

Presidency of the Republic

Office of the Chief of Staff

Sub Office of Legal Affairs

Law No. 11.484 of May 31, 2007 (Law on
Integrated Circuit Topographies)

Courtesy translation provided by WIPO, © 2012

Veto message

Conversion of Temporary Measure No. 352 of
2007

See Decrees Nos. 6.233 and 6234 of 2007

Compiled text

Setting out the incentives for the Digital TV equipment and electronic semiconductor component industries and the protection of the intellectual property of integrated circuit topographies, establishing the Support Program for the Technological Development of the Semiconductor Industry – PADIS - and the Support Program for the Technological Development of the Digital TV Equipment Industry - PATVD; amending Law No. 8.666 of June 21, 1993; and repealing Article 26 of Law No. 11.196 of November 21, 2005.

THE PRESIDENT OF THE REPUBLIC. I hereby declare that I ratify the following law enacted by the National Congress:

CHAPTER I

SUPPORT FOR THE TECHNOLOGICAL DEVELOPMENT OF THE SEMICONDUCTOR INDUSTRY

Section I

Support Program for the Technological Development of the Semiconductor Industry

Article 1

The Support Program for the Technological Development of the Semiconductor Industry

(PADIS) shall be established, under the terms and conditions established by this Law. (See Decree No. 6.233 of 2007)

Article 2

PADIS shall provide support to legal entities investing in research and development (R&D) in accordance with Article 6 of this Law and carrying out, independently or jointly:

I the following activities concerning electronic semiconductor devices classified under positions 85.41 and 85.42 of Mercosur's Common Nomenclature (NCM):

- (a) conception, development and project (design);
- (b) physical-chemical diffusion or processing; or
- (c) encapsulation and testing;

II – the following activities concerning display devices referred to in § 2 of this article:

- (a) conception, development and design;
- (b) manufacture of photosensitive, photo or electro-luminescent and light-emitting elements; or
- (c) final assembly of displays and electric and optical tests.

§ 1 - For the purposes of this article, it shall be deemed that the legal entity carries out the following activities:

I - independently, when carrying out all the steps set out in the sub-item under which they fall; or

II - jointly, when carrying out all the activities set out in the item under which they fall.

§ 2 - The provisions of item II of the main body of this article:

I - shall cover displays listed in the act of the Executive, with technology based on liquid crystal components (LCD), photo luminescent components (plasma display panels - PDP), electroluminescent components (light emitting diodes – LEDs), organic light emitting diodes (OLEDs) or thin film electroluminescent (TFEL) displays or similar components with microstructures that emit electrical fields, intended for use as components for electronic equipment;

II - shall not cover cathode ray tubes (CRTs).

§ 3 - The legal entity referred to in the main body of this article shall exclusively carry out the activities set out in this article.

§ 4 - The investment in research and development referred to in the main body of this article and the exercise of the activities referred to in items I and II of the main body of this article must be carried out in accordance with projects approved in the way set out in Article 5 of this Law.

§ 5 The provisions of item I of the main body shall cover electronic semiconductor devices, directly mounted and encapsulated on a printed circuit board (chip on board), classified under codes 8534.00.00 or 8523.51 of the TIPI (Table of Taxes Imposed on Manufactured Goods) (Included in Law No. 12.249 of 2010).

Section II

Application of PADIS

Article 3

In the event of sale on the domestic market, or of the importation, of machines, devices, instruments and equipment for incorporation in the fixed assets of the legal entity acquiring on the domestic market, or importing, goods and intended for the activities referred to in items I to III of the main body of Article 2 of this Law, the following duties shall be reduced to zero: (wording taken from Law No. 12.249 of 2010)

I – the Contribution to the Social Integration Program and the Civil Servant Asset Formation Program (PIS/PASEP) and the Contribution to Social Security Financing (COFINS) levied on the revenue of the selling legal entity when the acquisition is made by a legal entity benefiting from PADIS;

II - the contribution to PIS/PASEP-Importation and COFINS -Importation when importation is carried out by a legal entity benefiting from PADIS; and

III – the IPI (Tax on Processed Goods) imposed on imports or on goods removed from industrial premises or equivalent premises when importation or acquisition on the domestic market is carried out by a legal entity benefiting from PADIS.

§ 1 The reductions in the duties set out in the main body of this article shall also cover computer tools (software) and components intended for the activities referred to in Article 2 of this Law when they are imported or acquired on the domestic market by a legal entity benefiting from PADIS.

§ 2 The provisions of the main body of § 1 of this article shall only cover the goods or materials listed in the act of the Executive.

§ 3 The Contribution for Intervention in the Economic Domain (CIDE) used to fund the Program for the Fostering of University-Business Interaction for Innovation Support, referred to in Article 2 of Law No 10.168 of December 29, 2000, shall be reduced to zero for amounts of money sent abroad in payment of contracts relating to the exploitation of patents or the use of trademarks and of contracts for the supply of technology and technical assistance services, when they are carried out by a legal entity benefiting from PADIS and are linked to the activities referred to in Article 2 of this Law. (Term)

§ 4 For the purposes of this article, any legal entity acquiring foreign goods through importation carried out on its behalf of and on its orders by an importing legal entity shall be equated with the importer.

