

Act on the Protection of Topographies of Semiconductor Products

And

ACT AMENDING AND SUPPLEMENTING
THE PROTECTION OF TOPOGRAPHIES
OF SEMICONDUCTOR PRODUCTS ACT*/**

NN 173/2003, in force from January 1, 2004

*NN 76/2007, in force from July 31, 2007

**NN 30/2009, in force from March 17, 2009

Zagreb, December 2009

I. GENERAL PROVISIONS

SUBJECT MATTER OF THE PROTECTION

Article 1

This Act regulates the protection of topographies of semiconductor products.

DEFINITIONS

Article 2

For the purposes of this Act:

- (1) A Semiconductor product means the final or an intermediate form of any product:
 - a) Consisting of a body of material which includes a layer of semiconducting material, and
 - b) Having one or more other layers composed of conducting, insulating or semiconducting material which have been arranged in accordance with a predetermined three-dimensional pattern, and
 - c) Intended to perform an electronic function, exclusively or together with other functions.
- (2) The topography of a semiconductor product (hereinafter: topography) means a series of related images, however fixed or encoded:
 - a) Representing the three-dimensional pattern of the layers of which a semiconductor product is composed, and
 - b) 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 means the sale, rental, leasing or any other method of commercial distribution of the topography, including its offer for any of these purposes. First commercial exploitation shall not include exploitation under conditions of confidentiality to the extent that no further distribution to third parties occurs.

II. PROTECTION REQUIREMENTS AND RIGHT TO PROTECTION

PROTECTION REQUIREMENTS

Article 3

- (1) The topography shall be protected by an exclusive right in accordance with the provisions of this Act if it is the result of its creator's own intellectual effort and is not commonplace in the semiconductor industry.
- (2) Where the topography consists of elements that are commonplace in the semiconductor industry, it shall be protected only to the extent that the combination of such elements, taken as a whole, fulfils the conditions referred to in paragraph (1) of this Article.

RIGHT TO PROTECTION

Article 4

- (1) Right to protection shall apply in favour of natural persons who are the creators of the topographies. Where several persons have jointly created a topography, the right shall jointly apply in favour of all of them.
- (2) Where a topography is created in the course of the creator's employment, the right to protection shall apply in favour of the creator's employer unless otherwise provided by the employment contract.
- (3) Where a topography is created under a contract other than a contract of employment, the right to protection shall apply in favour of a party to the contract by whom the topography has been commissioned, unless otherwise provided by the contract.
- (4) Where a topography is created in accordance with paragraphs (2) and (3) of this Article, the right to protection of a topography shall apply in favour of:
 - a) Natural persons who are nationals of the Republic of Croatia or who have their domicile or habitual residence on the territory of the Republic of Croatia;
 - b) Companies or other legal persons who have their principle place of business on the territory of the Republic of Croatia.

- (5) The right to protection shall also apply in favour of the successors in title of the persons mentioned in paragraphs (1) to (4) of this Article.

Article 5

Foreign legal and natural persons not having their principle place of business, or a domicile or a habitual residence on the territory of the Republic of Croatia shall enjoy the protection provided by this Act, if it results from international treaties binding the Republic of Croatia or from the application of the principle of reciprocity.

III. THE REGISTRATION PROCEDURE

COMMON PROVISIONS ON THE PROCEDURE BEFORE THE OFFICE

Article 6

- (1) The procedures for registration and declaration of the decision on the registration of a topography null and void shall be carried out by the State Intellectual Property Office of the Republic of Croatia (hereinafter: the Office).
- (2) Against the decisions made by the Office no appeal shall be allowed, but an administrative lawsuit may be initiated.
- (3) The Act on General Administrative Procedure shall apply to certain matters concerning the procedure which are not regulated by this Act.

FILING OF THE APPLICATION

Article 7

- (1) The procedure for registration of a topography shall be initiated by an application containing a request for the registration of topography and other relevant elements prescribed by this Act (hereinafter: topography application).
- (2) A topography application shall contain:
- A request for the registration of a topography, which must clearly and concisely identify the topography by its name or specification of the product range,
 - Indications allowing the identity of the applicant to be established,
 - Sufficient data to contact the applicant or his representative, if any, by mail,

- d) Written statement as to the date of the first commercial exploitation if that date occurred before the filing date of the application,
- e) Data and supplements identifying the topography:
- Drawings or photographs of layouts for the production of a semiconductor product, or
 - Drawings or photographs of layouts or the parts thereof for the production of semiconductor product, or
 - Drawings or photographs of individual layers of the semiconductor product.

