

tion of units of the infringing semiconductor chip product that occurs before the innocent purchaser has notice of protection with respect to the mask work embodied in the semiconductor chip product; and

(2) shall be liable only for a reasonable royalty on each unit of the infringing semiconductor chip product that the innocent purchaser imports or distributes after having notice of protection with respect to the mask work embodied in the semiconductor chip product.

(b) The amount of the royalty referred to in subsection (a)(2) shall be determined by the court in a civil action for infringement unless the parties resolve the issue by voluntary negotiation, mediation, or binding arbitration.

(c) The immunity of an innocent purchaser from liability referred to in subsection (a)(1) and the limitation of remedies with respect to an innocent purchaser referred to in subsection (a)(2) shall extend to any person who directly or indirectly purchases an infringing semiconductor chip product from an innocent purchaser.

(d) The provisions of subsections (a), (b), and (c) apply only with respect to those units of an infringing semiconductor chip product that an innocent purchaser purchased before having notice of protection with respect to the mask work embodied in the semiconductor chip product.

(Added Pub. L. 98-620, title III, §302, Nov. 8, 1984, 98 Stat. 3350.)

§ 908. Registration of claims of protection

(a) The owner of a mask work may apply to the Register of Copyrights for registration of a claim of protection in a mask work. Protection of a mask work under this chapter shall terminate if application for registration of a claim of protection in the mask work is not made as provided in this chapter within two years after the date on which the mask work is first commercially exploited anywhere in the world.

(b) The Register of Copyrights shall be responsible for all administrative functions and duties under this chapter. Except for section 708, the provisions of chapter 7 of this title relating to the general responsibilities, organization, regulatory authority, actions, records, and publications of the Copyright Office shall apply to this chapter, except that the Register of Copyrights may make such changes as may be necessary in applying those provisions to this chapter.

(c) The application for registration of a mask work shall be made on a form prescribed by the Register of Copyrights. Such form may require any information regarded by the Register as bearing upon the preparation or identification of the mask work, the existence or duration of protection of the mask work under this chapter, or ownership of the mask work. The application shall be accompanied by the fee set pursuant to subsection (d) and the identifying material specified pursuant to such subsection.

(d) The Register of Copyrights shall by regulation set reasonable fees for the filing of applications to register claims of protection in mask works under this chapter, and for other services relating to the administration of this chapter or the rights under this chapter, taking into con-

sideration the cost of providing those services, the benefits of a public record, and statutory fee schedules under this title. The Register shall also specify the identifying material to be deposited in connection with the claim for registration.

(e) If the Register of Copyrights, after examining an application for registration, determines, in accordance with the provisions of this chapter, that the application relates to a mask work which is entitled to protection under this chapter, then the Register shall register the claim of protection and issue to the applicant a certificate of registration of the claim of protection under the seal of the Copyright Office. The effective date of registration of a claim of protection shall be the date on which an application, deposit of identifying material, and fee, which are determined by the Register of Copyrights or by a court of competent jurisdiction to be acceptable for registration of the claim, have all been received in the Copyright Office.

(f) In any action for infringement under this chapter, the certificate of registration of a mask work shall constitute prima facie evidence (1) of the facts stated in the certificate, and (2) that the applicant issued the certificate has met the requirements of this chapter, and the regulations issued under this chapter, with respect to the registration of claims.

(g) Any applicant for registration under this section who is dissatisfied with the refusal of the Register of Copyrights to issue a certificate of registration under this section may seek judicial review of that refusal by bringing an action for such review in an appropriate United States district court not later than sixty days after the refusal. The provisions of chapter 7 of title 5 shall apply to such judicial review. The failure of the Register of Copyrights to issue a certificate of registration within four months after an application for registration is filed shall be deemed to be a refusal to issue a certificate of registration for purposes of this subsection and section 910(b)(2), except that, upon a showing of good cause, the district court may shorten such four-month period.

(Added Pub. L. 98-620, title III, §302, Nov. 8, 1984, 98 Stat. 3351.)

§ 909. Mask work notice

(a) The owner of a mask work provided protection under this chapter may affix notice to the mask work, and to masks and semiconductor chip products embodying the mask work, in such manner and location as to give reasonable notice of such protection. The Register of Copyrights shall prescribe by regulation, as examples, specific methods of affixation and positions of notice for purposes of this section, but these specifications shall not be considered exhaustive. The affixation of such notice is not a condition of protection under this chapter, but shall constitute prima facie evidence of notice of protection.

