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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **A COMPREHENSIVE STUDY ON PROCEDURE FOR REGISTRATION UNDER SICLD ACT, 2000**

AUTHORED BY - UTKARSH DIXIT

## **Introduction**

Human being has always been a conscious creature and because of the same he always thinks something. Our surroundings and nature inspire us every moment. So, we always try to do something new and better. It paved the way for number of inventions and discoveries. Convenience is another factor which inspire us for such inventions.

Integrated circuits play a significant role for the advancement of technology especially for electronics and information technology. Integrated circuits are used in a large range of products including mobile phones, television, watches, radio, washing machine, data processing equipment, etc.

## **Need**

The layout-designs of integrated circuits are creations of human mind. The creation of a new layout-design of an integrated circuit involves enormous investment, both in terms of money and time. But it is possible to copy it with little technical help and at a fraction of the cost of the original layout-design, causing substantial monetary loss to its creator. So, there arises a need to protect such investment and to reward and encourage an adequate level of investment of human, financial and technological resources. All these purposes can be achieved with the help of a legislation Semiconductor Integrated Circuits Layout- Designs Act, 2000.

## **Evolution of Integrated Circuits Layout-Design Protection**

The evolution for protecting intellectual property rights started from USA, because this technology was first invented in USA in 1950 by Jack Kilby and Robert Noyce After using the integrated circuit (first used by US Air Force), the USA considered the importance of such chips. US Government forecasted the need of uniform and constant laws for integrated circuits. In a diplomatic conference held at Washington D.C., a treaty was adopted on May 26, 1989 popularly known as Washington Treaty or IPIC Treaty. The treaty was open to State Members



of WIPO or United Nations. The treaty gave freedom to its members to each member country to implement its obligation of protecting IC layout-design either through special law or existing IPR laws. The USA was first among all to provide protection to such chips.<sup>1</sup>

The next attempt at international level was made by WTO during TRIPs Agreement. Articles 35 to 38 of the TRIPs Agreement provides for protection of layout-design of Integrated Circuit at global level. IPIC Treaty has been incorporated in TRIPs and has been accepted as a model treaty.

India after realizing the importance of layout-design and its legal protection, enacted the Semiconductor Integrated Circuits Layout- Designs Act, 2000.

### **Meaning of Semiconductor integrated circuit and Layout-design**

**Semiconductor integrated circuit-** Section 2(r) of the Semiconductor Integrated Circuits Layout- Designs Act, 2000 defines the meaning of “Semiconductor integrated circuit”. It means ‘a product having transistors or other circuitry elements which are inseparably formed on a semiconductor material or an insulating material or inside the semiconductor material and designed to perform an electronic circuitry function.’

In simple words, the integrated circuits looks like a chip from outside and inside this chip there is composition of various small elements (resistors, transistors, capacitors, etc.). The base in which these small particles are kept and connected to each other is known as semiconductor.

**Layout-design-** It means a layout of transistors, and other circuitry elements and includes lead wires connecting such elements and expressed in any manner in a semiconductor integrated circuit.<sup>2</sup>

### **Procedure for registration**

Procedure of obtaining a registration under the Semiconductor Integrated Circuits Layout-Design Act (SICLDA) involves a lot of steps. However, whole of the process may be studied into following categories of heads:

#### **1) Filing Application**

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<sup>1</sup> <https://blog.ipleaders.in/semiconductor-integrated-circuit-layout-design-act-2000/>

<sup>2</sup> Bare Act, Semiconductor Integrated Circuits Layout Design Act, 2000



- 2) Advertisement
- 3) Opposition
- 4) Registration

**1) Filing Applications-** It is the first and foremost step towards obtaining registration under SICLDA. Then the question which comes in our mind is that who can file application for obtaining patent and where can it be filed? Section 8 of the Act accommodates the people qualified for make an application for registration of layout-design. It says that the creator of a layout-design an Indian national or national of country outside India which accords to citizens of India similar and has principal place of business in India or if he does not carry out business in India, has place of service in India can apply for registration. The application for the protection of layout design can be made by the person who claims to be the creator of the layout design, his legal representative, a person registered in the prescribed manner as a layout design agent or a person in the sole and regular employment of the principal, in writing to the registrar in the prescribed manner.

The application can be filed either alone or jointly. The application has to be filed within the territorial limits that is a principal place of business in India of the applicant.

The application is to be filed in the office of the Registry within whose territorial limits the principal place of business (or place mentioned in the address for service) in India of the applicant is situated.<sup>3</sup>

An Application to the registrar for the registration of a layout design shall be made on form LD-1 accompanied with Registration fees and three set of drawing or photograph of mask layout which describe the layout design applied for registration. These can be submitted as GDS-II file along with the PDK information used in the design.

On filing of the application, the Registrar may refuse the application or may accept it absolutely or subject to such amendments or modifications, as he may think fit.