- (3) The following may be attached to the material referred to in paragraph (2) (e) of this Article: data carriers, their printouts, the semiconductor product for the topography of which the registration is applied for, or a detailed description.
- (4) A separate application shall be filed for each topography.
- (5) The Minister responsible for the work of the Office, upon the proposal made by the Director of the Office, shall enact the Regulations defining the form of the application and the manner of drafting and filing thereof.

Article 8

- (1) The applicant has the right to mark any of the required materials or any of the parts thereof as a trade secret, in which case these parts shall not be made available to the public.
- (2) The court may order the disclosure of the materials referred to in paragraph (1) of this Article only to persons involved in litigation concerning the validity or infringement of the exclusive rights referred to in Article 14 of this Act.

EXAMINATION OF TOPOGRAPHY APPLICATION

Article 9

- (1) The Office shall examine whether the filed topography application contains all the elements referred to in Article 7, paragraph (2) of this Act.
- (2) If the application does not contain all the elements referred to in Article 7,

paragraph (2) of this Act, the Office shall invite the applicant to remedy the deficiencies within a time limit, which shall not be shorter than one month and not longer than three months.

- (3) If the applicant remedies all the deficiencies within the time limit referred to in paragraph (2) of this Article, the date of receipt of the correct application shall be deemed as the filing date of the application.
- (4) If the applicant does not remedy all the deficiencies within the time limit referred to in paragraph (2) of this Article, the Office shall reject the application by a decision.

REGISTRATION OF TOPOGRAPHY AND PUBLICATION OF THE REGISTERED TOPOGRAPHY

Article 10

- (1) If the application contains all the elements referred to in Article 7, paragraph (2) of this Act, the Office shall issue to the applicant a decision on the registration of the topography.
- (2) The topography shall be entered in the register of topographies and the data from the register shall be published in the Official Gazette of the Office.

REGISTER OF TOPOGRAPHIES

Article 11

- (1) The register of topographies shall be kept by the Office.
- (2) The register referred to in paragraph (1) of this Article shall be public.
- (3) For each topography the following data shall be entered in the register of topographies:
 - a) Registration number of the topography,
 - b) Filing date of the application,
 - c) Date and number of the decision on the entry into the register,
 - d) Name of the topography,
 - e) Data on the applicant: the family name and the first name, as well as the domicile, and the nationality of the applicant, if it is a natural person, or the name and principle place of

business of the applicant if it is a legal entity, whereas the data concerning legal entities shall correspond to those contained in the court register,

- f) Data on the creator: the family name, the first name and the title; the indication of the town and the country shall be sufficient,
 - g) Date of the first commercial exploitation of the topography, if the topography has already been commercially exploited,
 - h) Data on a representative, if any,
 - i) Data on changes referring to: the transfer of the right, license, declaration of nullity, expiration and other changes relevant for the legal status of the registered topography.
- (4) The Minister responsible for the work of the Office, upon the proposal made by the Director of the Office, shall enact the Regulations prescribing the form and the manner of keeping the register of topographies.

PAYMENT OF THE ADMINISTRATIVE FEES AND PROCEDURAL CHARGES

Article 12

- (1) The acts performed in the course of the administrative procedure for the registration of a topography shall be subject to the payment of the fees in compliance with special regulations.
- (2) Should the prescribed fees not be paid within the prescribed time limit, the application shall be deemed withdrawn.

DECLARATION OF THE DECISION ON THE REGISTRATION OF A TOPOGRAPHY NULL AND VOID

Article 13

- (1) The decision on the registration of a topography shall be declared null and void if it has been established:
 - a) That the topography does not meet the requirements referred to in Article 3, paragraph (1) of this Act,
 - b) That the application was filed by a natural person or a legal entity not entitled to the protection,

- c) That the application was not filed within the prescribed terms referred to in Article 19 of this Act,
 - d) That the identification of the registered topography is not possible on the basis of layouts relating to it.
- (2) The procedure relating to the declaration of the decision on the registration of a topography null and void may be initiated by the Office ex officio, or upon the proposal of any natural person or legal person or by the state attorney on the grounds prescribed in paragraph (1) of this Article, during the entire duration of the validity of a topography

IV. EFFECTS OF PROTECTION AND LIMITATIONS

EXCLUSIVE RIGHTS

Article 14

- (1) The exclusive rights referred to in Article 3 of this Act shall include the right to authorize or prohibit any of the following acts:
- a) Reproduction of the topography,
 - b) Import, sale or other forms of putting into circulation the topography or the semiconductor product manufactured by using the protected topography, as well as the products incorporating the semiconductor product containing the protected topography.
- (2) The exclusive rights referred to in paragraph (1) of this Article shall not apply to any concept, process, system, technique of production of the topography, or any information embodied in the topography, but to the topography as such.

