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## **On the legal protection of integrated microcircuits topology**

The Law of the Republic of Kazakhstan of 29 June, 2001 # 217

**For users' attention!**

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### **Article 1. Basic definitions used in this Law**

The following basic definitions are used in this Law:

- 1) bulletin – official periodical edition on matters of integrated microcircuits topologies protection;
- 2) integrated microcircuit – microelectronic item of final or transitional form destined for performing of functions of electronic circuit, elements and links of which are inseparably formed in content and (or) of material surface on base of which the item is made;
- 3) topology of integrated microcircuit (hereinafter – topology) – spatial and geometric position of assembly of elements of integrated microcircuit and connections between them fixed on physical media;
- 4) rights holder – author, his (her) successor as well as any individual or legal entity who has exclusive right received by force of law of treaty;
- 5) license treaty – treaty on which the rights holder (grantor of license) provide a right to use topology by special method temporary to the other party (granter of a license);
- 6) patent counsel – citizens of the Republic of Kazakhstan which are provided by a right on representation of individuals and legal entities in the authorized body in accordance with the legislation of the Republic of Kazakhstan;

7) exclusive right on topology – property right of the rights holder to use topology by any method at his own convenience;

8) use of topology – appliance, import, suggestion to sale, sale or other entering of topology, integrated microcircuit with this topology or item including this integrated microcircuit in civil turnover carried out in commercial purpose if unless otherwise provided by this Law;

9) authorized body – central executive body carrying out the administrative authority in the scope of legal protection of integrated microcircuits topologies within their powers.

**Footnote. Article 1 as amended by the Law of the Republic of Kazakhstan of 10.07.2012 # 34-V (the act is entered into force since the day after its first official publication ).**

## **Article 2. Relations regulated by this Law**

This Law shall regulate the property as well as linked with them personal non-propriety relations arising due to creation, legal protection and use of topologies.

## **Article 3. Legislation on topologies protection**

1. The legislation on topologies protection shall base of the Constitution of the Republic of Kazakhstan and consist of regulations of the Civil Code of the Republic of Kazakhstan, this Law and other regulatory legal acts of the Republic of Kazakhstan.
2. If international treaty, ratified by the Republic of Kazakhstan establishes other rules, than those appeared in this Law, the rules of international treaty shall be applied.

## **Article 4. Authorized body**

The Authorized body shall carry out following powers in accordance with this Law:

- 1) apply to the investigation the applications on topologies registration, investigate them and carry out registration of topologies;
- 2) enter topologies in the State register of integrated microcircuits topologies;
- 3) issues registration certificates;
- 4) publish details on registered topologies in the bulletin;
- 5) establish demands to compilation and filling out of application on registration;

6) establish the order of registration, form of registration certificate, structure of details pointed in it as well as list of details published in bulletin;. V106234

7) **excluded by the Law of the RK of 12.01.2012 # 537-IV (the act is entered into force in ten calendar days after its first official publication);**

8) other powers provided by this Law, other Laws of the Republic of Kazakhstan, acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

**Footnote. Article 4 as amended by the laws of the Republic of Kazakhstan of 09.07.2004 # 586; of 20.12.2004 # 13 (the act is entered into force since 01.01.2005); of 05.07.2011 # 452-IV (the act is entered into force since 13.10.2011); of 12.01.2012 # 537-IV (the act is entered into force in ten calendar days after its first official publication).**

#### **Article 5. Conditions of legal protection of topologies**

1. Legal protection provided by this Law shall cover only original topology.

2. Original is topology created in result of creative activity of author. Topology shall be declared as original until proved otherwise.

3. Legal protection shall not be provided by this Law to the topology, assembly of elements of which is known to implementers and manufacturers of integrated microcircuit on date of its creation.

Legal protection shall be provided to topology consisted of elements, which are known to implementers and manufacturers of integrated microcircuit on date of its creation if assembly of this elements totally satisfy the demands of paragraph 2 of this Article.

4. Legal protection provided by this Law shall not cover ideas, methods, systems, technology or coded information which may be embodied in topology.

#### **Article 6. Authorship on topology**

1. Individual shall be declared as author of topology by creative work of which it was created.

2. If in creation of topology participated several individuals all of them shall be considered to be its authors (co-authors). Order of use of rights belonged to co-authors shall be determined by agreement between them.

