

Law on Protection of Topographies of Semiconductor Products

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Chapter I General Provisions

Article 1. Terms Used in This Law

The following terms are used in this Law:

- 1) 'semiconductor product' the final or an intermediate form of any product intended to perform, exclusively or together with other functions, an electronic function, consisting of a body of material which includes a layer of semiconducting material, and having one or more other layers composed of conducting, insulating or semiconducting material, the layers being arranged in accordance with a pre-determined three-dimensional pattern;
- 2) 'topography' a series of related images, however fixed or encoded, representing the three-dimensional pattern of the layers of which a semiconductor product is composed, and in which series, each image has the pattern or part of the pattern of a surface of the semiconductor product at any stage of its manufacture;
- 3) 'commercial exploitation of a topography' the sale, rental, leasing or any other method of commercial distribution or introduction in economic circulation, or an offer for these purposes;
- 4) 'holder of the topography' the creator of the topography of semiconductor products, his successor in title, or any other natural or legal person, enjoying exclusive rights under this law, agreement or international treaty approved by the Saeima (Parliament).

Article 2. Protected Topographies

- (1) A topography shall be protected in the Republic of Latvia if it complies with the provisions of this law and has been registered with the Patent Office of the Republic of Latvia (hereinafter the Patent Office).
- (2) A topography shall be protected if it is the result of its creator's own intellectual effort and is not commonplace in the semiconductor industry. A topography shall be deemed the result of its creator's intellectual effort unless proved to the contrary.
- (3) A topography, consisting of elements that are commonplace in the semiconductor industry, shall be protected if the combination of such elements, taken as a whole, complies with the provisions of Paragraph 2 of this Article.
- (4) The legal protection of a topography shall not extend to any concept, process, system or technique, directly or indirectly related to the creation and manufacture of the topography, as well as to the encoded information embodied in the topography.

Article 3. Persons Entitled to Exclusive Rights

- (1) Exclusive right to a topography shall belong to its creator, or, where a topography has been created jointly by several persons, to all the creators.
- (2) Where a topography is created under a contract of employment that provides for creation of topographies, the exclusive right to the topography may belong to the employer, if so provided by the collective or individual contract of employment.
- (3) Where a topography is created under a contract of commission, the exclusive right to the topography may belong to the party to the contract by whom the topography has been commissioned, if so provided by the contract.
- (4) Where, in accordance with Paragraphs 2 and 3 of this Article, the creator of the topography does not have exclusive right in the topography, he is entitled to be mentioned as the creator of the topography in all the documents and publications pertaining to the registration of the topography.

(5) Where no exclusive right in topography belong to persons referred to in Paragraphs 1, 2 or 3 of this Article, they may belong to a person who is the first to commercially exploit the topography, if no other person has exploited it in Latvia or abroad.

(6) Exclusive right in a topography may belong to the successors in title of the persons referred to in Paragraphs 1, 2, 3 and 5 of this Article.

(7) Where exclusive right to a topography belong to several persons, their relations shall be laid down by an agreement between the holders of the topography. Where there is no such agreement, the provisions of Civil Law pertaining to common personal property shall apply.

Chapter II Registration of Topographies

Article 4. Filing of an Application for Registration of a Topography

(1) An application for registration of a topography (hereinafter application) may be filed with the Patent Office by any natural or legal person referred to in Article 3 of this Law (hereinafter applicant), provided that:

- 1) this person's habitual residence is in Latvia or this person owns an enterprise that is located on the territory of Latvia;
- 2) this person's habitual residence or enterprise is located in a state that has concluded a bilateral or multilateral agreement with the Republic of Latvia concerning the protection of topographies of semiconductor products;
- 3) this person's habitual residence or enterprise is located in a state, to the natural and legal persons of which, the Republic of Latvia, on the grounds of mutual agreement, has granted national treatment, and the laws of which ensure to the natural and legal persons of the Republic of Latvia protection of topographies of semiconductor products, that in its essence complies with the provisions of this Law.

(2) The applicant has a right to apply for registration of a topography unless it is proved that he is not entitled to such right.

(3) An application may be filed before the first commercial exploitation of the topography or within two years from the date of the first commercial exploitation of the topography in Latvia or any other state. If an application has not been filed within two years from the date of the first commercial exploitation of a topography, it is deemed that the exclusive rights referred to in Article 3 of this Law have not entered into force during this period, and they can no longer be obtained.

