

REPUBLISHED¹ LAW NO. 16 OF 6 MARCH 1995 ON THE PROTECTION OF TOPOGRAPHIES OF SEMICONDUCTOR PRODUCTS

Chapter I Object of Protection

Art. 1

Topographies of semiconductor products shall be protected on the territory of Romania by registration with the State Office for Inventions and Trademarks, under the conditions provided for by this law.

Art.2

For the purposes of this law, the terms and phrases below shall be

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Republished within the meaning of Art. III of Law 337/2005 for amending and completing the Law 16/1995 on the protection of topographies of integrated circuits, published in the Official Gazette of Romania, Part I, no. 1094 of 5 December 2005, the text being given a new numbering.

Law 16/1995 on the protection of topographies of integrated circuits was published in the Official Gazette of Romania, Part I, no.45 of 9 March 1995 and amended and completed by:

- the Government Ordinance no. 41/1998 on the fees in the industrial property protection field and the conditions for using the same, published in the Official Gazette of Romania, Part I, no. 43 of 30 January 1998, approved with the corresponding amendments and completions by the Law no. 383/2002, published in the Official Gazette of Romania no. 471 of 2 July 2002 with the subsequent amendments and completions;

- the Emergency Government Ordinance no. 190/2005 concerning necessary measures to be taken within the European integration process, published in the Official Gazette of Romania, Part I, no.1179 of 28 December 2005, approved with the corresponding amendments and completions by the Law no. 332/2006, published in the Official Gazette of Romania, Part I, no. 629 of 20 July 2006.

defined as follows:

a) BOPI - Official Industrial Property Bulletin - Topography Section;

b) semiconductor product - the final or intermediate form of any product which

- comprises a substrate having a layer of semiconducting material and

- consists of one or several layers of conducting, insulating or semiconducting materials, said layers being arranged according to a predetermined three-dimension configuration and

- is intended to perform, exclusively or not, an electronic function;

c) topography of a semiconductor product - a series of related images, however fixed or encoded, which represents the three-dimension configuration of the layers which form a semiconductor product, and in which each image reproduces the pattern or a part of the pattern of a surface of the semiconductor product, in any manufacturing stage;

d) commercial exploitation - sale, rental, leasing or any other method of commercial distribution or offer made for these purposes. However, the commercial exploitation does not include the exploitation under conditions of confidentiality; it shall be applied on condition that no further distribution to third parties takes place, except where the exploitation of the topography takes place under conditions of confidentiality required by the necessary measures for the protection of the main national security interests.

Art.3

(1) Under this law, the original topographies shall be protected. Topographies shall be deemed to be original if they are the result of an intellectual effort made by their creators and if, at the time of their creation, they were not commonplace among the creators of topographies and the manufacturers of semiconductor products.

(2) A topography made up of a combination of commonplace elements and interconnections may be protected only if the whole combination is original, in the meaning of paragraph (1).

Art. 4

The rights of the owner of a protected topography in the semiconductor product shall not depend on whether the latter is incorporated or not in a product.

Art. 5

The protection granted according to Art. 3 shall be applied only to the actual topography, any concept, process, system, technique or encoded information embedded in said topography being excluded.

Chapter II Right to Protection

Art. 6

(1) The following entities shall benefit by the protection granted by this law:

a) natural persons which are nationals of a Member State of the European Union or of the World Trade Organization, or which have their place of residence on the territory of such State;

b) companies or other legal persons having a real and effective industrial or commercial establishment on the territory of Romania or of a Member State of the European Union or of the World Trade Organization.

(2) In case of negotiating international agreements with third States or in case of adopting internal provisions for the extension of protection granted by this law to other persons than those provided under paragraph (1), the European Commission shall be notified accordingly 30 days in advance.

(3) The conclusion of the agreements or adoption of the provisions under paragraph (2) cannot take place in less than two months from the notification to the European Commission, if, within the time limit provided by the previous paragraph, it communicates to the Romanian State its intention to submit to the European Council a proposal as to the extension of protection to said persons or third States by all Member States.

(4) If, during said period of two months, the European Commission submits such a proposal to the European Council, the conclusion of the agreements or adoption of the provisions provided under paragraph (2) cannot take place in less than 4 months from the date of submission of the proposal.

