

On the legal protection of integrated circuits topologies

Unofficial translation

Law of the Republic of Kazakhstan of June 29, 2001 N 217

Unofficial translation

Article 1. Basic definitions used in this Law

The following basic definitions are used in this Law:

- 1) bulletin - the official periodical on the protection of integrated circuits topologies;
- 2) an integrated circuit - a microelectronic product of final or intermediate form, designed to perform the functions of an electronic circuit, which elements and connections are inseparably formed in the volume and (or) on the surface of the material on which basis the product is made;
- 3) the topology of an integrated circuit (hereinafter - the topology) - spatial-geometric arrangement of the set of elements of the integrated circuit and connections between them fixed on the material carrier;
- 4) the right holder - the author, his successor, as well as any individual or legal entity who has the exclusive right obtained by virtue of the law or the contract;
- 5) license contract - an contract under which the right holder (licensor) grants the other party (licensee) the right to use temporarily the topology in a certain way;
- 6) patent attorneys - citizens of the Republic of Kazakhstan who, in accordance with the legislation of the Republic of Kazakhstan, have been granted the right to represent individuals and legal entities before the authorized body;
- 7) the exclusive right to topology - the property right of the right holder to use the topology in any way at his discretion;
- 8) use of topology – application, importation, offer for sale, sale or other introduction of topology, an integrated circuit with this topology or a product, including such an integrated circuit, in civil circulation, carried out for commercial purposes, unless otherwise provided by this Law;
- 9) the authorized body - the central executive body, carrying out, within its authority, the leadership in the field of legal protection of the integrated circuits topologies.

Footnote. Article 1 is in the wording of the Law of the Republic of Kazakhstan dated 10.07.2012 No. 34-V (shall be enforced from the date of its first official publication).

Article 2. Relations regulated by this Law

This Law regulates property as well as related with it personal non-proprietary relations arising in connection with the creation, legal protection and use of topologies.

Article 3. Legislation on the protection of topologies

1. Legislation on the protection of topologies is based on the Constitution of the Republic of Kazakhstan and consists of the norms of the Civil Code of the Republic of Kazakhstan, this Law and other regulatory legal acts of the Republic of Kazakhstan.

2. If an international treaty ratified by the Republic of Kazakhstan establishes other rules than those contained in this Law, the rules of the international treaty shall be applied.

Article 4. Authorized body

The competence of the authorized body shall include:

1) participation in the implementation of state policy in the field of legal protection of rights to topologies;

2) development and approval of:

the rules of examination of applications for registration of topologies;

the rules of entering topologies in the State register of integrated circuits topologies and issuing of certificates of registration, certificates of authors;

the rules of registration in the State register of integrated circuits topologies of the exclusive right transfer, granting the right to use topologies;

the rules for provision of extracts from the State register of integrated circuits topologies; the rules for consideration of objections by the appeals council;

the provisions on the attestation commission;

the provisions on the appeals council;

the provisions on the appeals commission;

3) determination of the order of publication in the bulletin of information on registered topologies;

4) certification of candidates for patent attorneys and their registration in the register of patent attorneys;

5) organization of the activity of the certification commission, the appeals council and the appeals commission;

6) carrying out other powers provided for 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 is in the wording of the Law of the Republic of Kazakhstan dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after its first official publication).

Article 4-1. Expert organization

1. An expert organization established by the decision of the Government of the Republic of Kazakhstan in the organizational and legal form of a republican state enterprise on the right of economic management, subordinated in its activity to the authorized body shall:

1) examine applications for registration of topologies;

2) enter the topologies in the State register of integrated circuits topologies and issue certificates of registration, certificates of authors;

3) register in the State register of integrated circuits topologies a transfer of the exclusive right, granting the right to use topologies;

4) keep the State register of integrated circuits topologies, a bulletin and place them on its Internet resource;

5) provide extracts from the State register of integrated circuits topologies;

6) publish in the bulletin of the expert organization information on the registered topologies;

7) carry out other activities not prohibited by the legislation of the Republic of Kazakhstan.

2. The expert organization in coordination with the authorized body shall approve the prices of services in the field of topologies protection on condition of ensuring full compensation of the costs incurred by this organization for their rendering, break-even of its activity and financing at the expense of own income.