(4) Where a topography is not commercially exploited, the applicant is entitled to file an application with the Patent Office within 15 years from the year following the year in which the topography has been created.

Article 5. Application

(1) The application shall comprise:

- 1) a request for registration of the topography;
- 2) a short description of the topography;
- 3) materials clearly and unmistakably identifying the topography and its elements that allow reproduction of the topography:
 - a) drawings or photographs representing layouts of the layers of the semiconductor product;
 - b) drawings or photographs of the masks, or their parts, used for manufacture of the semiconductor products;
 - c) drawings or photographs of individual layers of the semiconductor product;
- 4) documents stating the date of the first commercial exploitation of the topography (where exploitation of the topography was started before filing the application). Where the first commercial exploitation of the topography has been commenced by a person other than the applicant, the applicant shall indicate his legal relations with this person in respect to the topography;
- 5) a document certifying payment of the application state fee;

- 6) letters of authorization where the application is filed through an authorized representative.
- (2) In order to ensure better identification of the topography, the applicant may additionally file:
- 1) a sample, or several samples, of the topography. The applicant shall pay a state fee for filing and storage of the sample topography;
 - 2) magnetic tapes, computer printouts, microfilms or other data storage means which contain the encoded topographies.
- (3) The applicant shall file the application and the short description of the topography in Latvian. Any other documents and materials referred to in Paragraphs 1 and 2 of this Article may be filed in English, French, German or Russian. Where the document certifying the date of the first commercial exploitation of the topography abroad is in another language, the applicant, at the time of filing the original document, shall submit also a certified translation of this document in any of the above mentioned languages.
- (4) In case of a dispute the applicant (holder of the topography) shall furnish, on the request of the Board of Appeal of the Patent Office (hereinafter Board of Appeal) or Court, translation of the document referred to in Paragraph 1 or 2 of this Article.
- (5) At the time of filing the documents and materials referred to in Paragraph 1, Subparagraph 3, and Paragraph 2 of this Article, the applicant may submit a written request indicating the part that contains a trade secret related to the manufacture of the topography, that must not be disclosed by the Patent Office, the Board of Appeal or the court. By way of exception such documents or materials may be disclosed, upon the request of the Board of Appeal or court, to the interested persons that are parties in a dispute concerning the validity of the exclusive right or infringement thereof.
- (6) The technical requirements concerning preparation of the documents and materials comprising the application shall be laid down by the Patent Office. The Office is entitled to amend and supplement the said requirements, in compliance with the provisions of international treaties approved by the Saeima.

Article 6. Filing Date of an Application

- (1) The filing date of the application (hereinafter filing date) shall be the date on which the Patent Office receives the application, short description of the topography and drawings or photographs referred to in Article 5, Paragraph 1 of this Law.
- (2) If the provisions of Paragraph 1 of this Article are not fulfilled, the Patent Office shall notify the applicant, and fix a time-limit for elimination of the noted deficiencies. In this case the date on which the Patent Office receives all the documents and materials referred to in Paragraph 1 of this Article, shall be regarded as the filing date. If the applicant fails to comply with the requirements set by the Patent Office within the prescribed time-limits, the application shall be considered as not having been filed, and it shall be communicated to the applicant in writing.
- (3) Upon the request of the applicant, the Patent Office shall, within 30 days from the filing date, send the applicant a certified copy of the application on which the filing date and number are indicated.
- (4) The applicant may file application documents and materials (except the document certifying payment of the fee), that have no influence on establishing the filing date, at the time of filing the documents and materials referred to in Paragraph 1 of this Article, but no later than 3 months after the filing date; the document certifying payment of the fee shall be filed within one month from the filing date. If the said documents are not filed within the prescribed time-limits, the application shall be deemed abandoned.

Article 7. Examination of an Application

- (1) The Patent Office shall, within 3 months from the filing date, examine an application as to compliance with the provisions of Article 4, Paragraphs 1, 3, and 4 and Article 5, Paragraphs 1 and 3 of this Law, as well as the technical requirements set down by the Patent Office with respect to preparation of an application documents and materials.
- (2) If the application complies with the said requirements, the Patent Office shall take a decision on the registration of the topography in the State Register of Topographies of Semiconductor Products and the publication of the respective announcement.
- (3) If an application does not comply or only partially complies with the prescribed requirements, the Patent Office shall notify the applicant and fix a three month period for elimination of the noted deficiencies.
- (4) The Patent Office shall take a decision to reject the application if the applicant has failed to eliminate the noted deficiencies within the prescribed time-limits.