(5) In the absence of such a communication from the part of the European Commission within the time limit provided under paragraph (3) or the submission of the proposal or the adoption of a decision by the European Council within the time limits provided under the paragraph (4), the Romanian State can conclude the agreements or can adopt the provisions provided

under the paragraph (2).

(6) The decision of the European Council adopted based on the proposal of the European Commission shall not affect the conclusion of the agreements or the adoption of the provisions stipulated in paragraph (2), unless otherwise decided by the Council with a qualified majority.

Art.7

(1) The person entitled to be granted the legal protection of a topography may be represented by a professional representative in the proceedings before the State Office for Inventions and Trademarks.

(2) As regards the foreign natural and legal persons having their domicile or place of business, respectively, abroad, the representation by a professional representative having the domicile or place of business on the territory of Romania is compulsory.

Art. 8

(1) The right to protection of a topography of a semiconductor product shall belong to the creator of the topography or to his successor in title. If there are several creators acting as joint authors, the rights shall belong to them jointly.

(2) The right to protection shall also be granted to the persons mentioned under the Art. 6, which:

a) first commercially exploit in Romania or in the European Union a topography which has not yet been exploited commercially anywhere in the world; and

b) have been exclusively authorized to exploit commercially the topography on the territory of Romania or of the European Union by a person entitled to dispose of it.

Art. 9

(1) Where the topography has been created by an employee in the course of his duties, the right to the protection of the topography shall belong to the employer of the creator of the topography.

(2) Where the topography has been commissioned by a natural or legal person, the right to the protection of the topography shall belong to the person by whom the topography has been commissioned.

(3) Where there are contract provisions contrary to the provisions in the previous paragraphs, it is the contract provisions that shall prevail.

Art.10

Where a topography has been exploited commercially, in Romania or abroad, said topography may benefit by protection under the conditions of this law, only if the registration application is filed with the State Office for Inventions and Trademarks within a two-year time limit from the date of the first commercial exploitation.

Art.11

Where a topography has not been exploited commercially for 15 years since it was created or first encoded, at the lapse of this time limit, the right to protection shall cease as follows:

a) if the topography has not been registered, it may no longer be the subject of an application for registration;

b) if the topography has been registered, the rights conferred by the registration become extinct.

Chapter III

Registration of Topographies

Art.12

(1) The registration of a topography of a semiconductor product shall depend on the regular filing of an application for registration with the State Office for Inventions and Trademarks.

(2) An application for registration shall have as an object only one topography, and a topography shall be registered only once.

Art.13

(1) An application for registration of a topography shall be deemed as having been regularly filed, if the following documents are filed:

a) a written request for the registration of the topography, specifying at least:

- creator's (creators') full name and address;
- applicant's full name or designation and address , where the applicant is not the creator of the topography;

- indications with respect to the applicant's right to register the topography;

- designation and destination of the semiconductor product to be

manufactured by using the topography;

- date of fixation or of first encoding of the topography;
- date of the first commercial exploitation of the topography, where appropriate;
- full name or designation and address of the professional representative, where appropriate;
- signature of the applicant or of the professional representative, as the case may be;

b) a technical documentation comprising graphical material and texts providing sufficient information for allowing the identification of the topography and for pointing out the electronic function of the semiconductor product incorporating the topography;

c) two copies of the semiconductor product, if it was manufactured and commercially exploited;

d) power of attorney, for the professional representative, where appropriate;

e) proof of payment of legal fees

(2) All documents mentioned above shall be typed in Romanian and filed as such.

Art.14

(1) The State Office for Inventions and Trademarks shall examine whether the applications for the registration of the topographies satisfy the legal requirements for regular filing and if it ascertains that the requirements are satisfied, it shall enter the topography in the National Register of Topographies, shall publish the topography registration as provided under Art.17 and shall issue to the entitled person a registration certificate within 3 months from the date of the regular filing.

(2) The date of the regular filing shall be the date when the application is filed.

Art. 15

(1) Where, upon examining the application, deficiencies are found in relation to the documents provided for in Art. 13, the applicant shall be notified in writing within 15 days from the date of filing the application and a two-month time limit shall be given for making the necessary completions and rectifications.