§ 5 In accordance with the act of the Executive, under the conditions and for the period fixed therein and as long as they are intended for the activities referred to in items I to III of the main body of Article 2 of this Law, import tax (II) applicable to machines, devices, instruments, equipment, computer tools (software), for incorporation by legal entities benefiting from PADIS in their fixed assets, and to supplies imported by such entities, may also be reduced to zero. (Wording contained in Law No 12.249 of 2010)

Article 4

In the sale of the devices referred to in items I to III of the main body of Article 2 of this Law, carried out by a legal entity benefiting from PADIS, the rates of the following taxes shall be reduced:(Wording contained in Law No. 12.249 of 2010)

I - to 0 (zero), the Contribution to PIS/PASEP and COFINS applicable to revenue earned; (Term)

II - to 0 (zero), IPI imposed on goods removed from industrial premises; and (Term)

III - by 100% (one hundred percent), the rates of taxes on income and additional tax applicable to earnings resulting from exploitation. (Term)

§ 1 The tax rate reductions set out in items I and III of the main body of this article shall also apply to revenue resulting from the sale of projects (design) when carried out by a legal entity benefitting from PADIS.

§ 2 The tax rate reductions set out in items I and II of the main body of this article relating to the sales of the devices referred to in items II and II of the main body of Article 2 of this Law shall only apply if the activities referred to in subitems (a) or (b) of item II and in item III of the main body of Article 2 of this Law have been carried out in the country. (Wording contained in Law No. 12.249 of 2010)

§ 3 In order to enjoy the reduction in duties referred to in item III of the main body of this article, legal entities must demonstrate clearly and precisely in their accounts the elements which constitute the revenue, costs, expenses and results of the assessment period, related to the sales to which the reduction applies, separated out from the other activities.

§ 4 The amount of the savings made in light of the tax rate reduction referred to in item III of the main body of this article may not be distributed to the partners and shall constitute a capital reserve of the legal entity which may only be used to cover damages or to increase social capital.

§ 5 The following shall be deemed to be distribution of the amount of the savings made in light of tax reductions:

I - The restoration of capital to the partners in the event of a reduction in the social capital, up to the amount of the increase with the incorporation of the capital reserve; and

II - The sharing of the net assets of the dissolved company up to the amount of the capital reserve balance.

§ 6 Non-observance of the provisions of § 3 to § 5 of this article shall cause the loss of the right to a reduction of the duties referred to in item III of the main body of this article and an obligation to collect, in relation to the amount distributed, the tax not paid by the legal entity, in addition to penalties and default interest, in accordance with the law.

§ 7 The tax rate reductions referred to in this article shall not apply cumulatively with other reductions or benefits relating to the same taxes or contributions, except as provided for in item I of the main body of this article and in § 2 of Article 17 of Law No. 11.196 of November 21, 2005.

Section III

Approval of Projects

Article 5

The projects referred to in § 4 of Article 2 of this Law must be approved in a joint act of the Treasury, the Ministry for Science and Technology and the Ministry for Development, Industry and Foreign Trade, under the terms and conditions established by the Executive.

§ 1 The approval of the project shall be conditional on proof of fiscal compliance by the interested legal entity regarding the taxes and contributions administered by the Federal Revenue Secretariat of the Treasury and by the Social Security Revenue Secretariat of the Ministry for Social Security.

§ 2 The deadline for the presentation of projects shall be 4 (four) years, extendable by up to 4 (four) years by act of the Executive.

§ 3 The Executive shall establish, through regulations, the procedures and deadlines for the assessment of projects.

Section IV

Investment in Research and Development

Article 6

Legal entities benefiting from PADIS referred to in the main body of Article 2 of this Law must invest at least 5% (five percent) of their gross domestic market turnover annually in research and development activities to be carried out in Brazil, after deduction of the taxes applicable to the commercialization of the devices referred to in items I and II of the main body of Article 2 of this Law and the value of the acquisitions of products incentivized under the terms of this Chapter, ..

§ 1 Only investment in research and development activities in the fields of microelectronics, of the devices mentioned in items I and II of the main body of Article 2 of this Law, in optoelectronics, computer tools (software) which support such projects and the project methodologies and the manufacturing process of the components mentioned in items I and II of the main body of Article 2 of this Law shall be allowed.

§ 2 At least 1% (one percent) of the gross turnover, following deduction of the taxes applicable to the commercialization referred to in the wording of the main body of this article, must be invested through agreements with research centers or institutes or Brazilian teaching bodies, either official or recognized, with accreditation from the Committee for the Field of Information Technology (CATI), referred to in Article 30 of Decree No. 5.906 of September 26, 2006, or from the Committee for Research and Development Activities in Amazonia (CAPDA), referred to in Article 26 of Decree No. 6.008 of December 29, 2006.

§ 3 The intellectual property resulting from research and development carried out as a part of projects approved under the terms of this Chapter must have the protection in the national territory that the competent body is required to provide, as appropriate, by the Brazilian legal entity benefiting from PADIS.

Article 7

The legal entity benefiting from PADIS must deliver, by July 31 of each calendar year, reports demonstrating compliance, in the previous year, with the obligations and conditions set out in Article 6 of this Law to the Ministry for Science and Technology.

Article 8

In the event that the investment in research and development set out in Article 6 of this Law does not achieve, in a given year, the minimum percentage set, the legal entity benefiting from PADIS shall invest the difference in the National Fund for Scientific and Technological Development - FNDCT (CT-Info or CT-Amazônia), together with a fine equivalent to 20% (twenty percent) of that difference and interest equivalent to the taxes of the Special System for Liquidation and Custody (SELIC), calculated from January 1 of the year following the one in which the percentage was not achieved up until the date of effective investment.