Article 8. Registration of a Topography

(1) The Patent Office shall register the topography in the State Register of Topographies of Semiconductor Products, publish the information about the topography in the Official Bulletin, and shall issue to the applicant, upon payment of the state fee, a standard certificate of registration of the topography as soon as possible after the adoption of a positive decision.

(2) Where an application is filed prior to the first commercial exploitation of the topography, the applicant is entitled to request that the publication of the announcement of registration of the topography is postponed until the first commercial exploitation of the topography, but no longer than one year after the registration date of the topography.

(3) As soon as announcement of registration of the topography has been published, any person shall have the right to inspect the application documents and materials in the Patent Office.

(4) The provisions of Paragraph 3 of this Article shall not apply with respect to those parts of the application that the applicant regards as trade secret, and with respect to whose non-disclosure he has, under the provisions of Article 5, Paragraph 5 of this Law, filed a written request with the Patent Office.

Article 9. Filing and Examination of an Appeal

(1) Patent Office's decision to refuse acceptance of an application for examination, to reject an application during examination, or to refuse registration of the topography may, on payment of the prescribed state fee, be appealed against with the Board of Appeal within 3 months from the date of such decision.

(2) The Board of Appeal shall examine the appeal within 3 months in accordance with the procedure for appeal proceedings laid down in the Patent Law.

(3) The decision of the Board of Appeal to refuse registration of the topography may be appealed against by the appellant to the Regional Court of Riga within a six month period in the procedure set by law. Other decisions of the Board of Appeal shall be final.

Article 10. Filing and Examination of Oppositions

(1) Where the provisions of Article 4, Paragraphs 1, 3 or 4 and Article 5, Paragraph 1, Subparagraphs 1, 2, 3 or 4 of this Law have been violated, any person may file with the Board of Appeal a substantiated opposition against the registration of the topography as a whole or in part within six months from the date of publication of the announcement of registration of the topography. The opposition shall be filed in writing in two copies. A state fee shall be paid for filing an opposition. If the fee is not paid, the opposition shall not be accepted for examination.

(2) The Board of Appeal shall notify the applicant of the registered topography of the opposition and, at the same time, set time-limits for submitting his observations.

(3) The Board of Appeal shall take a decision to cancel the registration of the topography, if the applicant fails to submit his observations within the time-limits prescribed by the Board of Appeal.

(4) The Board of Appeal shall, within 3 months from the date of receipt of the applicant's observations, examine the opposition in accordance with the procedure for settlement of patent disputes laid down in the Patent Law. The opponent, the applicant and their representatives are entitled to participate in opposition proceedings, to submit the necessary materials and to provide oral explanations.

(5) The decision of the Board of Appeal to satisfy the opposition fully or partially may be appealed against by the applicant of the registered topography to the Regional Court of Riga within a six month period. Rejection of the opposition shall not deprive the opponent of the right to contest the registration of the topography in court in accordance with general provisions of patent invalidation laid down in the Patent Law.

Chapter III**Rights Derived from Registration of a Topography****Article 11. Subject Matter and Nature of Exclusive Rights**

(1) The person in whose name the topography has been registered, shall have the exclusive right to:

- 1) reproduce the topography as a whole or in part by any means or in any form;
- 2) embody the topography in a semiconductor product by any means or in any form;

- 3) commercially exploit the topography or the semiconductor product embodying the topography, as well as to manufacture, offer for sale, distribute, import or store it for these purposes.
- (2) Other persons are prohibited to perform any of the acts referred to in Paragraph 1 of this Article without the authorization of the holder of the topography.
- (3) The holder of the topography may transfer his rights in whole or in part to any other person.
- (4) Any topography that is protected under the provisions of this Law, as well as the applicable exclusive right, are conferred the legal status of personal property, and, unless this Law provides otherwise, the provisions of the Patent Law pertaining to licences, licence agreements and other transactions related to exclusive rights, shall apply, as well as the general propositions of Civil Law on personal property and property transactions.
- (5) Where the registered topography is not exploited in Latvia, or is exploited in a scope that does not objectively satisfy the state interests of Latvia, and where the holder of the topography refuses to grant a licence to the interested person, the court, on request of the said person, may grant permission (compulsory licence) to exploit the registered topography. A compulsory licence may be granted in accordance with the provisions of the Patent Law, at any time from the date of registration of the topography.
- (6) Any transaction involving a registered topography shall be considered null and void, unless it is registered with the Patent Office.