Footnote. The Law is supplemented by Article 4-1 in accordance with the Law of the Republic of Kazakhstan dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after its first official publication).

Article 5. Terms of legal protection of topologies

1. The legal protection provided by this Law extends only to the original topology.

2. The original one is the topology created as a result of the creative activity of the author. The topology is recognized as original until proven otherwise.

3. Topologies, which set of elements is well known to developers and manufacturers of integrated circuits on the date of its creation, shall not be given legal protection by this Law. Topologies consisting of elements that are well known to developers and manufacturers of integrated circuits on the date of its creation shall be given legal protection only if the set of such elements as a whole meets the requirements of paragraph 2 of this Article.

4. The legal protection provided by this Law shall not extend to ideas, methods, systems, technology or coded information that may be embodied in a topology.

Article 6. Authorship on the topology

1. The author of a topology is an individual whose creative work it is.

2. If several individuals participated in the creation of the topology, all of them are considered to be its authors (co-authors). The procedure for the use of the rights belonging to the co-authors is determined by contract between them.

1. The author of topology shall be recognized an individual by whose creative activity it has been created.

2. If several individuals participated in the creation of the topology, all of them shall be recognized its authors (co-authors). The procedure of use the rights belonging to co-authors shall be determined by the contract between them.

3. Individuals who did not make a personal creative contribution to the creation of the topology, but who provided the author only technical, organizational or material assistance or who contributed to the design of the right to it and its use, shall not be recognized as authors

4. The right of authorship on the topology shall be an inalienable personal non-proprietary right and is protected indefinitely.

Article 7. Exclusive right to topology

1. The exclusive right to topology belongs to the author of the topology or to the employer, or the customer in the cases provided for in Article 9 of this Law, or their successors.

2. The right holder shall have the right to use the topology in any way at his discretion, in particular, by making integrated circuits with such a topology, including the right to prohibit other people from using this topology without the relevant permission of the right holder, except as provided for in Article 10 of this Law.

3. The procedure for the use of the exclusive right belonging to several authors of the topology or other right holders shall be determined by contract between them.

In the absence of such a contract, each of them may use the protected topology at his own discretion, but does not have the right to grant a license to it or transfer the exclusive right to another person without the consent of the other right holders.

4. A violation of the exclusive right to a topology shall be the performance of the following actions without the permission of the right holder:

1) copying the topology in whole or in part by incorporating it into an integrated circuit or in any other way, with the exception of copying only that part that is not original;

2) application, import, offer for sale, sale and other introduction of topology into civil circulation, an integrated circuit with this topology or a product including such an integrated circuit.

Article 8. Transfer of the exclusive right

1. The exclusive right to the topology may be transferred in whole or in part to another person under the contract, as well as transferred in the order of universal succession by inheritance and as a result of reorganization of the legal entity - the right holder.

2. Under the license contract, the right holder (licensor) shall grant the other party (licensee) the right to use temporarily the topology in a certain way.

3. The license contract may provide for the provision of a licensee:

1) the right to use the topology while retaining the ability of the licensor to use it and the right to issue a license to others (a simple, non-exclusive license);

2) the right to use the topology without preserving the licensor's ability to use it and without the right to issue a license to others (exclusive license);

3) is excluded by the Law of the Republic of Kazakhstan dated 21.01.2019 No. 217-VI (shall be enforced upon expiry of ten calendar days after its first official publication).

If the license contract does not provide for the type of license, it shall be assumed as simple, non-exclusive.

4. The contract on granting by the licensee to another person (sub-licensee) of a non-exclusive license to use the topology (sub-license contract) may be concluded only in cases stipulated by the license contract.

Responsibility to the licensor for the actions of the sublicensee is the licensee, unless otherwise provided by the license contract.

The licensee shall be liable to the licensor for the actions of the sublicensee, unless otherwise provided in the license contract.

5. The contract on assignment of the exclusive right to topology, licensing and sub-licensing contracts shall be concluded in written form.

The contract on assignment of the exclusive right to a registered topology, licensing and sublicensing contracts shall be subject to registration with an expert organization.

The contract on assignment of the exclusive right to a topology, which registration has not been carried out, licensing and sub-licensing contracts may be registered with an expert organization by an agreement of the parties.

Non-compliance with the written form and (or) registration requirements shall entail the nullity of the contract on the transfer of the exclusive right.