§ 1 The legal entity benefiting from PADIS must carry out the investment referred to in the main body of this article up to the last working day of March of the year following that in which the percentage was not achieved.

§ 2 Should the situation described in the main body of this article arise, the failure to carry out the investment referred to therein, within the deadline set out in § 1 of this article shall mean that the legal entity liable for contributions shall be obliged to pay the following:

I - interest and a late payment fine, in accordance with the law, referring to the unpaid contributions and tax due under the provisions of items I and II of the main body of Article 4 of this Law; and

II - income tax and the unpaid additional taxes in the light of the provisions of item III of the main body of Article 4 of this Law, in addition to interest and late payment fines, in accordance with the law.

§ 3 The interest and fine referred to in item I of § 2 of this article shall be collected separately and must be calculated:

I - from the date of effectiveness of the sale, in the case of item I of the main body of Article 4 of this Law, or from the date of removal of the goods from the industrial premises, in the case of item II of the main body of Article 4 of this Law; and

II - based on the amount of uncollected contributions and taxes, in proportion to the difference between the minimum percentage for investment in research and development set and the actual investment made.

§ 4 Payments made in accordance with § 2 and § 3 of this article shall not release the legal entity benefiting from PADIS from the obligation to invest in the FNDCT (CT-Info or CT-Amazônia), in accordance with the main body of this article.

§ 5 Failure to carry out or failure to carry out correctly the payment set out in § 2 of this article shall make the legal entity subject to the issuance of an official letter, with the application of ex officio fines in accordance with the law.

§ 6 – Legal entities failing to comply with the provisions of this article shall be subject to the provisions of Article 9 of this Law.

Section V

Suspension and Cancellation of the Application of PADIS

Article 9

Legal entities benefiting from PADIS shall be punished, at any time, by the suspension of the application of Articles 3 and 4 of this Law, without prejudice to the application of specific penalties, in the event of the following violations:

I - Non presentation or non approval of the reports referred to in Article 7 of this Law;

II - Non compliance with the obligation to invest in research and development, in accordance with Article 6 of this Law and in observation of the provisions of Article 8;

III - Violation of the provisions of PADIS regulations; or

IV - Irregularity relating to taxes or contributions administered by the Federal Revenue Secretariat or by the Social Security Revenue Secretariat.

§ 1 - The suspension measure referred to in the main body of this article shall be upgraded to cancellation of the application of Articles 3 and 4 of this Law, in the event that the legal entity benefiting from PADIS does not remedy the violation within 90 (ninety) days starting from the notification of suspension.

§ 2 Any legal entity receiving 2 (two) suspensions within a period of less than 2 (two) years shall be punished by the cancellation of the application of Articles 3 and 4 of this Law.

§ 3 The cancellation of implementation penalty may only be reversed 2 (two) years after the violation that gave rise to it has been remedied.

§ 4 The Executive shall regulate the provisions of this article.

Section VI

General Provisions

Article 10

The Ministry of Science and Technology must inform the Federal Revenue Secretariat of cases of:

I - non compliance by legal entities benefiting from PADIS with the obligation to submit reports demonstrating compliance within the deadline set in Article 7 of this Law, or to invest in the FNDCT (CT-Info or CT-Amazônia), in accordance with the main body of Article 8 of this Law, in observance of the deadline contained in § 1 of Article 8, if the minimum percentage of investment in research and development has not been achieved.

II - non approval of the reports demonstrating compliance referred to in Article 7 of this Law; and

III - violation of PADIS' regulatory provisions .

Sole paragraph

The cases provided for in item I of the main body of this article must be communicated by August 30 of each calendar year, the remaining cases being communicated up to 30 (thirty) days after the verification of the event.

Article 11

The Ministry for Science and Technology and the Ministry for Development, Industry and Foreign Trade shall make available, every 3 (three) years, a report containing the economic and technological results arising from the application of the provisions of this Chapter.

Sole paragraph

The Executive shall also disclose the form and amounts of the incentives granted and the investments made in research and development by beneficiary company and by project, in accordance with the regulations.

CHAPTER II

SUPPORT FOR THE TECHNOLOGICAL DEVELOPMENT OF THE DIGITAL TV EQUIPMENT INDUSTRY

Section I

Support Program for the Technological Development of the Digital TV Equipment Industry

Article 12

The Support Program for the Technological Development of the Digital TV Equipment Industry (PATVD) shall be established, under the terms and conditions set out by this Law. (See Decree No. 6234 of 2007)

Article 13

Any legal entity investing in research and development (R&D) in accordance with Article 17 of this Law, and carrying out development and manufacturing activities concerning equipment for the transmission of signals by radiofrequency for digital television, classified under NCM code 8525.50.2, shall be eligible to benefit from PATVD.

§ 1 For the purposes of this article, the legal entity referred to in the main body of this article must comply with the Basic Productive Process (PPB) established by the inter-ministerial decree of the Ministry for Development, Industry and Foreign Trade and the Ministry for Science and Technology or, alternatively, must meet the criteria for goods developed in the country defined by the decree of the Ministry of Science and Technology.

§ 2 Investment in research and development and the activities referred to in the main body of this article shall be carried out in accordance with projects approved under the terms of Article 16 of this Law.

