

THIRTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES
First Regular Session

'04 JUN 30 10:10

SENATE

RECEIVED BY:

S. No. 823

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EXPLANATORY NOTE

The Geneva-based General Agreement on Tariffs and Trade, or GATT, was established in 1947 to promote the multilateral trading system through non-discriminatory trade liberalization, and through fair and effective rules and disciplines. The ultimate objective of GATT is to raise world incomes and standards of living through the expansion of international trade.

GATT is the premier global institution that sponsors multilateral trade negotiating rounds, such as the Uruguay Round. These rounds generally achieve the progressive lowering of imports tariffs (or taxes on imports collected by Customs authorities), the reduction and even elimination of non-tariff barriers to trade (e.g. import quotas or prohibitions, technical regulations), and improvements in the rules and disciplines that govern multilateral trade.

There are now some 120 Contracting Parties and Observers in the GATT, and together they account for about 90% of world trade. The Philippines acceded to the GATT in 1980 after the conclusion of the Tokyo Round, and has since then participated actively in the various work of the GATT, including the Uruguay Round.

The Philippines sees value in the basic principles that the GATT upholds. These include the Most-Favored-Nation principle (MFN), or trade without discrimination; the binding of tariffs, or the commitment not to raise tariffs beyond a specified rate; National Treatment, or the commitment not to discriminate against imports inside the domestic market; and the undertaking to eliminate quantitative import restrictions. As a small trading nation, the Philippines needs GATT principles to promote its trading interests and to guard itself against unfair and often unilateral trade practices of its stronger and richer trading partners.

The TRIPS Agreement defines, among others, the minimum intellectual property system for the Member, including standards concerning the availability, scope and use of intellectual property rights, enforcement of intellectual property rights, maintenance of intellectual property rights, dispute prevention and settlement, transitional arrangements, and institutional arrangements.

The TRIPS Agreement standards concerning the availability, scope and the use of intellectual property rights covers the following intellectual property rights:


1. Copyright and Related Rights;
2. Trademarks;
3. Geographical Indications;
4. Industrial Designs;
5. Patents;
6. Layout-Designs (Topographies) of Integrated Circuits; and
7. Protection of Undisclosed Information

Layout-Design is synonymous with topography and 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.

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. Layout-Designs of integrated circuits are not industrial designs in the sense of the laws providing for the registration of industrial designs because they do not determine the external appearance of integrated circuits. Moreover, layout-designs of integrated circuits are not normally patentable inventions because their creation does not require an inventive step, although it requires a great amount of work by an expert.

The reasons for assuring protection of layout-designs of integrated circuits encompass not only a just reward for the creator but also the function of providing an incentive for creation, which in turn may be expected to encourage an adequate level of investment of human, financial and technological resources in order to produce new technological solutions and original products for the benefit of the consuming public, the advancement of technological progress and the dissemination of that progress through the acquisition of foreign technology. Since "reverse engineering" is permitted under the Washington Treaty as well under the draft Law, enterprises in places where a product containing integrated circuits becomes available have the opportunity to evaluate and analyze, and thereby acquire a knowledge of the layout-design incorporated in such a product and the techniques by which the layout-design has been created. Similarly, voluntary licensing is encouraged by the availability of protection. If the creator of the technology can be reasonably sure that his creation will be protected, he is more ready to part with his creation by allowing its reproduction or other use against payment. In the said context, it should also be underlined that experience shows that transfer of technology is faster and more secure if the reproduction, incorporation, manufacture, etc. are done with the cooperation of the creator than if they are done without such cooperation through reverse engineering.

In view of the foregoing, approval of this bill is highly recommended.



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“(3) LAYOUT-DESIGN IS SYNONYMOUS WITH “TOPOGRAPHY” AND 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.

“SEC. 113. *Substantive Conditions for Protection.* – 113.1. Only industrial designs that are new or [original] ORNAMENTAL shall benefit from protection under this Act.