Registration in the State register of integrated circuits topologies, introduction of changes to it, correction of technical errors, and cancellation of registration shall be carried out in the manner established by this Law.

Footnote. Article 8 as amended by the Law of the Republic of Kazakhstan dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after its first official publication); dated 21.01.2019 No. 217-VI (shall be enforced upon the expiry of ten calendar days after its first official publication).

Article 9. The exclusive right to topology, created in the order of performance of official duties and under the contract with the customer

1. The exclusive right to a topology created in the order of performance of official duties or a specific task of the employer belongs to the employer, unless otherwise provided by the contract between him and the author.

2. The size, conditions and procedure for paying remuneration to the author for the topology specified in paragraph 1 of this Article shall be determined by the contract between the author and the employer. If it is impossible to measure the contribution of the author and the employer to the creation of the topology, the size, conditions and procedure for paying remuneration to the author shall be determined by the legislative acts of the Republic of Kazakhstan.

3. The author may assume under the contract the obligation to create a topology and provide the customer, who is not his employer, with exclusive right to the topology.

Footnote. Article 9 as amended by the Law of the Republic of Kazakhstan dated 31.10.2015 No. 382-V (shall be enforced upon expiry of ten calendar days after its first official publication).

Article 10. Actions that are not recognized as violation of the exclusive right of the right holder

Not recognized as a violation of the exclusive right of the owner:

1) commission of the actions specified in subparagraph 2) of paragraph 4 of Article 7 of this Law in respect of integrated circuits with illegally reproduced topology or products containing such integrated circuits, if the person carrying out such use did not know and should not have known that these integrated circuits or products containing such integrated circuits are manufactured and distributed in violation of the exclusive right to topology. After receiving the appropriate notification from the right holder, this person shall have the right to take any action in relation to the existing stock or ordered before that time, products subject to payment to the right holder adequate remuneration, which would be paid under free licensing of the topology;

2) use of topology for personal purposes without profit, as well as for the purposes of evaluation, analysis, research or training;

3) inclusion of the protected topology in the other original topology created on the basis of its assessment or analysis and performance of actions specified in paragraph 4 of Article 7 of this Law regarding such topology;

4) distribution of an integrated circuit with a protected topology entered into civil circulation by legal means;

5) performance of the actions specified in paragraph 4 of Article 7 of this Law in respect of the identical original topology, independently created by another author of the topology.

Article 11. Registration of the topology

1. The author of the topology or other right holder shall have the right to register the topology by submitting an application for registration to an expert organization.

The application for registration of the topology and the documents attached thereto shall be submitted in the Kazakh and Russian languages. If the specified documents are submitted in another language, the expert organization shall have the right to request the translation of information contained in the documents attached to the application. The translation must be submitted simultaneously with the application or no later than two months from the date of receipt of the application.

2. Application for registration can be made in a period not exceeding two years from the date of the first use of the topology, if it has taken place.

3. Application for registration must refer to one topology and shall contain:

1) an application for registration of the topology indicating the author and the persons in whose name the registration is requested, as well as their place of residence or location, date of first use of the topology, if it has taken place;

2) materials identifying the topology, including the abstract;

3) a letter of attorney if the application for registration is filed through a representative;

4) (is excluded)

Requirements for the preparation and design of an application for registration shall be established by the authorized body.

4. On the received application for registration of the topology, an examination shall be carried out.

If the result of the examination is positive, the topology shall be registered in the State register of integrated circuits topologies and a certificate of registration shall be issued.

Before registration, the applicant shall have the right to add, clarify and correct the application materials.

The author of the topology, who is not the right holder, shall be issued the author's certificate by the expert organization.

5. Information entered into the State register of integrated circuits topologies shall be considered reliable until the contrary is proved.

The applicant shall be responsible for the accuracy of the information.

6. Is excluded by the Law of the Republic of Kazakhstan dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after its first official publication).

Footnote. Article 11 as amended by the Law of the Republic of Kazakhstan dated 09.07.2004 N 586; dated 22.11.2005 N 90 (the procedure of enforcement, see Article 2 of the Law); dated 12.01.2012 No. 537-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after its first official publication).

Article 12. Warning marking

To notify about their rights, the right holder shall have the right to use warning labels in the form of a capital T, the start date of the exclusive right to the topology, and information allowing identification of the right holder on the products including topology.

