

THE LAW ON PROTECTION¹ OF TOPOGRAPHIES OF INTEGRATED CIRCUITS

I GENERAL PROVISIONS

Article 1

This law shall govern the legal protection of topography of integrated circuits.

Article 2

Foreign natural and legal persons shall have rights to protection of topography in the state union of Serbia and Montenegro (hereinafter referred to as: Serbia and Montenegro) equal to the rights of domestic natural or legal persons, on the basis of ratified international agreements or reciprocity.

Article 3

In the proceedings before the competent authority of the state union foreign person must be represented by the representative registered in the Register maintained by the competent authority of the state union or by a national attorney at law.

II DEFINITIONS

For the purposes of this Law:

1. Integrated circuit shall be understood to mean a complete finished product or an intermediate product that:
 - a) consists of the material that includes semi-conductive layer;
 - b) has one or more other layers, of which at least one is active, with interconnections integrally made of conductive, isolation and semi-conductive materials positioned in accordance with three-dimensional pattern determined in advance, and
 - c) is intended to perform electronic function, alone or together with other functions.
2. Topography of the integrated circuit (hereinafter referred to as: the topography) shall be understood to mean a number of interconnected images, and:

¹ Official Gazette of Serbia and Montenegro, No. 61, 24 December 2004. Entered into force 1 January 2005.

- a) that is invariably formed or coded in any way,
 - b) that is three-dimensional sample of layers making an integrated circuit, and
 - c) where each image depicts a sample of the surface of the integrated circuit or part thereof, regardless of the level of its fabrication.
3. Commercial use of the topography shall be understood to mean sales, lease, rent or any other means of commercial distribution of the topography, including offering for said purposes. First commercial use of the topography shall not include its use under the terms of confidentiality, if it is not distributed to any third parties.

III CONDITIONS FOR PROTECTION

Article 5

Topography shall be protected provided it is the result of an intellectual endeavors of the author and it is usual in the integrated circuits industry.

Topography composed of a combination of elements that are generally known in the integrated circuits industry interconnections shall be protected to the extent that a combination of such elements, taken as a whole, comply with the conditions referred to in paragraph 1 of this Article.

IV SUBJECTS OF PROTECTION

Article 6

The author and/or its legal successor or employer and/or its legal successor shall have the right to protection of the topography.

Where topography was created by more than one author, they shall be co-beneficiaries of the right to protection.

V PROTECTION PROCEDURE

1. Common procedural provisions

Article 7

Legal protection of a topography shall be ensured through the administrative proceedings conducted by the competent authority of the state union.

Decisions taken within the administrative proceedings referred to in paragraph 1 of this Article shall be final and an administrative dispute procedure may initiated before the competent court in accordance with provisions of the Law on Administrative Disputes.

Provisions of the Law of General Administrative Procedures shall be applicable to all matters related to administrative proceedings that are not regulated by this Law.

Article 8

Administrative fees and proceedings related expenses shall be payable in the administrative proceedings before the competent authority of the state union in accordance with specific legislation that regulates payment of administrative fees and proceedings related expenses.

Article 9

The competent authority of the state union shall maintain the Register of topographies, into which data on registered topographies shall be entered.

The contents and the manner of maintenance of the public Register referred to in paragraph 1 of this Article shall be set by the legislation adopted based on this Law.

Article 10

All data under this Law and the legislation adopted based on this Law shall be published in the official publication published by the competent authority of the state union.

Registration of Topography

Article 11

Instituting proceedings for protection of topography

Proceedings for the registration of topography shall be initiated by filing of an application to the competent authority of the state union.

The competent authority of the state union shall not check whether the applicant has the right to protection.

A separate application shall be filed for each topography.

Article 12

A domestic natural or legal person shall be eligible to require protection of topography in a foreign country after the period of three months has elapsed from the day of filing the application to the competent authority of the state union.

Article 13
Contents of Application

The application shall contain:

- 1) Request for the registration of the topography that shall clearly and concisely describe the topography and the following attachments required by this Law:
 - a) clear and concise description of topography containing the name of the topography and particular field of the integrated circuit;
 - b) data on the applicant and, where the applicant is not the author, data on the author of topography;
 - c) date of the first commercial use, if such use occurred prior to the date of filing of the application.