“113.2. Industrial designs dictated essentially by technical or functional considerations to obtain a technical result or those that are contrary to public order, health or morals shall not be protected.

“113.3 ONLY LAYOUT-DESIGNS OF INTEGRATED CIRCUITS THAT ARE ORIGINAL SHALL BENEFIT FROM PROTECTION UNDER THIS ACT. A LAYOUT-DESIGN SHALL BE CONSIDERED ORIGINAL IF IT IS THE RESULT OF ITS CREATOR’S OWN INTELLECTUAL EFFORT AND IS NOT COMMONPLACE AMONG CREATORS OF LAYOUT-DESIGNS AND MANUFACTURES OF INTEGRATED CIRCUITS AT THE TIME OF ITS CREATION.

“113.4. A LAYOUT-DESIGN CONSISTING OF A COMBINATION OF ELEMENTS AND INTERCONNECTIONS THAT ARE COMMONPLACE SHALL BE PROTECTED ONLY IF THE COMBINATION, TAKEN AS A WHOLE, IS ORIGINAL.

“SEC. 114. *Contents of the Application.* – 114.1. Every application for registration of an industrial design OR LAYOUT-DESIGN shall contain:

- “(a) A request for registration of the industrial design OR LAYOUT-DESIGN;**
- “(b) Information identifying the applicant;**
- “(c) An indication of the kind of article of manufacture or handicraft to which the INDUSTRIAL design OR LAYOUT-DESIGN shall be applied;**

“(d) A representation of the article of manufacture or handicraft by way of drawings, photographs or [other] adequate graphic representation of the **INDUSTRIAL design OR OF THE LAYOUT-DESIGN** as applied to the article of manufacture or handicraft which clearly and fully discloses those feature for which [design] protection is claimed; and

“(e) The name and address of the creator, or where the applicant is not the creator, a statement indicating the origin of the right to the industrial design **OR LAYOUT-DESIGN** registration.

“114.2. The application may be accompanied by a specimen of the article embodying the industrial design **OR LAYOUT-DESIGN** and shall be subject to the payment of the prescribed fee.

“SEC. 116. *Examination.* – 116.1. The Office shall accord as the filing date the date of receipt of the application containing indications allowing the identity of the applicant to be established and a representation of the article embodying the industrial design **OR THE LAYOUT-DESIGN** or a pictorial representation thereof.

“116.2. If the application does not meet these requirements, the filing date should be that date when all the elements specified in Section [105] 114 are filed or the mistakes corrected. Otherwise, if the requirements are not complied within the prescribed period, the application shall be considered withdrawn.

“116.3. After the application has been accorded a filing date and the required fees paid on time, the applicant shall comply with the requirements of Section 114 within the prescribed period, otherwise the application shall be considered withdrawn.

“116.4 The Office shall examine whether the industrial design **OR LAYOUT-DESIGN** complies with requirements of Section 112 (Definitions) and [Subsections 113.2 and 113.3] **SECTION 113** (Substantive Conditions for Protection).

“SEC. 117. *Registration.* – 117.1. Where the Office finds that the conditions referred to in Section 113 are fulfilled, it shall order that registration be effected in the industrial design **OR LAYOUT-DESIGN** register and cause the issuance of an industrial design **OR LAYOUT-DESIGN** certificate of registration; otherwise, it shall refuse the application.

“117.2. The form and contents of an industrial design **OR LAYOUT-DESIGN** certificate shall be established by the regulations: *Provided*, That the name and address of the creator shall be mentioned in every case.

“117.3. Registration shall be published in the form and within the period fixed by the regulations.

“117.4. The Office shall record in the register any change in the identity of the proprietor of the industrial design **OR LAYOUT-DESIGN** or his representative, if proof thereof is furnished to it. A fee shall be paid, with the request to record the change in the identity of the proprietor. If the fee is not paid, the request shall be deemed not to have been filed. In such case, the former proprietor and the former representative shall remain subject to the rights and obligations as provided in this Act.