Article 13. Duration of the exclusive right to topology

1. The exclusive right to topology is valid for ten years, starting from the date of registration of the topology.

2. If registration of the topology has not been carried out, the specified ten-year period shall be calculated from the documentary confirmed date of first use in any country of the world of this topology or an integrated circuit with this topology.

3. When registering the topology, which use began before the date of registration of the topology, the duration of the exclusive right shall be calculated in accordance with paragraph 2 of this Article.

4. The appearance of an identical original topology, independently created by another author, shall not interrupt or terminate the validity period of the exclusive right specified in paragraphs 1, 2 of this Article, and the total period of validity of the exclusive right to topology cannot exceed ten years.

Article 14. Protection of the rights to topology

1. Protection of the rights to topology shall be carried out by the court by:

- 1) recognition of rights;
- 2) restoration of the situation, existed before the violation of the right;
- 3) suppression of actions infringing the right or creating the threat of its violation;
- 4) compensation by the violator of the damage caused and compensation for non-pecuniary damage;
- 5) collection of income received by the violator of the exclusive right, instead of reimbursement of losses;
- 6) payments by the violator of the exclusive right of compensation in the amount of from ten to fifty thousand monthly calculated indicators established by the legislation. The amount of compensation shall be determined by the court instead of reimbursement of losses or collection of income;
- 7) destruction or seizure in favor of the right holder of integrated circuits and products, including such circuits, introduced into civil circulation or stored for this purpose and recognized as infringing the exclusive right, as well as materials and equipment specifically designed for their manufacture;
- 8) mandatory publication of the violation with inclusion in it of information about who owns the violated right;
- 9) adoption of other measures provided for by legislative acts related to protection of the rights to topology.

2. Requirements for the violator of the exclusive right may be also declared by the licensee if it is provided by the license contract.

Article 15. Patent attorneys

1. A capable citizen of the Republic of Kazakhstan, permanently residing on its territory, having a higher education and work experience of at least four years, passed certification and registered in the register of patent attorneys shall have the right to be a patent attorney.

Registration in the register of patent attorneys shall be carried out when a candidate passes attestation, confirmed by a patent attorney certificate.

Certification of candidates for patent attorneys shall be carried out in the form of testing for knowledge of the legislation of the Republic of Kazakhstan in the field of protection of intellectual property.

The procedure for attestation of candidates for patent attorneys, registration in the register of patent attorneys and making amendments thereto shall be determined by the authorized body.

The register of patent attorneys shall be placed on the Internet resource of the authorized body.

2. The following persons shall not be allowed for certification as candidates for patent attorneys:

- 1) who, in accordance with the laws of the Republic of Kazakhstan, are prohibited from engaging in entrepreneurial activities;

2) who are employees of the authorized body and its subordinate organizations, as well as their close relatives, husband (wife);

3) having a conviction that has not been repaid or not convicted in accordance with the procedure established by the Law for commission of a crime;

4) excluded from the register of patent attorneys in accordance with this Law.

3. The activity of a patent attorney shall be suspended by the protocol decision of the attestation commission:

1) on the basis of the application of the patent attorney filed with the attestation commission; 2) for the period of assignment to persons who, in accordance with the laws of the Republic of Kazakhstan, are prohibited to engage in entrepreneurial activities, including employees of the authorized body and its subordinate organizations;

3) in order to clarify the circumstances provided for in subparagraphs 2) and 6) of paragraph 1 and in paragraph 5 of Article 15-2 of this Law.

In the case specified in subparagraph 3) of this paragraph, the activity of the patent attorney shall be suspended until the relevant decision taken by the attestation commission for three months.

The activity of the patent attorney shall be resumed by the protocol decision of the attestation commission in the event of elimination of grounds that served to suspend its activities.

4. A patent attorney as a representative of the applicant or patent owner shall carry out activity related to the conduct of business with the authorized body. Conducting business with the authorized body may also be performed by the applicant and (or) the right holder independently.

Individuals residing outside the Republic of Kazakhstan or foreign legal entities shall exercise their rights as an applicant, as well as the rights of an interested person in an authorized body through patent attorneys.

Individuals permanently residing in the Republic of Kazakhstan, but temporarily staying outside its borders, may exercise their rights as an applicant, as well as the rights of an interested person without a patent attorney when specifying an address for correspondence within the Republic of Kazakhstan.