Section II

Application of PATVD

Article 14

In the case of sale on the domestic market, or of the importation, of new machines, devices, instruments and equipment for incorporation in the fixed assets of the legal entity behind the purchase on the domestic market or importation, intended for the manufacture of the equipment referred to in the main body of Article 13 of this Law, the rates of the following taxes shall be reduced to zero: (Term)

I - the contribution to PIS/PASEP and to COFINS levied on the revenue of the legal entity selling the goods when the acquisition was made by a legal entity benefiting from PATVD;

II - the contribution to PIS/PASEP-Importation and COFINS-Importation if importation is carried out by a legal entity benefiting from PATVD; and

III - IPI applicable to importation or exit from the industrial premises or equivalent if the import or acquisition on the domestic market was carried out by a legal entity benefiting from PATVD.

§ 1 The tax rate reductions referred to in the main body of this article shall also cover computer tools (software) and components intended for the manufacture of the equipment referred to in Article 13 of this Law if they are acquired on the domestic market or imported by a legal entity benefiting from PATVD.

§ 2 The tax rate reductions set out in the main body and in § 1 of this article shall only cover the goods or components listed in the act of the Executive.

§ 3 The tax rate for CIDE (Contribution for Intervention in the Economic Domain) earmarked to fund the Program for the Fostering of University-Business Interaction for Innovation Support, referred to in Article 2 of Law No 10.168 of December 29, 2000, shall remain at zero for amounts of money destined for transfer abroad in payment of contracts relating to the exploitation of patents or for the use of trademarks and contracts for the supply of technology and technical assistance services, if they are carried out by a legal entity benefiting from PATVD and linked to the activities referred to in Article 13 of this Law.

§ 4 For the purposes of this article, any legal entity acquiring foreign goods through importation carried out on its behalf of and on its orders by an importing legal entity shall be equated with the importer.

§ 5 The rate of Importation Tax may also be reduced to 0 (zero) - II applicable on new machines, devices, instruments and equipment listed in the Act of the Executive and under the conditions and for the period set in that Act, imported by a legal entity benefiting from PATVD for incorporation into its fixed assets and for the purposes of the activities referred to in Article 13 of this Law.

Article 15

Rates of the following taxes are reduced to 0 (zero) with regard to the sales of transmission equipment referred to in Article 13 of this Law and carried out by a legal entity benefiting from PATVD: (Term)

I - contribution to PIS/PASEP and COFINS levied on revenues earned; and

II - IPI applicable on exit from industrial premises.

Sole paragraph

The tax rate reductions referred to in this article shall not apply cumulatively with other reductions or benefits relating to the same taxes or contributions.

Section III

Approval of Projects

Article 16

The projects referred to in § 2 of Article 13 of this Law must be approved jointly by the Treasury, the Ministry for Science and Technology and the Ministry for Development, Industry and Foreign Trade, under the terms and conditions established by the Executive.

§ 1 The approval of projects shall be conditional on the provision of proof of fiscal compliance on the part of the interested legal entity concerning the taxes and contributions administered by the Federal Revenue Secretariat of the Treasury and by the Social Security Revenue Secretariat.

§ 2 The Executive shall establish, through regulation, the procedures and deadlines for the assessment of projects.

Section IV

Investment in Research and Development

Article 17

Legal entities benefiting from PATVD, must invest, on an annual basis, at least 2.5 (two and a half) per cent of their gross domestic market turnover (after deduction of the taxes applicable to the commercialization of the transmission equipment referred to in Article 13 of this Law) in research and development activities to be carried out in Brazil.

§ 1 Only investment in research and development activities concerning the equipment referred to in Article 13 of this Law, as well as software and components for such equipment shall be allowed.

§ 2 At least 1 (one) per cent of gross turnover, after deduction of the taxes applicable to commercialization in accordance with the main body of this article, must be invested through agreements with research centers or institutes or official or recognized Brazilian teaching entities with accreditation from the Committee on the Field of Information Technology (CATI) or the Committee for Research and Development Activities in Amazonia (CAPDA).

§ 3 The intellectual property resulting from research and development carried out as a part of projects approved under the terms of this Chapter must have the protection in the national territory that the competent body is required to provide, as appropriate, by the Brazilian legal entity benefiting from PATVD.

Article 18

Legal entities benefiting from PATVD must submit, by July 31 of each calendar year, to the Ministry for Science and Technology, by July 31 of each calendar year, the reports demonstrating compliance, in the previous year, with the obligations and conditions set out in Article 17 of this Law.

Article 19

In the event that, in a given year, the minimum percentage of investment in research and development provided for in Article 17 of this Law is not achieved, , the legal entity benefiting from PATVD shall invest the difference in the National Fund for Scientific and Technological Development - FNDCT (CT-Info or CT-Amazônia), together with a 20 (twenty) per cent fine and interest equivalent to the taxes of the Special System for Liquidation and Custody (SELIC), calculated from January 1 of the year following the year in which the percentage was not achieved up until the date of effective investment.

§ 1 All legal entities benefiting from PATVD shall carry out the investment referred to in the main body of this article up to the last working day of March of the year following that in which the percentage was not achieved.

§ 2 Should the situation described in the main body of this article arise, the failure to carry out the investment referred to therein, within the deadline set out in § 1 of this article, the legal entity liable for contributions shall be obliged to pay interest and a late payment fine, in accordance with law,

regarding the unpaid contributions and tax due as a result of the provisions of items I and II of the main body of Article 15 of this Law.