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<sup>3</sup> <https://www.mondaq.com/india/technology/28601/semiconductor-integrated-circuits-layout-design-in-indian-ip-regime>

**a) Prohibition of registration of certain layout-designs**

The SICLD Act, 2000 prohibits the registration of certain Layout designs. Layout design which is not original is prohibited. Similarly, the registration of layout design which has been commercially exploited anywhere in India or a convention country has been prohibited. Layout design which is not inherently distinctive or which is not inherently capable of being distinguishable from any other registered layout-design also cannot be registered. The Act, however, provides that a layout-design which has been commercially exploited for not more than two years from the date on which an application for its registration has been filed either in India or a convention country shall be considered as not having been commercially exploited.<sup>4</sup>

**b) Abandonment-** Section 77 provides that if the registrar is of the opinion, that the applicant has defaulted in the prosecution of his application, he may, by a notice require the applicant to remedy the default after giving him an opportunity of being heard. He may treat the application as abandoned unless the default is remedied within the specified time.

**c) Withdrawal of acceptance-** Section 9 provides that Where after the acceptance of an application for registration of layout-design, but before its registration, the Registrar is satisfied that the layout-design is prohibited of registration under section 7, the Registrar may, after hearing the applicant if he so desires, withdraw the acceptance and proceed as if the application had not been accepted.

**2) Advertisement**

As indicated by SICLD Act, 2000, when an application for registration of a layout-design has been accepted, the Registrar is bound to publicize the accepted and acknowledged application within fourteen days after the date of acceptance. After the advertisement, the Registrar has the discretion to advertise the application again if the application has been corrected or is permitted to be amended under the Act and notify in the prescribed manner the correction or amendment made.

**3) Opposition to registration**

Section 11 enables a person to make opposition to the Registrar. Any person under the SICLD Act, 2000 can oppose the proposed registration of layout design. After an application for

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<sup>4</sup> <http://corporatelawreporter.com/2016/11/21/semiconductor-integrated-circuit-layout-design-an-intellectual-property-protection-in-indian-regime/>

registration of a layout-design has been accepted, any person can give notice in writing to the Registrar of his opposition, within three months from the date of advertisement or re-advertisement or within further period not exceeding one month in the aggregate, ( as may be allowed by the Registrar ) as per the procedure provided .

The Registrar is required to serve a copy of the notice to the applicant for registration. The applicant for registration may send a counter-statement of grounds on which he relies, within two months of the receipt of notice of opposition and if he does not do so, he shall be deemed to have abandoned his application. The Registrar shall send a copy of the counter-statement of the grounds to the person giving notice of opposition. Both the applicant and the opponent may also submit any evidence relied upon to the Registrar if they so desire. If the applicant for registration or the opponent sending notice of opposition neither resides nor carries on business in India, the Registrar may require them to give security for the costs of proceedings before him and, in default may treat the opposition or application, as the case may be, as abandoned. The Registrar then decides the matter regarding the registration based on the material before him. The application for registration is treated as abandoned if it is not completed within 12 months due to the reason of default on the part of the applicant or within such extended time as may be allowed by the Registrar.<sup>5</sup>

#### **4) Registration**

According to the SICLD Act, 2000, Registrar shall register the layout-design in the register, if the application has not been opposed within the prescribed time limit or the application has been opposed and the opposition has been decided for the applicant. The date of making the application is considered to be the date of registration of layout-design. After registration, the Registrar issues certificate of registration sealed with the seal of the Semiconductor Integrated Circuits Layout-Design Registry.

#### **Period of Validity of Registration**

A period of 10 years counted from the date of filing an application for registration or from the date of first commercial exploitation anywhere in India or in any convention country or country specified by Government of India whichever is earlier.

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<sup>5</sup> <https://blog.ipleaders.in/semiconductor-integrated-circuit-layout-design-act-2000/>



### **Registration fees**

The registration fee is Rs. 5000/- to be paid via Demand Draft in favour of "PAO, CGPDTM" payable at Mumbai.<sup>6</sup>

### **Effects of Registration**

It enables him to exploit the creation commercially and in the case of infringement, get reliefs permitted under the Act. Once the layout design is registered, the original registration and all subsequent assignments and transmissions of layout-design are admissible as a prima facie evidence of its validity. It cannot be held invalid on the ground that it was not a registerable layout design except upon evidence of originality and if such evidence was not submitted to the Registrar before.

### **Summary of procedure**

- Filing of application by the creator of the layout-design at the SICLD Registry.
- Registrar may accept, refuse the application or accept with some modifications.
- The accepted applications shall be advertised within 14 days of acceptance.
- Any opposition to the advertisement can be filed within 3 months from the date of advertisement.
- The counter-statement to the notice of opposition, if any, to be filed within 2 months from the date of receipt of copy of notice of opposition from the Registrar.
- A copy of the counter statement provided to the opposing party.
- The Registrar may take hearing with the parties.
- The Registrar will decide on the originality of the layout-design and grant or reject the application for registration based on the conclusions reached by him.

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<sup>6</sup> <http://sicldr.gov.in/faq>

## Flow Chart regarding Procedure for Registration



### Conclusion

We have already seen the procedure to register layout-design. If we see this procedure carefully, we may find that proper time is provided to each party. However, there is always a space for improvement. It may be suggested that this process may be made speedier by use of technology, and we can do that because we have required technology to do the same. However, one thing may be kept in mind while making this process speedier, that it may not do injustice to any party.