(2) Where all said completions and rectifications have been made within

the prescribed time limit, the State Office for Inventions and Trademarks shall follow the procedure provided for under Art.14.

(3) The date of the regular filing shall be, in this case, the date when all completions and rectifications are received.

(4) Where the required completions and rectifications have not been submitted within the prescribed time limit, the application shall be rejected and the grounds of rejection shall be notified in writing to the applicant.

Art.16

(1) The decisions referring to applications for the registration of topographies may be appealed against by administrative means, in writing and on valid grounds, with the State Office for Inventions and Trademarks within 3 months since communication.

(2) The appeal shall be examined, within 3 months from the lodging thereof, by the Board of Appeal in the Appeals Department of the State Office for Inventions and Trademarks.

(3) The substantiated decision of the Board of Appeal shall be communicated to the parties within 15 days from the pronouncement thereof and may be appealed against with the Law Court of Bucharest within 3 months since communication.

(4) The decision of the Law Court of Bucharest may be appealed against with the Court of Appeal of Bucharest within 15 days since communication.

(5) The final and irrevocable decisions of the Board of Appeal shall be published in BOPI, within 60 days.

Art.17

(1) The registration of topographies shall be published in BOPI within 2 months from the date of registration.

(2) The owner shall be obliged to inform the State Office for Inventions and Trademarks, in the shortest time possible, of any changes in the name or designation of the owner or of the professional representative thereof. The State Office for Inventions and Trademarks shall enter the changes into the National Register of Topographies and shall publish them in BOPI within 3 months from the receiving thereof.

Art. 18

(1) After the publication of the registration, the documentation in the

regular filing of the topographies shall be available to interested persons at the headquarters of the State Office for Inventions and Trademarks.

(2) Documents containing information declared by the applicant as trade secrets shall not be available to the public.

Art. 19

(1) Any interested person may lodge a request in writing, on valid grounds, to the State Office for Inventions and Trademarks, for the revocation of the decision concerning the applications for the registration of the topographies of semiconductor products within 3 months from the publication thereof, if said decisions were made without observing the Art. 13.

(2) The application for revocation shall be settled within 3 months from the lodging thereof with the State Office for Inventions and Trademarks, by the Board of Appeal in the Appeals Department of the State Office for Inventions and Trademarks.

(3) The substantiated decision of the Board of Appeal shall be communicated to the parties within 15 days from the pronouncement, and the same means of appeal provided for under Art. 16, paragraphs (3) and (4) shall be available.

(4) The final and irrevocable decisions referring to revocation shall be published in BOPI within 60 days.

Chapter IV Rights

Art. 20

The exclusive rights shall become extinct 10 years from the earlier of the following dates:

a) the end of the calendar year in which the topography is first commercially exploited anywhere in the world;

b) the end of the calendar year in which the application for registration is regularly filed.

Art. 21

(1) The owner of a registered topography shall have, over the whole period of protection, the exclusive right to commercially exploit the topography as well as the exclusive right to authorize or prohibit the following acts:

a) reproduction of the topography in so far as it is protected under Art. 3, paragraph (1);

b) commercial exploitation or the importation for that purpose of a topography or of a semiconductor product manufactured by using the topography.

(2) The provisions of paragraph 1 shall not apply to:

a) the reproduction of a topography privately for non-commercial aims;

b) the reproduction for the purpose of analysing, evaluating or teaching of concepts, processes, systems or techniques embodied in the topography or the topography itself;

c) the acts in relation to a protected topography created on the basis of an analysis and evaluation of another topography, carried out according to letter b).

(3) The exclusive right to authorize or prohibit the acts mentioned under paragraph (1), letter b) shall not apply to the acts committed after the topography or the semiconductor product has been put on the market in Romania or in the European Union by the owner or with his consent.

Art.22

The exclusive rights provided for under Art. 21 shall come into existence:

a) on the date when the registration application is regularly filed;

b) on the date when the topography is first commercially exploited anywhere in the world, if this date is earlier than the date under letter a).

Art.23

The owner shall be entitled to mark the semiconductor products manufactured on the basis of the protected topography by using the capital letter "T".