§ 3 The interest and fine covered in § 2 of this article shall be collected separately and shall be calculated as follows:

I - from the date of sale, in the case of item I of the main body of Article 15 of this Law, or from the date of the removal of goods from the industrial premises, in the case of item II of the main body of Article 15 of this Law; and

II - based on the value of the uncollected contributions and taxes, in proportion to the difference between the minimum percentage for investment in research and development set and the actual investment made.

§ 4 Payments made in accordance with § 2 and § 3 of this article shall not release the legal entity benefiting from PATVD from the obligation to invest in the FNDCT (CT-Info or CT-Amazônia), in accordance with the main body of this article.

§ 5 Failure to carry out or irregularities concerning the payment set out in § 2 of this article shall make the legal entity subject to the issuance of an official letter, with the application of an ex officio fine in accordance with the law.

§ 6 – Legal entities failing to comply with the provisions of this article shall be subject to the provisions of Article 20 of this Law.

Section V

Suspension and Cancellation of the Application of PATVD

Article 20

Legal entities benefiting from PATVD shall be punished, at any time, by the suspension of the application of Articles 14 and 15 of this Law, without prejudice to the application of specific penalties, in the event of the following violations:

I – non-compliance with the conditions set out in § 1 of Article 13 of this Law;

II - non compliance with the obligation to carry out investment in research and development, in accordance with Article 17 of this Law, subject to the provisions of Article 19 of this Law;

III – non-presentation or non approval of the reports referred to in Article 18 of this Law;

IV - violation of PATVD's regulatory provisions; or

IV - irregularities relating to the taxes or contributions administered by the Federal Revenue Secretariat or by the Social Security Revenue Secretariat.

§ 1 - The suspension referred to in the main body of this article shall be upgraded to the cancellation of the application of Articles 14 and 15 of this Law in the event that the legal entity benefiting from PATVD does not remedy the violation within 90 (ninety) days starting from the notification of suspension.

§ 2 Legal entities incurring 2 (two) suspensions within less than 2 (two) years shall be punished by the cancellation of the application of Articles 14 and 15 of this Law.

§ 3 The cancellation of application penalty may only be reversed 2 (two) years after the original violation has been remedied.

§ 4 The Executive shall regulate the provisions of this article.

Section VI

General Provisions

Article 21

The Ministry for Science and Technology shall inform the Federal Revenue Secretariat of any cases of:

I- non-compliance on the part of legal entities benefiting from PATVD with;

- (a) the conditions set out in § 1 of Article 13 of this Law;
- (b) the obligation to submit the reports demonstrating compliance within the deadline referred to in Article 18 of this Law, or with the obligation to invest in the FNDCT (CT-Info or CT-Amazonia), in accordance with the main body of Article 19 of this Law, the deadline referred to in § 1 of Article 19 having passed and the minimum percentage of investment in research and development activities not having been achieved;

II – non- approval of the reports demonstrating compliance referred to in Article 18 of this Law; and

III - violation of PATVD's regulatory provisions.

Sole paragraph

The cases set out in subitem (b) of item I of the main body of this article must be communicated by August 30 of each calendar year, while the remaining cases must be communicated within 30 (thirty) days following the determination of the event.

Article 22

Every three (3) years, the Ministry for Science and Technology and the Ministry for Development, Industry and Foreign Trade shall make available a report containing the economic and technological results of the application of the provisions of this Chapter.

Sole paragraph

The Executive shall also disclose the modalities and amounts of the incentives granted and of the R&D investments by beneficiary company and by project, in accordance with the regulations.

CHAPTER III

TOPOGRAPHY OF INTEGRATED CIRCUITS

Section I

Definitions

Article 23

This chapter shall establish the conditions of protection for integrated circuit topographies.

Article 24

The rights established in this chapter shall be guaranteed for:

I - nationals and foreigners resident in the country; and

II - persons domiciled in a country which has a reciprocal agreement with Brazil granting Brazilians or persons domiciled in Brazil equal or equivalent rights.

Article 25

The provisions of this Chapter shall also apply to registration applications originating from abroad and filed in Brazil by a person guaranteed protection under a treaty in force in Brazil.

Article 26

For the purposes of this Chapter the following definitions shall be adopted:

I – “integrated circuit” shall mean a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in and/or on a piece of material and which is intended to perform an electronic function;

II – Integrated circuit topography shall mean a series of related images, constructed or encoded in any media or form, which represents the three-dimensional configuration of the layers that make up an integrated circuit and in which each image represents, in whole or in part, the geometric layout or arrangements of the surface of the integrated circuit at any stage of its design or manufacture.

Section II

Ownership of Rights

Article 27

The creator of the integrated circuit topography shall be guaranteed registration ensuring that he enjoys protection under the conditions of this Chapter.

§ 1 Unless proven otherwise, the applicant for registration shall be deemed to be the creator.

§ 2 In the case of a topography created jointly by 2 (two) or more persons, registration may be requested by all or any one of those persons in return for the designation and enablement of the other persons in order to safeguard the respective rights.

§ 3 Protection may be requested in the name of the creator’s heirs or successors, the licensee or the person deemed by law or by a contract of work, of service provision, or by public servant status to own the title, consular legalization of the relevant documents being waived.

Article 28

Unless otherwise stipulated, the rights relating to an integrated circuit topography developed while an employment, service provision or public servant contract is in force, , in which the creative activity results from the nature of the duties related to those positions or if there were use of the resources, technological information, industrial or trade secrets, materials, premises or equipment of the employer, service commissioner or employing State entity,, shall be deemed to belong to the employer, service commissioner or employing State entity.