3. Individuals not contributing its personal creative input in creation of topology but rendered only technical, organizational or material assistance or promoted to formation of right on it and its use shall not be declared as authors.

4. Right of authorship shall be unalienable private non-property right and protected perpetually.

### **Article 7. Exclusive right on topology**

1. Exclusive right on topology shall belong to the author of topology or to employer or customer in cases provided by Article 9 of this Law or their legal successor.

2. Right holder have a right to use topology by any way at his own convenience in particular by producing of integrated microcircuits with that topology, including right to prohibit the use of this topology to the other persons without relevant permission of rights holder, except for cases provided by Article 10 of this Law.

3. Order of the use of exclusive right belonged to several authors of topology or other right holders shall be determined by treaty between them.

Upon absence of such treaty each of them may use protected topology at own convenience but do not have the right to provide the license on it or to yield exclusive right to the other person without consent of other right holders.

4. Violation of exclusive right on topology is commitment of following actions without permission of right holder:

1) copying of topology in total or its part by its including in integrated microcircuit or by other way, except copying only its part which is not original.

2) use, import, suggestion to sale, sale or other enter in civil turnover of topology, integrated microcircuit with this topology or item including this integrated microcircuit.

## **Article 8. Transfer of exclusive right**

1. Exclusive right on topology may be transferred totally or partly to the other person on treaty as well as transfer in manner of universal legal succession hereditably and in result of re-organization of legal entity – right holder.

2. On license treaty the right holder (grantor of license) shall provide to the other party (granter of a license) a right to use topology temporarily by special way.

3. License treaty may provide the provision to granter of a license:

1) rights of use of topology with preserving of possibility of its use and right of issuance of license to the other persons (simple, unexclusive license) by granter of license;

2) rights of use of topology with preserving of possibility of its use, but without the issuance of license to the other persons (exclusive license) by granter of license;

3) right of use of topology without preserving of possibility of its use and without of issuance of license to the other persons (full license) by granter of license.

If license treaty shall not provide type of license it shall be in contemplation as simple, unexclusive.

4. Treaty on providing of unexclusive license on right of use of topology (sublicense treaty) to the other person (sublicensee) by granter of a license may be negotiated only in cases provided by license treaty.

Responsibility for action of sublicensee shall entail the granter of a license in front of granter of a license unless otherwise provided by license treaty.

5. Treaty on cession of exclusive right on topology, license and sublicense treaties shall be concluded in written form.

Treaty on cession of exclusive right on registered topology, license and sublicense treaties on use of registered topology shall be subject to registration in the authorized body.

Treaty on cession of exclusive right on topology, registration of which didn't carry out, license and sublicense treaties on use of specified topology may be registered in the authorized body on agreement of parties.

Nonobservance of written form or demand on registration shall entail the invalidity of a treaty.

**Article 9. Exclusive right on topology, created in order of performance of official obligations and on treaty with customer**

1. Exclusive right on topology, created in order of performance of official obligations or concrete task of employer shall belong to the employer unless otherwise provided by treaty between him (her) and author.

2. Size, condition and order of payment of reward to the author for topology specified in paragraph 1 of this Article shall be determined by agreement between author and employer. If it is impossible to measure contribution of author and employer in creation of topology, size, conditions and order of payment of reward to the author are defined by the legal acts of the Republic of Kazakhstan.

3. Author may take obligation on treaty to create topology and provide exclusive rights on topology to customer not being his (her) employer.

**Footnote. Article 9 as amended by the laws of the Republic of Kazakhstan of 31.10.2015 # 382-V (the act is entered into force in ten calendar days after its first official publication).**

**Article 10. Actions not recognized as violation of exclusive right of right holder**

Shall not be admitted as violation of exclusive right of right holder:

1) commitment of actions specified in subparagraph 2) of paragraph 4 of Article 7 of this Law in relation of integrated microcircuit with illegally reproduced topology or items containing such integrated microcircuit if person carrying out such use didn't know and shall not to know that these integrated microcircuit or items containing such integrated microcircuit are produced and distributed with violation of exclusive right on topology. After receiving of relevant notification from rights holder this person have a right to commit any action in relation of being available or ordered until this time production upon condition of payment of equitable reward to the rights holder which would be paid upon free purchase of license on such topology;

2) use of topology in personal purpose without profit as well as in purpose of valuation, analysis, exploration or training;

3) including of protected topology in created other original topology based of its valuation or analysis and performing in relation of such topology of actions specified in paragraph 4 of Article 7 of this Law;

4) distribution of integrated microcircuit with protected topology entered in civil turnover by legal way;

5) commitment of actions specified in paragraph 4 of Article 7 of this Law in relation of identical original topology irrespectively created by other author of topology.