“117.5. Anyone may inspect the register and the files of registered industrial designs **OR LAYOUT-DESIGNS** including files of cancellation proceedings.

“SEC. 118. *The Term of Industrial Design OR LAYOUT-DESIGN Registration.* –

118.1. The registration of an industrial design shall be for a period of five (5) years from the filing date of the application.

“118.2. The registration of an industrial design may be renewed for not more than two (2) consecutive periods of five (5) years each, by paying the renewal fee.

“118.3. The renewal fee shall be paid within twelve (12) months preceding the expiration of the period of registration. However, a grace period of six (6) months shall be granted for payment of the fees after such expiration, upon payment of a surcharge.

“118.4. The regulations shall fix the amount of renewal fee, the surcharge and other requirements regarding the recording of renewals of registration.

“118.5. REGISTRATION OF A LAYOUT-DESIGN UNDER THIS LAW SHALL BE VALID FOR A PERIOD OF TEN (10) YEARS FROM THE DATE OF COMMENCEMENT OF PROTECTION WITHOUT RENEWAL. PROTECTION OF A LAYOUT-DESIGN UNDER THIS ACT SHALL COMMENCE:

“(A) ON THE DATE OF THE FIRST COMMERCIAL EXPLOITATION, ANYWHERE IN THE WORLD, OF THE LAYOUT-DESIGN BY OR WITH THE CONSENT OF THE RIGHT HOLDER: *PROVIDED*, THAT AN APPLICATION FOR REGISTRATION IS FILED WITH THE INTELLECTUAL PROPERTY OFFICE WITHIN TWO (2) YEARS FROM SUCH DATE OF FIRST COMMERCIAL EXPLOITATION; OR

“(B) ON THE FILING DATE ACCORDED TO THE APPLICATION FOR THE REGISTRATION OF THE LAYOUT-DESIGN IF THE LAYOUT DESIGN HAS NOT BEEN PREVIOUSLY EXPLOITED COMMERCIALY ANYWHERE IN THE WORLD.

“SEC. 119. *Application of Other Sections and Chapters.* – 119.1. The following provisions relating to patents shall apply *mutatis mutandis* to an industrial design registration:

“Section 21 - Novelty;

“Section 24 - Prior art: *Provided*, That the disclosure is contained in printed documents or in any tangible form;

“Section 25 - Non-prejudicial Disclosure;

[Section 27 - Inventions Created Pursuant to a Commission];

“Section 28 - Right to a Patent;

“Section 29 - First to File Rule;

“SECTION 30- INVENTIONS CREATED PURSUANT TO A COMMISSION;

“Section 31 - Right of Priority: *Provided*, That the application for industrial design shall be filed within six (6) months from the earliest filing date of the corresponding foreign application;

“Section 33 - Appointment of Agent or Representative;

“Section 51 - Refusal of the Application;

“Sections 56 to 60- Surrender, Correction of and Changes in Patent;

“Chapter VII - Remedies of a Person with a Right to Patent;

“Chapter VIII - Rights of Patentees and Infringement of Patents; and

“Chapter XI - Assignment and Transmission of Rights.

“119.2. If the essential elements of an industrial design which is the subject of an application have been obtained from the creation of another person without his consent, protection under this Chapter cannot be invoked against the injured party.

“119.3. THE FOLLOWING PROVISIONS RELATING TO PATENTS SHALL APPLY *MUTATIS MUTANDIS* TO A LAYOUT DESIGN OF INTEGRATED CIRCUITS REGISTRATION:

“SECTION 28 - RIGHT TO A PATENT;

“SECTION 29 - FIRST TO FILE RULE;

“SECTION 30 - INVENTIONS CREATED PURSUANT TO A COMMISSION;

“SECTION 33 - APPOINTMENT OF AGENT OR REPRESENTATIVE;

“SECTION 56 - SURRENDER OF PATENT;

“SECTION 57 - CORRECTION OF MISTAKES OF THE OFFICE;