Article 12. Term of the Exclusive Rights

- (1) Exclusive right in a topography shall enter into force on the earlier of the following dates - the date of first exploitation of the topography in Latvia or any other state, or the filing date.
- (2) Exclusive right in a topography cannot be obtained if, within 15 years from the year following the year in which the topography has been created, the respective application has not been filed with the Patent Office or exploitation of the topography was not commenced.
- (3) Exclusive right in a topography shall be in force for 10 years from the earlier of the following dates - from the year following the year in which the application has been filed or on which exploitation of the topography was commenced, provided that the application is filed within 2 years from the date of the first commercial exploitation of the topography.

Article 13. Restrictions of Exclusive Rights

- (1) Exploitation of a topography, or a topography that is embodied in a semiconductor product, shall not constitute an infringement of the exclusive right of the holder of topography referred to in Article 11, Paragraphs 1 and 2 of this Law, where the said exploitation is:
 - 1) for private and non-commercial purposes;
 - 2) for purposes of scientific experiment or research;
 - 3) for teaching purposes;
 - 4) for analysis or evaluation of the topography, or concepts, methods, systems and techniques related to the said topography (embodied in the topography).
- (2) The provisions of Article 11, Paragraphs 1 and 2 of this Law pertaining to exclusive rights of the holder of topography shall not apply with respect to any improved topography created on the basis of scientific research, analysis or evaluation of a known topography belonging to another person. The newly created topography shall be registered and protected where its features, taken as a whole, comply with the provisions of Article 2 of this Law.
- (3) The holder of the topography cannot prohibit another person to commercially exploit his topography or a semiconductor product embodying the said topography, in products manufactured by this other person, if the holder of the topography or another person authorized by him has introduced the said topography or the respective semiconductor product in economic circulation either in Latvia or in any foreign country.
- (4) Commercial exploitation of a topography or a semiconductor product embodying the said topography shall not constitute an infringement of the exclusive right, where the person who independently and in good faith exploits it (hereinafter the user), or his successor in title is not aware or cannot be expected to be aware of the existence of such exclusive right. In this case the exploitation of the topography or the respective semiconductor product may be continued after the user has become aware or should have

become aware of the existence of the exclusive right, provided that the holder of the topography has given his consent (based on a licence agreement) and pay him reasonable compensation. Any disputes between the holder of the topography and the user shall be settled by court.

Article 14. Lapse of the Registration of a Topography

(1) The Patent Office shall cancel the registration of the topography before the expiration of its term if the holder of the topography so requests. The registration shall be cancelled as from the date indicated in the request.

(2) Where the right in topography belong to several persons or have been transferred to a third party, the registration can be cancelled only with the consent of all the holders of the topography.

Article 15. Invalidation of the Registration of a Topography

(1) Any interested person may institute an action before the Regional Court of Riga to invalidate the registration of a topography within the term of validity observing the law provisions concerning the lodging of a claim.

(2) The registration of a topography may be invalidated if:

- 1) the subject-matter (object) of the registration does not comply with the definition of semiconductor products and topography set forth in Article 1 of this Law, and with the main provisions for protection of topographies referred to in Article 2;
- 2) the mandatory documents and materials of the application (Article 5, Paragraph 1, Subparagraphs 1 and 2, and Subparagraph 3, Item "a") as compared to other documents and materials of the application (Paragraph 2 of Article 5) misidentify the topography as a whole or in part or discloses the essence of the topography so unclearly that it is impossible to identify the topography unmistakably;
- 3) the topography has been registered in the name of a person who was not entitled to apply for it (Paragraphs 1, 2, 3, 5 and 6 of Article 3, and Paragraph 1 of Article 4);
- 4) the topography has been registered in violation of the provisions of Article 4, Paragraphs 3 and 4 this Law pertaining to the time-limits for filing an application;
- 5) the document certifying the date of first commercial use of the topography (Article 5, Paragraph 1, Subparagraph 4) is false and indication of a false date influences the right of the applicant to file an application for registration (Paragraphs 3 and 4 of Article 4) or the term of validity of the exclusive right (Article 12).

