

quirement that the offer be in writing, as well, was imposed because the date of written offers can be established by a search of company files or other records, while relying on undocumented salesman's talk as evidence would create business uncertainty of the very type of which the *EDN* article warns.

Incidentally, sale of the mask work, referred to in the passage from *EDN* quoted above, means sale of the layout or design. That will *not* constitute first commercial exploitation for the purposes of starting the SCPA's two-year clock, in any circumstances. Thus, a systems house's sale of a design to a customer, or offer to sell it, even in writing and after wafer fabrication, is not a triggering event. The sale or offer to sell must be of the chips, not of the design for the chips. Finally, *EDN*'s reference to a design copyright in the chips is in error. There is no "design copyright to a new chip, so carefully crafted by Congress." Congress decided not to have chips protected by the copyright law and instead passed a new, industrial property law to govern chip layouts. The mask work right is not a copyright or a patent, but is significantly different from either.

References

1. *Sarkes Tarzian, Inc. v. Audio Devices, Inc.*, 166 F. Supp. 250 (S.D. Cal. 1958), aff'd mem., 283 F.2d 695 (9th Cir. 1960), cert. denied, 376 U.S. 869 (1961). A number of similar decisions are collected in the court's decision in *Motorola, Inc. v. Fairchild Camera & Instr. Corp.*, 366 F. Supp. 1173, 1182 (D. Ariz. 1973), the case in which Motorola sued Fairchild for raiding enough major employees to start up a semiconductor company.
2. *B.F. Goodrich Co. v. Wohlgenuth*, 117 Ohio App. 493, 192 N.E. 2d 99 (1963).
3. Probably, there is a duty to disclose one's plans to leave an employer, prior to actually resigning, only if (1) because of his position in the company, the person has a fiduciary duty (i.e., duty of faithfulness) to the employer, and (2) failure to make the disclosure results in a harm to the employer. Thus, Wozniak probably had no duty to disclose his plans, and his conduct was ultraconservative in avoiding difficulties and hard feelings.
4. *Daniel Orifice Fitting Co. v. Whalen*, 198 Cal. App. 2d 791, 18 Cal. Rptr. 659 (1962).
5. 17 U.S.C. § 901(a)(1) provides: "a 'semiconductor chip product' is the final or intermediate form of any product—
(A) having two or more layers of metallic, insulating, or semiconductor material deposited on or otherwise placed on, or etched away or otherwise removed from, a piece of semiconductor material in accordance with a predetermined pattern; and
(B) intended to perform electronic circuitry functions. . . ."
6. 17 U.S.C. § 901(a)(5) provides: "to 'commercially exploit' a mask work is to distribute to the public for commercial purposes a semiconductor chip product embodying the mask work; except that such term includes an offer to sell or transfer a semiconductor chip product only when the offer is in writing and occurs after the mask work is fixed in the semiconductor chip product."

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To the Editor:

"What's New?"

To the Editor:

Two articles in recent issues of *IEEE Micro* annoyed me.

MicroReview (October, p. 80) states, "AT&T emerged with a new approach . . . NAPLPS." This is blatantly unfair to the years of work in Canada, sponsored by DOC, before AT&T saw NAPLPS. AT&T made only minor changes.

"Mapping High Level Syntax and Structure Into Assembly Language" (August, p. 67) ignores many related efforts. Its only "new ideas" have been in Intel's ASM-86 for several years. It should not be hard to outdo IASM, so concluding the approach is wrong because their implementation is poor is premature at best.

Ian McIntosh
Scarborough, Ontario, Canada

Author's reply

To the Editor:

I am sorry that Mr. McIntosh was annoyed by our article. I am afraid, however, that I cannot agree that our "poor implementation" led us to a premature conclusion; we used several other authors' high level language assemblers and were even less impressed with these than with our own. I would suggest that Mr. McIntosh implement a high level syntax assembler, use it, and report the results—I am always ready to be convinced by a cogent argument.

I am more concerned that we may have "ignored many related efforts." I discovered, during the time between writing and publication, that the IBM Personal Computer Macro Assembler supports record structures. While not excusing myself, I can only say that extensive research of the literature was carried out (the IBM information was

not published, to my knowledge) and that the article was subjected to rigorous refereeing. I would welcome a list of overlooked references from Mr. McIntosh, if these exist.

M. F. Smith
Redditch, Worcestershire, UK

(Editor's note: The author's reply to the first comment appears in this issue at the end of MicroReview.)

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