“SECTION 58 - CORRECTION OF MISTAKES IN THE APPLICATION;

“SECTION 59 - CHANGES IN PATENTS;

“SECTION 60 - FORM AND PUBLICATION OF AMENDMENT;

“CHAPTER VII - REMEDIES OF A PERSON WITH A RIGHT TO PATENT;

“CHAPTER VIII - RIGHTS OF PATENTEES AND INFRINGEMENT OF PATENTS: *PROVIDED*, THAT THE LAYOUT-DESIGN RIGHTS AND LIMITATION OF LAYOUT-DESIGN RIGHTS PROVIDED HEREUNDER SHALL GOVERN;

“CHAPTER X - COMPULSORY LICENSING; AND

“CHAPTER XI - ASSIGNMENT AND TRANSMISSION OF RIGHTS.

“119.4. RIGHTS CONFERRED TO THE OWNER OF ALL LAYOUT-DESIGN REGISTRATION. – THE OWNER OF A LAYOUT-DESIGN REGISTRATION SHALL ENJOY THE FOLLOWING RIGHTS:

“(1) TO REPRODUCE, WHETHER BY INCORPORATION IN AN INTEGRATED CIRCUIT OR OTHERWISE, THE REGISTERED LAYOUT-DESIGN IN ITS ENTIRETY OR ANY PART THEREOF, EXCEPT THE ACT OF REPRODUCING ANY PART THAT DOES NOT COMPLY WITH THE REQUIREMENT OF ORIGINALITY; AND

“(2) TO SELL OR OTHERWISE DISTRIBUTE FOR COMMERCIAL PURPOSES THE REGISTERED LAYOUT-DESIGN, AN ARTICLE OR AN INTEGRATED CIRCUIT IN WHICH THE REGISTERED LAYOUT-DESIGN IS INCORPORATED.

“119.5. LIMITATIONS OF LAYOUT RIGHTS. – THE OWNER OF A LAYOUT-DESIGN HAS NO RIGHT TO PREVENT THIRD PARTIES FROM REPRODUCING, SELLING OR OTHERWISE DISTRIBUTING FOR COMMERCIAL PURPOSES THE REGISTERED LAYOUT-DESIGN IN THE FOLLOWING CIRCUMSTANCES:

“(1) REPRODUCTION OF THE REGISTERED LAYOUT DESIGN FOR PRIVATE PURPOSES OR FOR THE SOLE PURPOSE OF EVALUATION, ANALYSIS, RESEARCH OR TEACHING;

“(2) WHERE THE ACT IS PERFORMED IN RESPECT OF A LAYOUT-DESIGN CREATED ON THE BASIS OF SUCH ANALYSIS OR EVALUATION AND WHICH IS ITSELF ORIGINAL IN THE MEANING AS PROVIDED HEREIN;

“(3) WHERE THE ACT IS PERFORMED IN RESPECT OF A REGISTERED LAYOUT-DESIGN, OR IN RESPECT OF AN INTEGRATED CIRCUIT IN WHICH SUCH A LAYOUT-DESIGN IS INCORPORATED, THAT HAS BEEN PUT ON THE MARKET BY OR WITH THE CONSENT OF THE RIGHT HOLDER;

“(4) IN RESPECT OF AN INTEGRATED CIRCUIT WHERE THE PERSON PERFORMING OR ORDERING SUCH AN ACT DID NOT KNOW AND HAD NO REASONABLE GROUND TO KNOW WHEN ACQUIRING THE INTEGRATED CIRCUIT OR THE ARTICLE INCORPORATING SUCH AN INTEGRATED CIRCUIT, THAT IT INCORPORATED AN UNLAWFULLY REPRODUCED LAYOUT-DESIGN: PROVIDED, HOWEVER, THAT AFTER THE TIME THAT SUCH PERSON HAS RECEIVED SUFFICIENT NOTICE THAT THE LAYOUT-DESIGN WAS UNLAWFULLY REPRODUCED, THAT PERSON MAY PERFORM ANY OF THE SAID ACTS ONLY WITH RESPECT TO THE STOCK ON HAND OR ORDERED BEFORE SUCH TIME AND SHALL BE LIABLE TO PAY TO THE RIGHT HOLDER A SUM EQUIVALENT TO AT LEAST FIVE PERCENT (5%) OF NET SALES OR SUCH OTHER REASONABLE ROYALTY AS WOULD BE PAYABLE UNDER A FREELY NEGOTIATED LICENSE IN RESPECT OF SUCH LAYOUT-DESIGN; OR