### **Article 11. Registration of topology**

1. Author of topology or other rights holder has a right to register the topology by filing of application for registration in the authorized body.

Application for registration of topology shall be submitted on the state and Russian languages. Other document of application shall be submitted on the state, Russian and other languages. If other documents are submitted in other language the notarized translation on the state or Russian language shall be accompanied. Translation shall be submitted simultaneously with application and not later than two months from the date of receipt of applications containing documents on the other language in the authorized body.

2. Filing of application for registration may be carried out in term not exceeding two years from the date of first use of topology, if it took place.

3. Application for registration shall be related to one topology and contain:

1) application for registration with designation of author or persons on name of which the registration is asked, as well as place of residence or location, date of first use of topology, if it took place;

2) materials, identifying topology including a paper;

3) letter of attorney if the application for registration shall be submitted via representative;

4) (is excluded)

Demands to compilation and filling out of application for registration shall be established by the authorized body.

4. After receipt of application for registration the authorized body shall check the availability of necessary documents and their correspondence to demands stated in paragraph 3 of this Article. Upon positive result of check the authorized body shall enter topology in the State register of topologies of integrated microcircuit, issue a registration certificate of topology to applicant and publish details on registered topology in bulletin.

On request of the authorized body or on his (her) own initiative applicant has a right to add, specify and edit materials of application before publication of details in bulletin.

Order of registration, form of registration certificate, structure of details stated on it as well as list of details published in bulletin shall be established by the authorized body.

The authorized body shall give a certificate to author of topology not being a rights holder confirming his (her) authority.

5. Details entered in the State register of topologies of integrated microcircuits shall be trustworthy until proved otherwise.

Applicant shall entail responsibility for authenticity of stated details.

6. State tax for performing of actions on issuing of certificates and registration of treaties by the authorized body shall be applied in accordance with the Tax legislation of the Republic of Kazakhstan.

**Footnote. Article 11 as amended by the laws of the Republic of Kazakhstan of 09.07.2004 # 586; of 22.11.2005 # 90 (order of enforcement see Article 2 of the Law); of 12.01.2012 # 537-IV (the act is entered into force in ten calendar days after its first official publication).**



## **Article 12. Warning marking**

For notifications of his (her) rights the rights holder have a right to use a warning marking as detailed capital letter T, inception date of validity of exclusive right on topology and information allowing to identify the rights holder on items including topology.

## **Article 13. Validity of exclusive right on topology**

1. Exclusive right on topology shall be in force during ten years starting from the date of topology registration.

2. If registration of topology didn't be performed, stated ten-year term shall be calculated from documentarily confirmed date of first use in any country of the world of this topology or integrated microcircuit with this topology.

3. Upon registration of topology use of which started before date of registration of topology, validity of exclusive right shall be calculated in accordance with paragraph 2 of this Article.

4. Emergence of the identical original topology, created by other author irrespectively shall no interrupt and stop validity of exclusive right stated in paragraphs 1, 2 of this Article upon this general validity of exclusive right on topology may not to exceed ten years.

## **Article 14. Protection of rights on topology**

1. Protection of rights on topology shall be carried out by:

- 1) recognition of rights;
- 2) a regain of position pre-existent of right infraction;
- 3) suppression of actions infracting right or creating a threat of its infraction;
- 4) refundment of inflicted damages and compensation of moral harm by infractor;
- 5) sanction of income received by infractor instead of refundment of damages;
- 6) payment of compensation in sum from ten to fifty thousand of monthly

calculation index by infractor of exclusive right established by the legislation. Amount of compensation shall be determined by the court instead of refundment of damages or sanction of income;

7) elimination or withdrawal in favor of rights holder of integrated microcircuits and items including such microcircuits entered in civil commerce or stored with this purpose and admitted as infracting exclusive right as well as materials and equipment specially assigned for their making;

8) mandatory publication on allowing infractions with including in it details on who has an infringed right;

9) application of other measures linked with right protection of topology provided by legislative acts.