Art. 24

Creators of topographies shall be entitled to have their name and their status as creators mentioned in the certificate of registration and in the publications of the State Office for Inventions and Trademarks relating to the registered topographies.

Art.25

Creators of topographies who are not topography owners according to

Art. 9, shall have the right to a remuneration which is established by a contract concluded between them and the owner of the protected topography.

Art.26

(1) The exploitation of a topography by the person who has purchased the semiconductor product in good faith, without possibly knowing that said semiconductor product embedded a protected topography which was illegally reproduced, shall not be deemed to be an infringement of the rights of the owner of the protected topography. Starting from the date when that person learned that the topography was protected, said person shall no longer have the right to purchase similar semiconductor products without the owner's authorization, but he shall be allowed to further exploit the semiconductor products purchased or contracted before that date, subject to payment of a fair compensation to the owner.

(2) The provisions under paragraph (1) shall also apply to the successors in title of the owner of the protected topography.

Art. 27

For the period prior to the coming into existence of the exclusive rights, according to the provisions of Art. 22, the person having the right to protection under this law, who can prove that a third party has fraudulently reproduced, commercially exploited or imported the topography for such purposes may claim damages according to the common law.

Chapter V Transfer of Rights

Art.28

The right to protection and the rights deriving from the registration of a topography shall be transferable in whole or in part, by assignment and by legal or testamentary succession.

Art.29

The rights conferred by the registration of a topography may be transferred by granting exclusive or non-exclusive licenses.

Art. 30

The transfer of rights provided by Art. 28 and 29 shall have effects for third parties only starting with the date when the mention of the transfer registered with the State Office for Inventions and Trademarks has been published in BOPI.

Art.31

(1) The Law Court of Bucharest may grant a compulsory license for exploitation to persons who, despite their efforts, have not been able to obtain the owner's authorization to exploit a protected topography, if:

a) the grant of the license is necessary in emergency cases referring to national defence and security, prevention or elimination of the effects of natural disasters, infringement of the Competition Law no.21/1996, as republished, or non-observance of national standards concerning environmental pollution;

b) at least 4 years have elapsed from the start of the protection period and the topography has not been commercially exploited on the territory of Romania.

(2) Compulsory licenses are non-exclusive and may only be transferred with the assets intended for their application.

(3) Granted compulsory licenses shall be communicated to the State Office for Inventions and Trademarks which shall enter them in the National Register of Topographies.

(4) The beneficiary of the compulsory license shall pay a fair compensation to the owner.

(5) The extent and duration of compulsory licenses shall be limited to the purposes for which they have been authorized.

(6) The Government or third parties authorized by the Government may also be beneficiaries of compulsory licenses.

Art.32

(1) At the justified request presented by the interested person, the Law Court of Bucharest may withdraw the compulsory license, when the circumstances leading to the grant thereof ceased to exist, provided that the legitimate interests of the licensee should be protected adequately.

(2) The license shall not be withdrawn, if the circumstances which determined the grant thereof are likely to occur again.

(3) The decisions of the Law Court of Bucharest concerning the grant

of a compulsory licence, as well as those concerning the withdrawal thereof may be appealed against with the Court of Appeal of Bucharest within 15 days since communication.

(4) The final and irrevocable decisions concerning the grant of a compulsory licence or the withdrawal of the compulsory licence, as the case may be, shall be communicated by the interested person to the State Office for Inventions and Trademarks which shall enter them into the National Register of Topographies and publish the mention of said decisions in BOPI within 30 days from the communication.

Art.33

The State Office for Inventions and Trademarks shall publish in BOPI all the assignments and licenses registered in respect of the protected topographies, as well as the changes thereupon, within 3 months since registration.

Chapter VI Extinction of Rights

Art. 34

(1) The rights conferred to the owner by the registration of the topography shall become extinct at the date of the expiry of the period of protection, when the topography enters the public domain and may be exploited by any person, without restrictions.

(2) The rights of the owner shall become extinct before the expiry of the period of protection if the conditions provided by Art. 11, letter b) are fulfilled.

Art.35

The owner may renounce the protection of a registered topography any time during the period of protection; the renunciation results in the extinction of the owner's rights, with all the consequences mentioned under Art.34, paragraph (1), starting with the date of publishing the renunciation request in BOPI.

