

DEVELOPMENTS— SEMICONDUCTOR CHIP PROTECTION ACT

ALTERA V. CLEAR LOGIC

424 F.3d 1079 (9th Cir. 2005)

The Ninth Circuit upheld a nearly \$37 million judgment and a permanent injunction against Clear Logic for infringing Altera's rights under the Semiconductor Chip Protection Act (SCPA) by inducing Altera's customers to breach Altera's software licensing agreement, and interfering with Altera's contractual relations with its customers.

Altera manufactures programmable logic devices ("PLDs"), which allow users to program chips to perform various logic functions, using Altera's software. Altera's chips allow customers to continue to reprogram the PLD until it meets their needs precisely; however, this optimization process can be expensive and can take months. Clear Logic provides an alternative type of chip, an Application Specific Integrated Circuit (ASIC) which performs only one specific function. Customers cannot program Clear Logic's ASICs themselves. Rather, Clear Logic creates an ASIC when customers send them "bitstream" that is generated from a customer's programming a PLD. Clear Logic's ASICs are smaller than PLDs, more energy efficient, and cheaper if a customer places a large order.

Altera sued Clear Logic for infringing its rights under the SPCA for copying its layout design for its registered mask works, to which Clear Logic asserted the defense of reverse engineering. In addition, Altera sued Clear Logic under state law claims for inducing its customers to violate their license agreement because Altera's licensing agreement stated that the customers could use the software only to program PLDs.

At trial, the jury found for Altera on both grounds, and Clear Logic appealed, contending that the trial judge misinterpreted the application of the SCPA to the chips, and improperly instructed the jury concerning the defense of reverse engineering. Clear Logic also contested liability under the state law claims.

The Ninth Circuit upheld the jury verdict. The court rejected Clear Logic's assertion that the groupings of transistors on chips were merely ideas (which would have made them exempt under the SCPA), because the transistors themselves were physically embodied on a chip. The Ninth Circuit also found that the legal issue was fairly presented to the jury to decide that Clear Logic did not fall within the reverse engineering scope of the SCPA. The Ninth Circuit also held that the trial court was correct to reject Clear Logic's contention that the Copyright Act preempted Altera's state law claims related to the software licensing agreement because state law protects against unauthorized *use* of software, while the Copyright Act only regulates unauthorized *copying* of software itself. Because Clear Logic's customers used the bitstream but did not copy Altera's software the Copyright Act did not apply.

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