§ 1 Unless agreed otherwise, compensation for the work or service provided shall be limited to the agreed remuneration.

§ 2 Rights relating to an integrated circuit topography developed without a link to an employment or service provision contract and without the use of resources, technological information, industrial or trade secrets, materials, premises or equipment of the employer, service commissioner or entity creating the public servant post, shall belong exclusively to the employee, service provider or public servant

§ 3 The provisions of this article shall also apply to scholarship holders, trainees and similar persons.

Section III

Protected Topographies

Article 29

The protection provided for in this Chapter shall only apply to topographies which are original, in the sense that they are the result of the intellectual effort of their creator/creators and are not, at the time of their creation, commonplace among integrated circuit technicians, specialists or manufacturers.

§ 1 A topography resulting from a combination of elements and interconnections that are commonplace or which incorporates, with the due authorization, protected topographies of third parties, shall only be protected if the combination, seen as a whole, meets the provisions of the main body of this article.

§ 2 Protection shall not be granted to the concepts, processes, systems or techniques on which the topography is based or to any information stored through the use of said protected concepts, processes, systems or techniques.

§ 3 The protection granted by this Chapter shall be independent of the fixation of the topography.

Article 30

Protection shall be dependent on registration, which shall be carried out by the National Institute of Industrial Property (INPI).

Section IV

Registration Application

Article 31

Registration applications shall refer to a single topography and shall meet the legal conditions regulated by the INPI and must contain:

I – the application;

II – a description of the topography and its corresponding function;

III - drawings or photographs of the topography, essential for the identification and determination of its originality;

IV - declaration of prior exploitation, if any, indicating the start date of said exploitation; and

V - proof of payment of the fee relating to the filing of the registration application.

Sole paragraph

The application and any accompanying documents shall be presented in the Portuguese language.

Article 32

At the request of the applicant, at the time of filing, the application may be kept confidential for a period of 6 (six) months, starting from the date of filing, after which period it shall be processed in accordance with the provisions of this Chapter.

Sole paragraph

During the confidentiality period, the application may be withdrawn, with the documentation being returned to the interested party, without producing any effect, on the condition that the request is presented to the INPI up to 1 (one) month before the end of the period of confidentiality.

Article 33

Once the registration application has been recorded according to protocol, the INPI shall carry out the formal examination and may set requirements which must be met fully, within a period of 60 (sixty) days, failure to do so leading to the application being shelved definitively..

Sole paragraph

Applications which indicate an exploitation start date that pre-dates the date of filing by more than 2 (two) years shall also be shelved definitively.

Article 34

In the absence of requirements, or in cases in which all requirements have been met fully, the INPI shall grant the registration, publishing it in whole and issuing the respective certificate.

Sole paragraph

The registration certificate must contain the number and date of registration, the name, nationality and domicile of the title holder, the exploitation start date, where applicable, or the date of the filing of the registration application, and the title of the topography.

Section V

Rights Granted by Protection

Article 35

Protection shall be granted to topographies for 10 (ten), years starting from the filing date or from the date of the 1st (first) instance of exploitation, whichever occurred first.

Article 36

The registration of an integrated circuit topography shall give its holder the exclusive right to exploit it, third parties being prohibited from the following acts without the consent of the holder:

I – reproduction of the topography, in whole or in part, by any means, including its incorporation into an integrated circuit;

II – importation, sale, or distribution by any other means, for commercial purposes, of a protected topography or an integrated circuit which incorporates a protected topography; or

III – importation, sale, or distribution by any other means, for commercial purposes, of a product which incorporates an integrated circuit incorporating a protected topography, only in so far as this circuit continues to contain an illegal reproduction of a topography.

Sole paragraph

The performance of any of the acts set out in this article by an unauthorized third party, between the exploitation start date or the filing date of the registration application and the date of grant of the registration, shall entitle the holder to obtain, after said grant, compensation which shall be set by the courts.

Article 37

The effects of the protection set out in Article 36 of this Law shall not apply:

I – to acts carried out by unauthorized third parties for the purposes of analysis, evaluation, teaching and research;

II – to acts which consist of the creation or exploitation of a topography which is the result of analysis, evaluation and research on the protected topography, on the condition that the resulting topography is not substantially identical to the protected topography;

III – to acts consisting of the importation, sale or distribution by other means for commercial or private purposes, of integrated circuits or products containing them, put into circulation by the holder of the corresponding integrated circuit topography registration or with his consent; and

IV – to acts described in items II and III of the main body of Article 36 of this Law, carried out or ordered by a person or persons unaware, at the time of obtaining the integrated circuit or the product, or with no reasonable grounds to suspect, that the product or integrated circuit incorporated an illegally reproduced, protected topography.

§1 In the case of item IV of the main body of this article, after due notification, the person responsible for the acts or for ordering those acts may carry out such acts in relation to products or integrated circuits in stock or previously ordered, as long as, in relation to these products or circuits, he pays the rights holder remuneration equivalent to the amount that would be paid in the case of a voluntary license.

§2 The holder of the registration of an integrated circuit topography may not exercise his rights in relation to an identical original topography created independently by a third party.

Section VI

Expiry of Registration

Article 38

Registrations shall expire:

I – at the end of the period of duration; or

II – on renunciation by their holders, by means of an appropriate document, safeguarding third party rights.

Sole paragraph

The subject of protection shall fall into the public domain on expiry of the registration.