(b) The notice referred to in subsection (a) shall consist of—

(1) the words “mask work”, the symbol *M*, or the symbol \textcircled{M} (the letter M in a circle); and

(2) the name of the owner or owners of the mask work or an abbreviation by which the name is recognized or is generally known.

(Added Pub. L. 98-620, title III, § 302, Nov. 8, 1984, 98 Stat. 3352; amended Pub. L. 105-80, § 12(a)(22), Nov. 13, 1997, 111 Stat. 1535.)

Editorial Notes

AMENDMENTS

1997—Subsec. (b)(1). Pub. L. 105-80 substituted “‘mask work’, the symbol” for “‘mask force’, the symbol”.

§ 910. Enforcement of exclusive rights

(a) Except as otherwise provided in this chapter, any person who violates any of the exclusive rights of the owner of a mask work under this chapter, by conduct in or affecting commerce, shall be liable as an infringer of such rights. As used in this subsection, the term “any person” includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity.

(b)(1) The owner of a mask work protected under this chapter, or the exclusive licensee of all rights under this chapter with respect to the mask work, shall, after a certificate of registration of a claim of protection in that mask work has been issued under section 908, be entitled to institute a civil action for any infringement with respect to the mask work which is committed after the commencement of protection of the mask work under section 904(a).

(2) In any case in which an application for registration of a claim of protection in a mask work and the required deposit of identifying material and fee have been received in the Copyright Office in proper form and registration of the mask work has been refused, the applicant is entitled to institute a civil action for infringement under this chapter with respect to the mask work if notice of the action, together with a copy of the complaint, is served on the Register of Copyrights, in accordance with the Federal Rules of Civil Procedure. The Register may, at his or her option, become a party to the action with respect to the issue of whether the claim of protection is eligible for registration by entering an appearance within sixty days after such service, but the failure of the Register to become a party to the action shall not deprive the court of jurisdiction to determine that issue.

(c)(1) The Secretary of the Treasury and the United States Postal Service shall separately or jointly issue regulations for the enforcement of the rights set forth in section 905 with respect to importation. These regulations may require, as a condition for the exclusion of articles from the United States, that the person seeking exclusion take any one or more of the following actions:

(A) Obtain a court order enjoining, or an order of the International Trade Commission under section 337 of the Tariff Act of 1930 excluding, importation of the articles.

(B) Furnish proof that the mask work involved is protected under this chapter and that the importation of the articles would infringe the rights in the mask work under this chapter.

(C) Post a surety bond for any injury that may result if the detention or exclusion of the articles proves to be unjustified.

(2) Articles imported in violation of the rights set forth in section 905 are subject to seizure and forfeiture in the same manner as property imported in violation of the customs laws. Any such forfeited articles shall be destroyed as directed by the Secretary of the Treasury or the court, as the case may be, except that the articles may be returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury that the importer had no reasonable grounds for believing that his or her acts constituted a violation of the law.

(Added Pub. L. 98-620, title III, § 302, Nov. 8, 1984, 98 Stat. 3352; amended Pub. L. 101-553, § 2(b)(1), Nov. 15, 1990, 104 Stat. 2750; Pub. L. 105-80, § 12(a)(23), Nov. 13, 1997, 111 Stat. 1535.)

Editorial Notes

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(2), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Section 337 of the Tariff Act of 1930, referred to in subsec. (c)(1)(A), is classified to section 1337 of Title 19, Customs Duties.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105-80 substituted “As used” for “as used” in second sentence.

1990—Subsec. (a). Pub. L. 101-553 inserted sentences at end defining “any person” and providing that any State and any instrumentality, officer, or employee be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-553 effective with respect to violations that occur on or after Nov. 15, 1990, see section 3 of Pub. L. 101-553, set out as a note under section 501 of this title.

§ 911. Civil actions

(a) Any court having jurisdiction of a civil action arising under this chapter may grant temporary restraining orders, preliminary injunctions, and permanent injunctions on such terms as the court may deem reasonable to prevent or restrain infringement of the exclusive rights in a mask work under this chapter.

(b) Upon finding an infringer liable, to a person entitled under section 910(b)(1) to institute a civil action, for an infringement of any exclusive right under this chapter, the court shall award such person actual damages suffered by the person as a result of the infringement. The court shall also award such person the infringer's profits that are attributable to the infringement and are not taken into account in computing the award of actual damages. In establishing the infringer's profits, such person is required to present proof only of the infringer's gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the mask work.