“(5) WHERE THE ACT IS PERFORMED IN RESPECT OF AN IDENTICAL LAYOUT-DESIGN WHICH IS ORIGINAL AND HAS BEEN CREATED INDEPENDENTLY BY A THIRD PARTY.

“SEC. 120. *Cancellation of Design Registration.* – 120.1. At any time during the term of the industrial design registration, any person upon payment of the required fee, may petition the Director of Legal Affairs to cancel the industrial design on any of the following grounds:

“(a) If the subject matter of the industrial design is not registerable within the terms of Sections 112 and 113;

“(b) If the subject matter is not new; or

“(c) If the subject matter of the industrial design extends beyond the content of the application as originally filed.

“120.2. Where the grounds for cancellation relate to a part of the industrial design, cancellation may be effected to such extent only. The restriction may be effected in the form of an alteration of the effected features of the designs.

“120.3. GROUNDS FOR CANCELLATION OF LAYOUT DESIGN OF INTEGRATED CIRCUITS. – ANY INTERESTED PERSON MAY PETITION THAT THE REGISTRATION OF A LAYOUT-DESIGN BE CANCELLED ON THE GROUNDS THAT:

“(I) THE LAYOUT-DESIGN IS NOT PROTECTABLE UNDER THIS ACT;

“(II) THE RIGHT HOLDER IS NOT ENTITLED TO PROTECTION UNDER THIS ACT; OR

“(III) WHERE THE APPLICATION FOR REGISTRATION OF THE LAYOUT-DESIGN, WAS NOT FILED WITHIN TWO (2) YEARS FROM ITS FIRST COMMERCIAL EXPLOITATION ANYWHERE IN THE WORLD.

“WHERE THE GROUNDS FOR CANCELLATION ARE ESTABLISHED WITH RESPECT ONLY TO A PART OF THE LAYOUT-DESIGN, ONLY THE CORRESPONDING PART OF THE REGISTRATION SHALL BE CANCELLED.

“ANY CANCELLED LAYOUT-DESIGN REGISTRATION OR PART THEREOF, SHALL BE REGARDED AS NULL AND VOID FROM THE BEGINNING AND MAY BE EXPUNGED FROM THE RECORDS OF THE INTELLECTUAL PROPERTY OFFICE. REFERENCE TO ALL CANCELLED LAYOUT-DESIGN REGISTRATION SHALL BE PUBLISHED IN THE *IPO GAZETTE*.”

SEC. 2. Implementing Rules and Regulations. – The Intellectual Property Office may issue regulations prescribing details for the implementation of this law. The regulations may, in particular, provide for the payment of fees in connection with applications for the registration of layout-designs of integrated circuits and matters related thereto, including administrative instructions relating to the procedures and other functions of the responsible unit duly designated by the Director General.

SEC. 3. *Applicability.* – The provisions of this Act shall apply to layout-designs of integrated circuits that were commercially exploited anywhere in the world from and after January 1998 provided they meet the conditions for protection under this Act.

SEC. 4. *Repealing Clause.* – All acts and parts of acts inconsistent herewith are hereby repealed or amended accordingly.

SEC. 5. *Separability Clause.* – If any provision of this Act or the application of such provision to any circumstance is held invalid, the remainder of this Act shall not be affected thereby.

SEC. 6. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in two (2) newspapers of general circulation.

Approved,