LIMITATIONS OF EXCLUSIVE RIGHTS

Article 15

Without the authorisation of the holder of the exclusive rights conferred by a protected topography, the following shall be permitted:

- (1) Reproduction of the protected topography for private purposes and non-commercial aims,
- (2) Reproduction of the protected topography for the purpose of analysing, evaluating or teaching the concepts, processes, systems

and techniques embodied in the topography or the topography itself, and

- (3) Commercial exploitation of a new topography which has been created on the basis of research and analysis of the protected topography which is a result of personal creative effort of its creator and is not commonplace in the semiconductor industry.

Article 16

- (1) A person who, when he acquires a semiconductor product, does not know, or has no reasonable grounds to believe, that the product is protected by the exclusive rights conferred by protected topography, shall not be prevented from commercially exploiting that product.
- (2) For the commercial exploitation of a semiconductor product occurring after the person referred to in paragraph (1) of this Article has known, or has reasonable grounds to believe, that the product is protected by the exclusive rights conferred by a protected topography, an adequate remuneration shall be determined by the court unless the parties resolve the issue by negotiation, mediation, or binding arbitration.
- (3) The provisions of paragraphs (1) and (2) of this Article shall also apply to the successors in title of the person who has acquired a semiconductor product protected by the exclusive rights conferred by a protected topography.

EXHAUSTION OF RIGHTS

Article 17

The exhaustion of the exclusive rights to authorise or prohibit the acts specified in Article 14 paragraph (1) of this Act shall come into effect at the moment of putting the protected topography or the semiconductor product produced by using the protected topography on the market in Republic of Croatia by the holder of the exclusive rights conferred by the protected topography or with his authorisation.

V. DURATION OF EXCLUSIVE RIGHTS

COMING INTO EXISTENCE OF EXCLUSIVE RIGHTS

Article 18

The exclusive rights conferred by a protected topography shall come into existence on the earlier of the following dates:

1. The date when the topography is first commercially exploited anywhere in the world, or
2. The date when an application for registration has been filed to the Office in due form.

EXPIRY OF EXCLUSIVE RIGHTS

Article 19

- (1) The exclusive rights shall come to an end upon the expiry of a 10 year period from the earlier of the following dates:
 - a) The end of the calendar year in which the first commercial exploitation of the topography has started anywhere in the world; or
 - b) The end of the calendar year in which the application for the registration of the topography has been filed in due form.
- (2) Where a topography has not been commercially exploited anywhere in the world, any exclusive rights in existence shall expire within 15 years from its first fixation or encoding, unless an application for registration in due form has been filed within that period.

Article 20

An application for the registration of a topography shall not be filed after the expiration of a period of two years as from date on which the first commercial exploitation of the topography has started.

MARKING OF TOPOGRAPHY

Article 21

During the existence of the exclusive rights, the holder of a registered topography shall have the right to mark a semiconductor product produced by using the registered topography with a capital letter "T".

VI. CIVIL PROTECTION

Article 22

- (1) A holder of the exclusive rights conferred by the protected topography whose rights have been infringed may claim, in addition to the compensation for damages, the ordering of measures to prevent further infringement of his exclusive rights.
- (2) A person infringing the exclusive rights conferred by the protected topography shall be liable to compensate for the damage incurred, in accordance with the general principles on the compensation for damages.
- (3) The provision referred to in paragraph (1) of this Article shall also apply to the successors in title of the holder of the protected topography.

VII. TRANSITIONAL AND FINAL PROVISIONS

Article 23

The provisions of the Patent Act concerning the representation, the holders of the joint rights to a protected topography, the procedure for the declaration of the decision on the registration of a topography null and void, the time limits for bringing civil action on the grounds of the infringement of the right, the transfer of the right, and licence agreements shall apply *mutatis mutandis* to the topographies of semiconductor products which are the subject matter of this Act.

Article 24

The provisions of this Act shall apply only to the topographies created after its entry into force.

Article 25

Upon the proposal made by the Director of the Office, the Minister responsible for the work of the Office shall enact the Regulations prescribing the matters referred to in Article 7, paragraph (5) and Article 11, paragraph (4) of this Act up to the date the application of this Act shall start.

Article 26

The Act on the Protection of the Layout-Designs of Integrated Circuits (Official Gazette Nos. 78/99 and 127/99) shall cease to be in force on the date the application of this Act starts.

Article 27

This Act shall enter into force on the eighth day from the day of its publication in the Official Gazette, and shall be applied as of 1 January 2004.

ACT AMENDING AND SUPPLEMENTING THE PROTECTION OF TOPOGRAPHIES OF SEMICONDUCTOR PRODUCTS ACT

Article 1

In the Protection of Topographies of Semiconductor Products Act (Official Gazette No. 173/03), in Article 4, following the paragraph 4 a new paragraph 5 is added to read:

"(5) Where the right to protection does not exist pursuant to other provisions of this Article, the right to protection of a topography shall also apply in favour of the persons referred to in paragraph 4, subparagraphs a) and b) of this Article, if:

a) they have first commercially exploited in the territory of the Republic of Croatia a topography, which has not previously been commercially exploited anywhere in the world,

b) they have been exclusively authorized to commercially exploit a topography in the European Union by the person entitled to transfer the rights in it."