- 2) Data and attachments that identify the topography:
 - a) drawings or photographs of the plans for the production of integrated circuits; or
 - b) drawings or photographs of the plans, or parts thereof, for the production of integrated circuits; or
 - c) drawings or photographs of particular layers of the integrated circuit.

Besides attachments referred to in subparagraph 2 of this Article, the application may be supplemented by a detailed description of the topography, depiction of the topography in another manner appropriate to identify the topography, or by any other appropriate data carrier, as well as a sample integrated circuit made in accordance with the topography requested to be protected.

Where the applicant is not the author of the topography, the statement on the right to file the application shall be attached to the application.

Article 14

At the time of filing of the application, the applicant may request that attachments referred to in the Article 13, paragraph 1, subparagraph 2 of this Law, or parts thereof, constituting trade secret, shall not be disclosed or made accessible to the public.

The court may order data referred to in paragraph 1 of this Article to be disclosed to a person who is a party to the dispute related to the violation of exclusive rights referred to in the Article 18 of this Law.

Article 15

Formal Examination of the Application

Following the receipt of the application, the competent authority of the state union shall examine whether the application meets requirements prescribed by the Law on General Administrative Procedure, this Law and the legislation based on this Law, and in particular, requirements referred to in the Article 13 of this Law.

Where after the examination it was determined that the application did not meet requirements referred to in paragraph 1 of this Article, the competent authority of the state union shall communicate to the applicant in writing (the result of the examination) and request deficiencies to be eliminated within the period of time that shall be no less than 30 days, but not more than 90 days.

Where the applicant eliminates deficiencies referred to in paragraph 2 of this Article the date of submission of the orderly application shall be deemed as the filing date.

Where the applicant fails to eliminate deficiencies referred to in paragraph 2 of this Article the competent authority of the state union shall decide to reject the application.

Article 16

Registration and publishing of the registered topography

Where the application meets all requirements referred to in the Article 13 of this Law, the competent authority of the state union shall decide to register the topography.

The data on the registered topography, determined by the legislation enacted based on this Law shall be entered into the Registry of Topographies and published in the official publication.

Article 17

Making topography accessible to the public

Upon the entry of the topography into the Register of Topographies, everyone shall have the right to review the application and get a copy of the request for the registration of the topography and the attachments referred to in the Article 13 of this Law.

The parts of the attachments, denoted as trade secret, shall not be made accessible to a third party without the permission of the right holder or without court order.

VI CONTENTS OF THE RIGHT

Article 18

The right holder to the topography shall have the exclusive right to:

- 1) reproduce the protected topography as a whole or its essential parts;
- 2) produce integrated circuits containing the protected topography or its essential parts;
- 3) import, sell or in some other way places into circulation registered topography or its essential parts, or integrated circuits containing the protected topography or its essential parts.

In exercising the exclusive right, the right holder shall have the right to prevent any third person that does not have his/hers permission to take any action referred to in paragraph 1 of this Article.

Exclusive rights referred to in paragraph 1 of this Article shall not relate in any way to the process, system, production technology of the topography or information contained in the topography, but shall only relate to the topography as such.

VII RESTRICTION OF THE RIGHT

Article 19

Exclusive rights referred to the Article 18 of this Law shall not relate to:

- 1) the reproduction of the topography for personal use for noncommercial purposes;
- 2) the reproduction of the topography for the purpose of analysis, evaluation, teaching of procedures or technologies contained in the topography or topography itself;
- 3) the commercial use of the new topography created on the basis of the analysis or research of the protected topography that is the result of the intellectual endeavor of its creator that is not usual in the industry of integrated circuits.

Article 20

Any person, who at the time of the acquisition of the integrated circuit did not know or that could not have known that the product contained protected topography covered by the exclusive right, shall not be prohibited to use such product.

After the time that the person referred to in paragraph 1 of this Article has received sufficient notice that there is an exclusive right with respect to the protected topography, the right holder shall be entitled to the appropriate remuneration for such use established by the court, if not negotiated by interested parties.

The provisions of paragraphs 1 and 2 of this Article shall be applicable to legal successors of the person that acquired an integrated circuit covered by the exclusive right.

Article 21

Exhaustion of the right

Where the registered topography or an integrated circuit containing registered topography were placed into circulation in the territory of Serbia and Montenegro by the right holder or with his consent, an acquirer shall be free to use and dispose acquired protected topography or integrated circuit.