Chapter IV

Protection of Rights of the Creator and the Holder of a Topography

Article 16. Restoration of Rights

(1) Any person who meets the requirements set forth in Article 4, Paragraph 1 of this Law and who has proof of his right in a topography, may submit a claim to court to transfer to him the right to the application or the registered topography, where the application has been filed by another person who was not entitled to do so, or the registration has been effected in favour of this other person.

(2) The rights referred to in Paragraph 1 of this Article may be exercised no later than two years from the date of registration of the topography.

(3) The Patent Office, on the grounds of a judicial decision shall introduce the necessary changes in the Register of Topographies of Semiconductor Products and other documents relating to the registration of a topography. The request for making the necessary changes shall be accompanied by a document certifying payment of the state fee.

(4) The creator of a topography, who is not the holder of the topography, is entitled to protect his rights in court in accordance with the procedure set forth by the Patent Law for protection of the rights of inventor.

Article 17. Protection of Exclusive Rights

(1) The holder of a topography and - with his consent - the holder of exclusive licence has the right to mark the topography, semiconductor product or packaging thereof with a sign warning about the

registration of the topography and the exclusive rights, and that may comprise one or more of the following signs:

- 1) a sign in the form of an encircled letter "T";
- 2) the starting date of the first commercial exploitation of the topography;
- 3) the surname (title) or mark of the holder of the topography.

(2) The warning sign shall be regarded as proof that the topography has been registered, or applied for registration, or that the holder of the topography intends to register it within the time-limits set forth by Article 4 of this Law.

(3) The warning sign may not be placed on a product where the request for the registration of the respective topography has not been filed within the time-limits set forth by Article 4 of this Law, or where the application has been rejected. Otherwise the provisions of the current legislation and other normative acts pertaining to unfair competition shall apply.

(4) The holder of a topography or the holder of an exclusive licence shall have the right to notify third parties, who are likely to use or are preparing to use the topography or the semiconductor product embodying the said topography, about filing of the respective application or about registration of the topography.

(5) The holder of the topography may, from the date of registration of the topography, submit a claim to court on infringement of exclusive rights. The holder of an exclusive licence shall have the same rights.

Chapter V

Responsibility for Infringement of Exclusive Rights

Article 18. Concept of Infringement of Exclusive Rights

(1) Any act referred to in Article 11, Paragraph 2, of this Law, shall be deemed infringement of exclusive rights, if it has been performed during the term of validity of the registration of the topography without the consent of the holder of the topography or without any other legal grounds. An act shall be regarded as infringement, if its object is the topography as a whole or an essential part thereof.

(2) An act shall be deemed an intentional infringement, where it has been performed after the infringer has been notified by the holder of the topography or by the holder of an exclusive licence about the filing of the respective application or the registration of the topography, and in cases where the disputable article carries a warning sign (Paragraphs 1 and 4 of Article 17).

(3) Any person shall be deemed infringer and shall be responsible for infringing exclusive rights even where the acts, referred to in Paragraph 2, Article 11, of this Law, have been committed through the assistance of third parties.

Article 19. Responsibility for Infringement of Exclusive Rights

(1) The provisions of Article 41 of the Patent Law pertaining to responsibility for infringement of exclusive rights shall apply *mutatis mutandis* to the protection of a topography, with the exceptions provided for in this Article.

(2) A person who has, without the consent of the holder of the topography or without any other legal grounds, performed any of the acts referred to in Article 11, Paragraph 1 of this Law, after the date of registration of the topography or after the date of receipt of a notice from the holder of the topography or the holder of an exclusive licence about the filing of the respective application (where the application has been accepted by the Patent Office), shall compensate to the holder of the topography the damages caused by the infringement of the exclusive rights and shall discontinue the exploitation of the topography or the semiconductor product.