Section VII

Nullity

Article 39

The registration of an integrated circuit topography shall be declared legally null if it was granted contrary to the provisions of this Chapter, in particular when:

I – the presumption of §1 of Article 27 of this Law is proven to be untrue;

II – the topography does not meet the requirement of originality in accordance with Article 29 of this Law;

III – the documents presented in accordance with the provisions of Article 31 of this Law do not suffice for the identification of the topography; or

IV – the registration application was not filed within the period set out in the sole paragraph of Article 33 of this Law.

§1 Nullity may be full or partial.

§2 Partial nullity shall only occur if the remaining part constitutes material which is itself protected.

§3 Nullity of the registration shall take effect from the date of the commencement of the protection defined in Article 35 of this Law.

§4 In the event of non compliance with the provisions of §1 of Article 27 of this Law, the creator may, alternatively, claim award of the registration.

§5 Claims concerning nullity may only be formulated during the term of duration of the protection or, as defense material, at any time.

§6 The federal courts with jurisdiction over the head office of the National Industrial Property Institute (INPI) shall be competent regarding nullity actions, with the INPI being a necessary party to the proceedings.

Article 40

The respective certificate shall be cancelled on declaration of nullity of the registration

Section VIII

Assignment and Changes to the Registration

Article 41

Rights concerning an integrated circuit topography may be assigned.

§1 Assignment may be whole or partial, , the corresponding percentage necessarily being indicated in the case of partial assignment.

§2 The document of assignment must contain the signatures of the assignor and the assignee, as well as those of 2 (two) witnesses, consular legalization being waived.

Article 42

The INPI shall record the following:

- I – the assignment, noting the full details of the assignee;
- II – any limitation or obligation linked to the registration; and
- III – changes of name, head office or address of the holder.

Article 43

The annotations shall have effect relative to third parties after publication in the official journal of the INPI or, if not published, 60 (sixty) days after the request has been duly recorded.

Section IX

Licenses and Unauthorized Use

Article 44

The holder of the registration of an integrated circuit topography may sign a contract for an exploitation license.

Sole paragraph

In the absence of a contrary provision, the licensee shall be invested with the legitimacy to act in defense of the registration.

Article 45

The INPI shall record the licensing contracts in order that they may have effect in relation to third parties.

Article 46

Unless there is a contractual stipulation to the contrary, in the case of crossed licenses, remuneration relating to protected licensed topographies may not be collected from third parties who have acquired integrated circuits incorporating said protected licensed topography.

Sole paragraph

Remuneration may only be collected from a third party if he was expressly notified of this possibility when purchasing the circuit.

Article 47

The Public Authorities may make public, non-commercial use of protected topographies, directly or by contracting or authorizing third parties, observing the provisions of items III to VI of the main body of Article 49 and the provisions of Article 51 of this Law.

Sole paragraph

The holder of the topography registration to be used by the Public Authority under the terms of this article must be notified in a timely manner.

Article 48

Compulsory licenses may be granted to ensure free competition or to prevent abuses of the right or economic power by the right holder, including non provision of service to the market with regards to price, quantity or quality.

Article 49

The following conditions and requirements shall be met when granting compulsory licenses.

I –license requests shall be considered on their individual merits;

II – applicants for licenses shall demonstrate that they previously made attempts, over a reasonable period, to obtain a license in accordance with normal commercial practices and that said attempts were not fruitful;

III – the scope and duration of a given license shall be restricted to the purpose for which the license was granted;

IV – the license shall be non-exclusive;

V – licenses shall not be transferrable, unless transferred in conjunction with the assignment, alienation or leasing of the undertaking or the part of the undertaking exploiting the license.

VI – licenses shall be granted principally to supply the domestic market.

§1 The conditions set out in items II and VI of the main body of this article shall not apply if the license was granted to remedy uncompetitive or unfair practice, recognized as such in administrative or legal proceedings

§2 Moreover, the conditions established in item II of the main body of this article shall not apply if the license was granted in the event of a national emergency, or other circumstances of extreme urgency.

§3 In situations of national emergency or in other circumstances of extreme urgency, the rights holder shall be notified as soon as possible.

Article 50

Compulsory license applications shall contain an indication of the conditions offered to the registration holder.

§1 Once a license application has been presented, the holder shall be called on to respond within a period of 60 (sixty) days, at the end of which, if there no response is forthcoming from the title holder, the proposal shall be deemed to have been accepted under the conditions offered.

§2 License applicants invoking anti-competitive or unfair practice must attach evidentiary documentation.

§3 If the compulsory license requested on the basis of Article 48 of this Law involves an allegation of lack of exploitation or inefficient exploitation, it shall be recumbent on the registration holder to prove the unfounded nature of that allegation.

§4 In the event of an appeal, the INPI shall carry out the diligences necessary for the resolution of the dispute and may, if necessary, appoint a committee of experts, including individuals not on the staff of the INPI.

Article 51

The holder must be adequately remunerated depending on the circumstances of each use, it begin compulsory to take into account the economic value of the license granted when determining said remuneration.

Sole paragraph

If a license has been granted based on anticompetitive or unfair practice then that fact must be taken into account when determining the remuneration.

Article 52

Without prejudice to the adequate protection of the legitimate interests of the licensees, the license may be cancelled, following a reasoned request made by the holder of the rights to the topography, if the circumstances which made it possible to grant the license should cease to exist and are unlikely to arise again.