2. Demands to infractor of exclusive right may be applied as well as by granter of a license if it provided by license treaty.

### **Article 15. Patent agents**

1. A capable citizen of the Republic of Kazakhstan residing on its territory permanently, having higher education and work experience in the field of intellectual property no less than four years, passes attestation and registered in the authorized body in the field of intellectual property have a right to be a patent agent.

Attestation commission from among of officers of the authorized body and expert organization shall be formed by the authorized body for performance of attestation of candidates for patent agent. Upon this minimal quantity of members of attestation commission shall comprise no less five officers.

Attestation of candidate on patent agent shall be performed by the authorized body no less than one time per year according to entering of applications from candidate for patent agents.

On results of attestation, the attestation commission renders a decision on attestation or on refusal in attestation of candidate. Form of decision of attestation commission shall be established by the authorized body. Decision of attestation commission may be appealed in court manner during three months from the moment of rendering of such decision.

Certificate of patent agent form of which shall establish the authorized body shall be issued to candidate successfully passed the attestation exam.

State tax established by Tax legislation of the Republic of Kazakhstan shall be incurred for performance of attestation of candidate for patent agent and issuance of certificate.

2. Following persons shall not be allowed to attestation of candidates for patent agents:

1) which are prohibited to carry on business in accordance with the Laws of the Republic of Kazakhstan;

2) being officers of the authorized body and its jurisdictional organizations as well as their close relatives, husband (wife);

3) having outstanding or unexpunged conviction for commitment of infraction in manner established by the Law;

4) excluded from the list of patent agents in accordance with this Law.

3. Activity of patent agent shall be stopped by protocol decision of attestation commission:

1) on basis of application of patent agent appealed to attestation commission;

2) on period of relation to persons which are prohibited to carry on business as well as to officers of the authorized body and its jurisdictional organizations in accordance with the Laws of the Republic of Kazakhstan;

3) in purpose of cases provided in subparagraphs 2) and 6) of paragraph 1 and in paragraph 5 of Article 15-2 of this Law.

In case stated in subparagraph 3) of this Article, activity of patent agent shall be stopped until applying relevant decision by attestation commission during three months.

Activity of patent agent shall be reproduced by protocol decision of the attestation commission in case of elimination of basis served to stoppage of his (her) activity.

4. Patent agent shall carry out activity linked with performance of cases with the authorized body as representative or patent holder. Performance of cases with the authorized body may be also carried out by applicant and (or) rights holder independently.

Individuals residing beyond of the Republic of Kazakhstan or foreign legal individuals shall carry out their rights of applicant as well as rights of interested person in the authorized body via patent agents.

Individuals residing in the Republic of Kazakhstan permanently but temporary being beyond its borders may carry out their rights of applicant as well as rights of interested person without patent agent upon specifying of address for communications within the Republic of Kazakhstan.

5. Information which patent agent receive from appointer in connection with performance of his commission shall be recognized as confidential upon observance of demands required by the legislative acts of the Republic of Kazakhstan to the confidential information or other secret protected by the Law.

**Footnote. Article 15 as amended by the Law of the Republic of Kazakhstan of 12.01.2012 # 537-IV (the act is entered into force in ten calendar days after its first official publication).**

#### **Article 15-1. Rights and obligations of patent agent**

1. Patent agent have a right to carry out following types of activity in interests of applicant, employer concluded a labor treaty with him (her) or person concluded the civil and legal treaty with him (her) or his (her) employer:

1) consulting on questions of protection of integrated microcircuit topologies, purchase or transaction of right on topology on integrated microcircuit;

2) carrying out of works on filling out of application for registration of topology of integrated microcircuits on behalf and by order of applicant;

3) coordination with the authorized body on matter of registration of integrated microcircuits topology;

4) supporting in compilation, investigation and following dispatching on expertise of license (sublicense) treaties and (or) assignment treaties.

