions of the Treaty

(1) The Assembly may amend the definitions contained in Article 2(i) and (ii), as well as Articles 3(1)(c), 9(1)(c) and (d), 9(4), 10(1)(a) and 14.

(2)(a) Proposals under this Article for amendment of the provisions of this Treaty referred to in paragraph (1) may be initiated by any Contracting Party or by the Director General.

(b) Such proposals shall be communicated by the Director General to the Contracting Parties at least six months in advance of their consideration by the Assembly.

(c) No such proposal shall be made before the expiration of five years from the date of entry into force of this Treaty under Article 16(1).

(3) Adoption by the Assembly of any amendment under paragraph (1) shall require four-fifths of the votes cast.

(4)(a) Any amendment to the provisions of this Treaty referred to in paragraph (1) shall enter into force three months after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the Contracting Parties members of the Assembly at the time the Assembly adopted the amendment. Any amendment to the said provisions thus accepted shall bind all States and Intergovernmental Organizations that were Contracting Parties at the time the amendment was adopted by the Assembly or that become Contracting Parties thereafter, except Contracting Parties which have notified their denunciation of this Treaty in accordance with Article 17 before the entry into force of the amendment.

(b) In establishing the required three-fourths referred to in subparagraph (a), a notification made by an Intergovernmental Organization shall only be taken into account if no notification has been made by any of its member States.

Article 12 Safeguard of Paris and Berne Conventions

This Treaty shall not affect the obligations that any Contracting Party may have under the Paris Convention for the Protection of Industrial Property or the Berne Convention for the Protection of Literary and Artistic Works.

Article 13 Reservations

No reservations to this Treaty shall be made.

Article 14 Settlement of Disputes

(1)(a) Where any dispute arises concerning the interpretation or implementation of this Treaty, a Contracting Party may bring the matter to the attention of another Contracting Party and request the latter to enter into consultations with it.

(b) The Contracting Party so requested shall provide promptly an adequate opportunity for the requested consultations.

(c) The Contracting Parties engaged in consultations shall attempt to reach, within a reasonable period of time, a mutually satisfactory solution of the dispute.

(2) If a mutually satisfactory solution is not reached within a reasonable period of time through the consultations referred to in paragraph (1), the parties to the dispute may agree to resort to other means designed to lead to an amicable settlement of their dispute, such as good offices, conciliation, mediation and arbitration.

(3)(a) If the dispute is not satisfactorily settled through the consultations referred to in paragraph (1), or if the means referred to in paragraph (2) are not resorted to, or do not lead to an amicable settlement within a reasonable period of time, the Assembly, at the written request of either of the parties to the dispute, shall convene a panel of three members to examine the matter. The members of the panel shall not, unless the parties to the dispute agree otherwise, be from either party to the dispute. They shall be selected from a list of designated governmental experts established by the Assembly. The terms of reference for the panel shall be agreed upon by the parties to the dispute. If such agreement is not achieved within three months, the Assembly shall set the terms of reference for the panel after having consulted the parties to the dispute and the members of the panel. The panel shall give full opportunity to the parties to the dispute and any other interested Contracting Parties to present to it their views. If both parties to the dispute so request, the panel shall stop its proceedings.

(b) The Assembly shall adopt rules for the establishment of the said list of experts, and the manner of selecting the members of the panel, who shall be governmental experts of the Contracting Parties, and for the conduct of the panel

proceedings, including provisions to safeguard the confidentiality of the proceedings and of any material designated as confidential by any participant in the proceedings.

(c) Unless the parties to the dispute reach an agreement between themselves prior to the panel's concluding its proceedings, the panel shall promptly prepare a written report and provide it to the parties to the dispute for their review. The parties to the dispute shall have a reasonable period of time, whose length will be fixed by the panel, to submit any comments on the report to the panel, unless they agree to a longer time in their attempts to reach a mutually satisfactory resolution to their dispute. The panel shall take into account the comments and shall promptly transmit its report to the Assembly. The report shall contain the facts and recommendations for the resolution of the dispute, and shall be accompanied by the written comments, if any, of the parties to the dispute.

(4) The Assembly shall give the report of the panel prompt consideration. The Assembly shall, by consensus, make recommendations to the parties to the dispute, based upon its interpretation of this Treaty and the report of the panel.

Article 15 Becoming Party to the Treaty

(1)(a) Any State member of the World Intellectual Property Organization or of the United Nations may become party to this Treaty.

(b) Any Intergovernmental Organization which meets the requirements of Article 2(x) may become party to this Treaty. The Organization shall inform the Director General of its competence, and any subsequent changes in its competence, with respect to the matters governed by this Treaty. The Organization and its member States may, without, however, any derogation from the obligations under this Treaty, decide on their respective responsibilities for the performance of their obligations under this Treaty.

(2) A State or Intergovernmental Organization shall become party to this Treaty by:

(i) signature followed by the deposit of an instrument of ratification, acceptance or approval, or

(ii) the deposit of an instrument of accession.

(3) The instruments referred to in paragraph (2) shall be deposited with the Director General.

Article 16 Entry Into Force of the Treaty

(1) This Treaty shall enter into force, with respect to each of the first five States or Intergovernmental Organizations which have deposited their instruments of ratification, acceptance, approval or accession, three months after the date on which the fifth instrument of ratification, acceptance, approval or accession has been deposited.

(2) This Treaty shall enter into force with respect to any State or Intergovernmental Organization not covered by paragraph (1) three months after the date on which that State or Intergovernmental Organization has deposited its instrument of ratification, acceptance, approval or accession unless a later date has been indicated in the instrument; in the latter case, this Treaty shall enter into force with respect to the said State or Intergovernmental Organization on the date thus indicated.

(3) Any Contracting Party shall have the right not to apply this Treaty to any layout-design (topography) that exists at the time this Treaty enters into force in respect of that Contracting Party, provided that this provision does not affect any protection that such layout-design (topography) may, at that time, enjoy in the territory of that Contracting Party by virtue of international obligations other than those resulting from this Treaty or the legislation of the said Contracting Party.

Article 17 Denunciation of the Treaty

(1) Any Contracting Party may denounce this Treaty by notification addressed to the Director General.

(2) Denunciation shall take effect one year after the day on which the Director General has received the notification of denunciation.

Article 18 Texts of the Treaty

(1) This Treaty is established in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic.

(2) Official texts shall be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly may designate.

Article 19 Depositary

The Director General shall be the depositary of this Treaty.

Article 20 Signature

This Treaty shall be open for signature between May 26, 1989, and August 25, 1989, with the Government of the United States of America, and between August 26, 1989, and May 25, 1990, at the headquarters of WIPO.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Treaty.

Done at Washington, May 26, 1989.