Sole paragraph

An appeal may be lodged against the cancellation provided for in the main body of this article if the conditions which made it possible to grant the license should arise again.

Article 53

The licensee must initiate exploitation of the subject of protection within a period of 1 (one) year, with allowance being made for:

I – 1 (one) extension, for an equal period, on the condition that the licensee has made substantial and effective preparations to start exploitation or that there exist other grounds for the granting of an extension;

II – 1 (one) interruption of exploitation, for an equal period, on the condition that legitimate grounds exist for such an interruption.

§1 The exceptions provided for in items I and II in the main body of this article can only be granted following the submission of a duly reasoned request to the INPI, containing proof of the allegations justifying the granting of said exceptions.

§2 On expiry of the periods referred to in the main body of this article and its items without the licensee having initiated or taken up exploitation, the license shall expire.

Article 54

Any person who, without the authorization of the right holder of an integrated circuit topography, carries out an act provided for in Article 36 of this Law, shall be deemed to have committed the crime of infringement of the rights of the topography's rights holder, excepting the provisions of Article 37 of this Law.

§1 Where the violation consists of the reproduction, importation, sale, holding in stock or distribution, for commercial purposes, of a protected topography or of an integrated circuit which incorporates that topography:

Penalty: imprisonment of 1 (one) to 4 (four) years, together with a fine.

§2 The custodial sentence shall be increased by 1/3 (one third) to ½ (half) if:

I – the agent was or had been a representative, mandate holder, agent, partner or employee of the registration holder, or even, of his licensee; or

II – the agent repeats the offence.

§3 The amount of the fines, as well as their updating or increase, shall be governed by the system set out in Decree-Law No. 2.848 of December 7, 1940 – Criminal Code.

§4 In the case of crimes provided for in this article the procedure shall only be commenced following a complaint, unless they are carried out with prejudice to a public right entity, public firm, mixed economy company or a foundation established by the public authority.

§5 Independently of the criminal action, the prejudiced party may initiate an action to prevent the offender from carrying out the offense, with the possibility of a financial penalty for cases of infringement of the ruling, with cumulative loss and damages.

Section X

General Provisions

Article 55

The acts provided for in this Chapter shall be practiced by the parties or by their duly authorized agents.

§1 Power of attorney instruments drafted in a foreign language, with consular legalization having been waived, must be accompanied by a sworn translation.

§2 If not initially presented power of attorney documents must be handed over within 60 (sixty) days of the recording according to protocol of the registration request, otherwise they will be shelved definitively.

Article 56

For the purposes of this Chapter, persons domiciled abroad shall select and maintain a proxy, duly qualified and resident in the country, with powers to represent them administratively and legally, and also to receive judicial summonses.

Article 57

The INPI shall not recognize a petition which is:

- I – presented outside of the legal deadline;
- II – presented by a person without a legitimate interest in the proceedings; or
- III – not accompanied by proof of payment of the respective fee in force at the date of presentation.

Article 58

Unless otherwise stipulated in this Chapter, the period for the carrying out of acts shall be 60 (sixty) days.

Article 59

The time periods set out in this Chapter shall be uninterrupted, and the right to carry out acts shall expire automatically after they have elapsed, unless the party can prove that they were not carried out for a legitimate reason.

Sole paragraph

On recognition of the legitimate reason, the party shall carry out the act within the period assigned by the INPI.

Article 60

The time periods referred to in this Chapter shall commence, unless provided for otherwise, from the 1st (first) working day following the issuing of the summons.

Sole paragraph

Unless provided for otherwise, the summons shall be issued through publication in the official journal of the INPI.

Article 61

A charge shall be made for the services provided in accordance with this Chapter, the amount and collection procedure of which shall be established by the Ministry of State to which the INPI is attached.

CHAPTER IV

FINAL PROVISIONS

Article 62

The main body of Article 24 of Law No. 8.666, of June 21, 1993, shall enter into force with the addition of the following item XXVIII:

“Article 24.....

XXVIII – for the supply of goods and service, produced or provided in the country, which involve both high technological complexity and national defense, the opinion commission specifically appointed by the highest authority of the body having been heard.

.....” (NR)

Article 63 (VETOED)

Article 64

The provisions of Article 3 and of items I and II of the main body of Article 4 of this Law shall remain in force until January 22, 2022.

Article 65

The provisions of §3 of Article 3 and of item III of the main body of Article 4 of this Law shall remain in force for:

I – 16 (sixteen) years, starting from the date of approval of the project, in the case of projects involving the activities referred to in sub items:

- (a) (a) or (b) of item I of the main body of Article 2 of this Law; or
- (b) (a) or (b) of item II of the main body of Article 2 of this Law;

II – 12 (twelve) years, starting from the date of approval of the project, in the case of projects which only involve the activities referred to in sub items:

- (a) (c) of item I of the main body of Article 2 of this Law; or
- (b) (c) of item II of the main body of Article 2 of this Law.

Article 66

The provisions of Articles 14 and 15 of this Law shall remain in force until January 22, 2017.

Article 67

This Law shall come into force on the date of its publication, Article 62 having effect from February 19, 2007.

Brasilia, May 31, 2007; 186th year of Independence and 119th year of the Republic.

LUIZ INÁCIO LULA DA SILVA

Tarso Genro

Miguel Jorge

Sergio Machado Rezende

This text shall not replace that published in the Federal Official Gazette (DOU) of May 31,,2007, extra edition.