In present paragraph 5, which shall be renumbered into paragraph 6, number "4" shall be replaced by number "5".

Article 2

Article 6 is amended to read:

"(1) The Office shall carry out the administrative proceedings for registration of a topography and declaration of the decision on the registration of a topography null and void, and perform other administrative and professional tasks concerning the protection of the topographies of semiconductor products.

(2) The administrative decisions rendered by the Office in the first instance may be appealed and the appeals shall be decided on by the Board of Appeal in accordance with the provisions of this Act.

(3) The provisions of the General Administrative Proceedings Act shall apply to particular matters concerning the procedure referred to in paragraphs 1 and 2 of this Article, not regulated by this Act.

(4) The administrative decisions rendered by the Board of Appeal in the second instance may be challenged in the administrative dispute according to the Administrative Dispute Act."

Article 3

Article 11, paragraph 4 is deleted.

Article 4

In article 12, paragraph 1, a second sentence is added to read:

"If the prescribed administrative fee and procedural charges have not been paid within the prescribed time limit, the application shall be considered as withdrawn."

Paragraph 2 is amended to read:

"(2) The filing of an appeal shall be subject to payment of the administrative fee and procedural charges in accordance with special regulations. If the administrative fee and procedural charges have not been paid before the expiry of the appeal period, the appeal shall not be considered as filed."

Article 5

Article 17 is amended to read:

"The placing on the market in the territory of the Republic of Croatia, or following the accession of the Republic of Croatia to the European Union in the territory of a European Union Member State or a Contracting State of the Agreement creating the European Economic Area, of a protected topography or a semiconductor product manufactured by using the protected topography by the holder of the exclusive right conferred by the protected topography or with his/her express authorization, shall exhaust for the territory of the Republic of Croatia, the exclusive rights conferred by the protected topography."

Article 6

Article 23 is amended to read:

"The provisions of the Patent Act concerning the representation, the holders of the joint rights, the procedure for the declaration of nullity, the bringing the claim because of the infringement of rights, the claim for establishing the infringement and its termination, the claim for damages, the proceedings concerned with the infringement of rights, other matters concerning the civil enforcement of rights, the transfer of rights, the licence contracts, the appeal, the appeal proceedings, the Board of Appeals, and the administrative dispute, shall apply *mutatis mutandis* to the topographies of semiconductor products regulated by this Act."

TRANSITORY AND FINAL PROVISIONS

Article 7

The procedures concerning the protection of rights conferred by the registered topography of a semiconductor product, pending on the date of the entry into force of this Act, shall be completed pursuant to the provisions of the Act

which was in force before the entry into force of this Act.

Article 8

The Regulations referred to in Article 25 of the Protection of Topographies of Semiconductor Products Act (Official Gazette No. 173/03) shall be harmonised with the provisions of this Act by the Minister responsible for the work of the Office, at the proposal of the Director General of the Office, not later than within three months following the entering into effect of this Act.

Article 9

This Act shall enter into force on the eight day following the day of its publication in the Official Gazette, except for:

- the provisions of Article 1 of this Act which shall enter into force on the day of accession of the Republic of Croatia in the European Union and
- the provisions of Article 2 of this Act which enter into force on 1 June 2008.

THE ACT
ON AMENDMENTS TO THE ACT ON THE
PROTECTION OF TOPOGRAPHIES OF
SEMICONDUCTOR PRODUCTS

Article 1

In the Act on Amendments to the Act on the Protection of Topographies of Semiconductor Products (OG 173/03 and 76/07) in Article 14, paragraph (1), item b), the words: "import, sale or other forms of putting into circulation", are replaced by the words: "commercial exploitation or import for these purposes".

Article 2

Article 17 is amended to read:

"The exclusive rights to authorise or prohibit the acts referred to in article 14, paragraph (1), item b) of this Act, shall be exhausted for the territory of the Republic of Croatia, after the protected topography or semiconductor product, manufactured by using the protected topography, is placed on the market in the territory of the Republic of Croatia, or, upon the accession of the Republic of Croatia to the European Union, respectively, in the territory of any of the States of the European Union, or any of the States that are parties to the Agreement Creating the European Economic Area, respectively, by a person entitled to authorise commercial exploitation of a topography, or any other person with his/her consent".

TRANSITIONAL AND FINAL PROVISIONS

Article 3

This Act shall enter into force on the eighth day following the publication in the "Official Gazette".