

GENEVA CONFERENCE: Integrated circuits protection

The Chips are down for ICs

A Draft Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits is under consideration by the Commonwealth Attorney-General's Department.

The Draft Treaty (document IPIC/CE/I/2) was prepared by the International Bureau of WIPO (the World Intellectual Property Organisation) and considered by a Committee of Experts at a meeting in Geneva in November 1985.

The Committee of Experts, in its report (document IPIC/CE/I/7) generally supported such protection, based on the principle of reciprocity of national treatment.

"The Delegation of Australia expressed its support for a multilateral approach to integrated circuit protection, which it considered to be a far sounder basis for such protection than the principle of reciprocity.

The Delegation expressed its agreement with the flexible approach to protection adopted by the Draft Treaty and stated that it strongly wished such flexibility to be maintained.

The Delegation indicated that integrated circuit designs were already subject to protection under Australian copyright law and it would be a matter of concern if Australia were required to make exceptions to its general law in order to become party to the Treaty.

In order to prevent such a possi-

bility, the Delegation wondered whether the statement of intention to provide for a flexible system of protection, which was included in the explanatory memorandum, should not be embodied in the text of the Treaty."

European delegates were particularly concerned that any Treaty be compatible with the Commission of the EEC Draft Proposal for a Council Directive on the Legal Protection of Topographies of Semiconductor Products.

Issues for Australia

An Issues Paper prepared by Attorney-General's before the announcement of the Apple decision, raises the following arguments for discussion:

Minimum rights

- The minimum exclusive rights needed to protect the time and investment involved in developing integrated circuits must cover the reproduction of layout drawings, the making of masks from those layout drawings, making integrated circuits (ICs) using those masks, and dealings with ICs made from such masks.

What form of protection?

Most ICs are not a "manner of new manufacture" under Australian patent law, nor "new or original" under designs law.

- Existing Australian copyright law may provide sufficient protection to ICs to allow Australia to accede to the Draft Treaty, but a specific inclusion of ICs as a "work of artistic craftsmanship" would remove all doubt.

- Designs law presents an alternative which could limit protection to "new and original" ICs only, if the Treaty allows such minimal protection.
- A sui generis means of protection, along the lines of the U.S. Semiconductor Chip Protection Act 1984, or the Japanese or European models, might allow somewhat more limited protection than copyright by requiring some "higher" standard of originality/novelty and registration.

Other questions

- Should all "original" ICs be protected, or should a higher standard of "new" or "novel" ICs be required?
- Should the subject matter be defined in terms of "circuit layout" (Japan), "topography" (EEC), a "mask work", or more broadly?
- Should foreign ICs get protection as broad as Australian ones?
- Should copying for the purpose of "legitimate" reverse engineering be allowed, as in the US and Japanese legislation?
- "Should any country be allowed to compel registration or deposit of foreign IC layouts?" Should a symbol like © be required?
- Is 10 years, as suggested in the Draft Treaty, an appropriate term of protection?

Australia's representative on the Expert Committee, Ms. Lauren Honcoper, Principal Legal Officer, Intellectual Property Business Affairs Division, may be contacted at the Attorney-General's Department, Barton ACT 2600, or on (062) 719324.

USA calls in its chips last month

In June 1985 the United States Secretary of Commerce made an interim order extending protection under the Semiconductor Chip Protection Act 1984 (SCPA) to Australian designed ICs for 12 months.

Australia could seek further interim protection, but this could only last until November 1987 when all such interim protection will cease.

Australia has also sought permanent protection under the SCPA on the basis its copy-

right law already protects US chip designs.

Attorney-General's is uncertain how important it is to Australian industry to obtain SCPA protection, given that protection requires registration of the mask work at the U.S. Register of Copyrights within two years of commercial exploitation anywhere in the world.

It may be that industry prefers to rely on trade secrets law.