2. Powers of the patent agent shall be identified by letter of attorney.

3. In case of submission by patent agent of copy of letter of attorney on performance of cases linked with submission of applications for registration of

integrated microcircuits topologies and (or) receiving of security documents, as well as filing of exception in appeal board during three months from the moment of appeal of stated application or exception, patent agent shall provide original of letter of attorney in expert organization and the authorized body. After confirmation of authenticity, the original letter of attorney is subject to refund.

If letter of attorney is filled on foreign language the translation of Kazakh and Russian languages notarized by notary officer shall be represented in mandatory manner.

4. Patent agent shall not to apply commissions if on this case represented or consulted persons interests of which contradict the interests of person apply with request on performance of case or participated in its investigation, as well if civil servant being an immediate relative of patent agent, husband (wife) and his (her) immediate relative participate in investigation.

**Footnote. The Act was completed with article 15-1 according to the Law of the RK of 12.01.2012 # 537-IV (the act is entered into force in ten calendar days after its first official publication).**

#### **Article 15-2. Revocation and extinguishment of patent agent's certificate**

1. Patent agent shall be excluded from the patent agents register by decision of attestation commission:

- 1) on basis of personal application appealed in attestation commission;
- 2) upon cancellation of citizenship status of the Republic of Kazakhstan or upon departure on permanent place of residence beyond the Republic of Kazakhstan;
- 3) in case of suspension in professional activity of patent agent more than five years;
- 4) upon enforcement of judgment of guilt of the court by which the patent agent convicted for commitment of infraction;
- 5) in case of death of patent agent or recognition as missing or declaration of death;
- 6) in case of recognition of patent agent as incapable or partially incapacitated.

2. In case of exception of patent agent from register on basis stated in subparagraph 4), 5) and 6), the certificate shall be rescinded by decision of attestation commission. Details on extinguishment of certificate shall be entered in the patent agent's register.

3. In cases stated in subparagraphs 1), 2) and 3) of paragraph 1 of this Article the certificate of patent agent shall be withdrew by attestation commission on basis of application of patent agent or third parties having basis on it.

Patent agent excluded from the register on basis of subparagraphs 1) and 2) of paragraph 1 of this Article may be registered as patent agent again without repeated passing of qualifying examination upon condition of cancelation of basis served to excluding him (her) from the register and appealing application to attestation commission during three years from the date of publication of decision on exclusion from the register. Attestation commission shall establish the fact on cancelation of basis stated in subparagraphs 1) and 2) of paragraph 1 of this Article by submitted documents.

4. Patent agent excluded from the patent agent's register lose a right on carrying out of activity of patent agent from the date of entering of details on this and certificate on his (her) registration as patent agent shall be withdrew or rescinded.

5. In case of unconscientious performance of obligations by patent agent established by this Law, by the authorized body shall be created the review board, structure of which is consist of odd number of officers of the authorized body.

Review board is collegial body and shall investigate gravamens of individuals and (or) legal entities on actions of patent agent, representing their rights and legal interests, committed on their opinion with infraction of current legislation.

Persons, appealed gravamen on actions of patent agent and patent agents in relation of which such gravamens are appealed have a right to participate on session of the review board.

On results of investigation of gravamen the review board shall recommend to the authorized body to direct in the court the original bill on extinguishment of certificate of patent agent or apply one of following decisions:

- 1) on removal of investigation of extinguishment in recognition of lack of evidence or until explanation cases promoting to applying of objective decision;
- 2) on refusal of satisfying of gravamen.

Decision of the review commission shall be applied by simple majority vote and filled by protocol. Decision of review commission may be appealed in the court.

Provision on review commission shall be established by the authorized body.

**Footnote. The Act was completed with article 15-2 according to the Law of the RK of 12.01.2012 # 537-IV (the act is entered into force in ten calendar days after its first official publication).**

#### **Article 16. Rights of foreigners, foreign legal entities and stateless persons**

1. Foreigners and foreign legal entities shall use rights provided by this Law, equally with citizens and legal entities of the Republic of Kazakhstan in force of international treaties participant of which is the Republic of Kazakhstan or on basis of principle of reciprocity.

2. Stateless persons residing in the Republic of Kazakhstan shall use rights provided by this Law and other acts related to legal protection of topologies equally with citizens and legal entities of the Republic of Kazakhstan, unless otherwise follows from this Law and other legislative acts of the Republic of Kazakhstan.

*The President*

*of the Republic of Kazakhstan*