Art. 36

(1) Any interested person may apply to the Law Court of Bucharest for the cancellation of the registration of a topography in whole or in part, if the

failure to comply with the legal conditions for granting the protection is ascertained. The request for cancellation may be presented during the entire period of protection of the topography.

(2) The decisions of the Law Court of Bucharest may be appealed against at the Court of Appeal of Bucharest within 30 days since communication.

(3) The decisions of the Court of Appeal may be appealed against at the High Court of Cassation and Justice within 30 days since communication.

Art.37

The State Office for Inventions and Trademarks shall enter in the National Register of Topographies and shall publish in BOPI, any change concerning the protection of topographies, occurred as a consequence of applying the provisions under Art. 34 - 36.

Chapter VII Defence of Rights

Art.38

(1) Within the meaning of this law, the unauthorized commercial exploitation or production of a protected topography or semiconductor product embedding a protected topography or a circuit element embedding such a semiconductor product, as far as said element still contains a topography, shall constitute the offence of infringement.

(2) The acts mentioned under paragraph (1) shall be deemed to be considered as an infringement when committed after the date of publication of the topography registration in the National Register of Topographies and shall be punishable with imprisonment from 3 months to 2 years or with a fine from 10,000 to 30,000 lei.

(3) The criminal action shall be initiated ex officio.

(4) For the prejudice caused to him, the owner shall be entitled to damages, according to the common law, and may require to the competent jurisdiction to order the seizing or destroying of the counterfeited products, as the case may be; said provisions shall also apply to the equipment used directly for committing the infringement offence.

Art.39

Litigations concerning the topography authorship or ownership, as well as those concerning the rights deriving from the registration of topographies - creator's patrimonial rights included - or from the assignment or license contracts shall be settled by the law courts.

Art.40

Where a final and irrevocable court decision has established that a person, other than the owner of the registration certificate, is entitled to be granted the topography protection, the State Office for Inventions and Trademarks shall issue the registration certificate to the entitled person, shall enter the change of ownership in the National Register of Topographies and shall publish the same in BOPI.

Art.41

Where the rights on a registered topography have ceased for a certain period of time, as a consequence of the renunciation, the forfeiture of rights or the cancellation of the registration, the damages and the other patrimonial rights acquired by the owner for the above-mentioned period of time, shall be refunded to the persons from which they have been acquired.

Art.42

At the request of the law court, the State Office for Inventions and Trademarks shall be obliged to submit the papers, documents and information necessary for judging the cause entrusted to the law court, papers and documents to be returned at the end of the trial. Summoning to the court shall be made only for this purpose.

Art.43

(1) The procedures concerning the applications and the certificates of registration of the topographies of semiconductor products shall be subject to the payment of fees, in the amount and the time limits specified by the law. The fees shall be paid to the account of the State Office for Inventions and Trademarks.

(2) Fees owed by the natural or legal persons having their domicile or place of business, as the case may be, abroad, shall be paid in hard currency to the account of the State Office for Inventions and Trademarks.

(3) Failure to pay the fees within the time limits provided by the law shall

cause the non-performance of the concerned procedure.

Chapter VIII

Final Provisions

Art. 44

This law shall enter into force 3 months after its publication in the Official Gazette of Romania, Part I.

This law transposes the Council Directive 87/54 EEC of 16 December 1986 on the legal protection of topographies of semiconductor products, published in the Official Journal of the Economic Communities no. L 024/27.01.1987.

Reproduced below is the Art. II of the Law no. 337/2005 which does not form part of the republished text of the Law . no. 16/1995 and is still applicable as provisions of the Law no.337/2005:

“Within 3 months from the publication of this law, the State Office for Inventions and Trademarks shall issue Norms for implementing the Law no 16/1995 on the Protection of Topographies of Integrated Circuits with all subsequent modifications, as well as with the amendments and completions brought by this law, which shall be published in the Official Gazette of Romania, Part I.

On the date of entering into force of the norms provided by paragraph 2, the Government Decision no. 535/1996 for the approval of the Implementing Regulations concerning the registration of topographies of integrated circuits, published in the Official Gazette of Romania, Part I, no. 172 of 1 August 1996 shall be abrogated.”