ESTABLISHMENT AND VALIDITY OF EXCLUSIVE RIGHTS

Article 22

Establishment of the Right

Exclusive rights with respect to the protected topography shall be established:

- a) as of a filing date of the application that meets requirements referred to in the Article 13 of this Law, or
- b) as of the date of the first commercial use of the topography anywhere in the world,

whichever comes earlier.

Article 23

Cessation of the Right

Exclusive rights with respect to the protected topography shall cease when the calendar year elapses in which it will be 10 years, starting from:

- a) the end of the calendar year in which the orderly application for the registration of the topography was filed, or
- b) the end of the calendar year in which the topography was first commercially used anywhere in the world

whichever comes earlier.

Where the topography was not commercially used anywhere in the world, exclusive rights shall cease when 15 years elapse from the day it was created, if orderly application for its registration was not filed within such period of time.

Article 24

Where 2 years elapse from the beginning of the first commercial use of the topography anywhere in the world, the application for the registration of the topography cannot be filed.

Article 25

Marking of the Topography

During the period of the validity of exclusive rights the right holder shall be entitled to mark integrated circuit produced using the registered topography by the capital "T".

ANNULMENT OF THE DECISION TO REGISTER A TOPOGRAPHY

Article 26

Reasons to Annul the Decision

The competent authority of the state union shall, at the proposal of the interested person, annul the decision to register a topography anytime during the validity of the right, if it determines that at the moment of taking decision:

- 1) the topography did not meet requirements referred to in the Article 5 of this Law;
- 2) the application was not filed within the time limits referred to in the Article 24 of this Law;
- 3) it was not possible to identify the topography on the basis of drawings related to it;
- 4) attachments referred to in the Article 13, paragraph 1, subparagraph 2 of this Law failed to conform with the integrated circuit presented with the application for the recognition of protection

PENAL PROVISIONS

Article 27

Economic offences

Any enterprise or other legal person who files an application for protection of the confidential topography abroad without an approval of the competent authority of the state union shall be fined EURO 1,500 to EURO 15,000 or the equivalent of such amount calculated based on the average exchange rate of the National Bank of Serbia applicable on the day the decision of the competent authority was taken.

Responsible person in an enterprise or other legal person shall be fined EURO 150 to EURO 1,500 or the equivalent of such amount calculated based on the average exchange rate of the National Bank of Serbia applicable on the day the decision of the competent authority was taken, for committing act referred to in the paragraph 1 of this Article.

Article 28
Misdemeanors

Any enterprise or other legal person who files an application for protection of the topography abroad prior to the expiration of 3 months period from the submission of the application to the competent authority of the state union shall be fined EURO 750 to EURO 4,500 or the equivalent of such amount calculated based on the average exchange rate of the National Bank of Serbia applicable on the day the decision of the competent authority was taken (Article 12).

Responsible person in an enterprise or other legal person shall be fined EURO 150 to EURO 450 or the equivalent of such amount calculated based on the average exchange rate of the National Bank of Serbia applicable on the day the decision of the competent authority was taken, for committing act referred to in the paragraph 1 of this Article.

Any individual shall be fined EURO 150 to EURO 450 or the equivalent of such amount calculated based on the average exchange rate of the National Bank of Serbia applicable on the day the decision of the competent authority was taken, for committing act referred to in the paragraph 1 of this Article.

TRANSITIONAL AND FINAL PROVISIONS

Article 29

Provisions of the Patent Law that regulate representation, civil legal protection, procedure for annulment of the decision to recognize a patent, inventions by an employee, circulation of rights and confidential patents shall be applicable *mutatis mutandis* to topographies of integrated circuits that are the subject of this Law.

Article 30

Provisions of this Law shall be applicable only to topographies created after the date this Law comes into force.

Article 31

Implementing legislation for this Law shall be adopted not later than 60 days after this Law comes into force.

Article 32

On the day this Law comes into force, the Law on Protection of Topographies of Integrated Circuits (FRY Official Gazette No. 12/98 of March 6, 1998) shall cease to be effective.

Article 33

This Law shall come into force on the eighth day from the day of its publishing it in the "Official Gazette of Serbia and Montenegro".