(3) A person who has performed the acts referred to in Article 11, Paragraph 1 of this Law during the period between the date on which the holder of the topography has commenced the first commercial exploitation of a semiconductor product marked with a warning sign and the date of registration of the topography, shall only pay to the holder of the topography a reasonable compensation and discontinue the exploitation of the topography or the semiconductor product. In case of dispute the amount of reasonable compensation shall be determined by court, considering the economic value of the exploitation of the topography.

(4) A person who has performed the acts referred to in Article 11, Paragraph 1 of this Law after the holder of the topography has commenced the first commercial exploitation of the unmarked

semiconductor product, shall only pay a reasonable compensation to the holder of the topography. Where the compensation has been paid and where the said person expresses a wish to that effect, the holder of the topography shall grant a licence giving the said person a right to continue the exploitation of the topography in his enterprise in the same scope that the topography was used before the registration date. In case of dispute the amount of reasonable compensation and the licence terms shall be determined by court, considering the economic value of the exploitation of the topography.

(5) The provisions of Paragraphs 2, 3 and 4 of this Article shall not apply with respect to persons who have, during the period between the date on which the holder of the topography has commenced the first commercial exploitation of the semiconductor product and the date on which the exclusive right of the holder of the topography have taken effect, performed any of the acts referred to in Article 11, Paragraph 1 of this Law in bad faith or fraudulently. Such infringements of exclusive right, where the fact of infringement has been ascertained, shall be deemed intentional infringements, and provisions of Paragraphs 6 and 8 of this Article shall be applicable.

(6) Where the infringement of exclusive right has been performed after the registration date of the topography, and the fact of infringement has been ascertained, the holder of the topography or his successor in title, whose rights and legal interests have been infringed, may demand:

- 1) termination of the exploitation of the topography, or the semiconductor product embodying the said topography;
- 2) arrest or destruction of the products, and conveyance thereof to aggrieved party at the prime cost with the consent of the aggrieved party;
- 3) reimbursement of damages caused by the infringement, as well as reimbursement of unrealized profit;
- 4) allotment of the profits, obtained by unlawful exploitation of the topography or the semiconductor product embodying the said topography, to the aggrieved party, completely or in part.

(7) When instituting an action before court, the plaintiff may not, for one and the same infringement, claim reimbursement of damages (Paragraph 6, Subparagraph 3 of this Article) and allotment of the obtained profit to the aggrieved party (Paragraph 6, Subparagraph 4 of this Article).

(8) The persons guilty of the acts infringing the exclusive right of the holder of the topography shall be held responsible in accordance with the provisions of the Law.

Chapter VI Final Provisions

Article 20. Application of Provisions of Other Laws and International Treaties for Protection of Topographies

(1) The provisions of this Law shall be without prejudice to the exclusive rights and legal relations arising from the said exclusive rights, that are, with respect to topographies of semiconductor products embodying the said topographies, founded in the provisions of the Patent Law or other laws pertaining to the protection of intellectual property.

(2) For the purposes of this Law the following provisions of the Patent Law shall apply *mutatis mutandis*:

- 1) on the State as the subject of rights (Article 6);
- 2) on representation before the Patent Office (Article 7, Paragraph 4, Subsection 7 and Article 29);
- 3) on the interests of State security and the respective Patent Office's rights (Article 11, Paragraph 4);
- 4) on State fees (Article 21, Paragraph 2);
- 5) on restrictions on Patent Office employees (Article 23);
- 6) on Board of Appeal (Article 27);
- 7) on nature of patent rights (Article 36);
- 8) on use of an invention (Article 37, Paragraphs 2, 3 and 4);
- 9) on licence and licence contract (Article 38);
- 10) on compulsory licences (Article 39);

- 11) on compensation for damages caused by prohibition of publication (Article 44);
 - 12) on review of disputes in court (Articles 46, 47, 48 and 49).
- (3) Where international treaties approved by the Saeima contain provisions which differ from those in this Law, the provisions of such international treaty shall be applicable.

Transitional Provisions

1. Topographies, the first commercial exploitation of which was commenced no earlier than two years before the date of entry into force of this Law, shall be registered in Latvia.
2. The Cabinet of Ministers shall determine the amount of fees for legal protection of topographies. Until the date on which the respective Rules of the Cabinet of Ministers enter into force, these fees shall be paid in the amount fixed for the protection of industrial designs.

This Law shall enter into force on the thirtieth day following its promulgation.