5. The information that the patent attorney receives from the principal in connection with execution of his order shall be considered confidential, subject to the requirements imposed by the legislative acts of the Republic of Kazakhstan on confidential information or other secrets protected by law.

Footnote. Article 15 is in the wording of the Law of the Republic of Kazakhstan dated 12.01.2012 No. 537-IV (shall be enforced upon expiry of ten calendar days after its first official publication); as amended by the Law of the Republic of Kazakhstan dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after its first official publication).

Article 15-1. Rights and obligations of a patent attorney

1. A patent attorney shall have the right to carry out the following types of activity in the interests of the applicant, the employer who has concluded a labor contract with him, or the person who has concluded a civil- legal contract with him or his employer:

- 1) advising on the protection of integrated circuits topologies, acquisition or transfer of the rights to the integrated circuits topologies;
- 2) execution of work on the design and preparation of applications for registration of the integrated circuits topology on behalf and by order of the applicant;
- 3) interaction with the authorized body for registration of integrated circuits topographies;
- 4) assistance in drafting, reviewing and subsequent dispatch for examination of licensing (sublicensing) contracts and (or) contracts of assignment.

2. The powers of the patent attorney shall be certified by a letter of attorney.

3. If a patent attorney submits a copy of the letter of attorney to handle cases related to filing applications for registration of the integrated circuits topology and/or obtaining security documents, as well as filing an objection to the appeals council within three months from the date of filing the specified application or objection, the patent attorney shall be obliged to submit the original letter of attorney respectively to the expert organization and the authorized body. After confirmation of the authenticity, the original letter of attorney shall be returned.

If the letter of attorney is in a foreign language, then a translation in Kazakh and Russian languages certified by a notary must be submitted.

4. A patent attorney shall be obliged not to accept instructions in cases, if in this case he represented or advised persons whose interests contradict the interests of the person requesting the case, or otherwise participated in its consideration, as well as if the official being a close relative of the patent attorney, husband (wife) and his (her) close relative participates in consideration of the case.

Footnote. The Law is supplemented by Article 15-1 in accordance with the Law of the Republic of Kazakhstan dated 12.01.2012 No. 537-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

Article 15-2. Recognition invalid of the patent attorney's certificate and annulment of information in the register of patent attorneys

Footnote. Title of Article 15-2 is in the wording of the Law of the Republic of Kazakhstan dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after its first official publication).

1. A patent attorney shall be excluded from the register of patent attorneys by the decision of the attestation commission:

- 1) on the basis of a personal application filed with the attestation commission;
- 2) upon termination of the citizenship of the Republic of Kazakhstan or when leaving for permanent residence outside the Republic of Kazakhstan;

3) in case of a break in the professional activity of a patent attorney for more than five years; 4) upon the entry into force of a court conviction, by which a patent attorney is convicted of committing a crime;

5) in case of the death of a patent attorney or recognition of him as missing or being declared dead;

6) in case of recognition of a patent attorney incapable or partially capable.

2. On the basis of the decision of the attestation commission or the court decision entered into force by the decision of the authorized body, the certificate of the patent attorney shall be recognized invalid and the relevant information on inclusion of the patent attorney in the register of patent attorneys shall be annulled.

3. Is excluded by the Law of the Republic of Kazakhstan dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after its first official publication).

4. A patent attorney, excluded from the register of patent attorneys, shall lose the right to carry out the activity of a patent attorney from the date of entering information about it, and the certificate of its registration as a patent attorney shall be revoked or annulled.

5. In the case of a complaint of an individual or a legal entity against the actions of a patent attorney, the authorized body shall form an appeal commission from an odd number of employees of the authorized body. For the period of consideration of the received complaint by the appeal commission, validity of the patent attorney's certificate shall be suspended indicating the relevant information in the register of patent attorneys.

Based on the results of consideration of the complaint, the appeal commission shall take one of the following decisions:

1) to recommend the authorized body to send to the court a statement of claim on termination of the patent attorney's certificate;

2) to refuse in satisfaction of the complaint.

The decision of the appeal commission shall be taken by a simple majority of votes and be documented by a protocol. The decision of the appeal commission may be appealed in the court.

Footnote. The Law is supplemented by Article 15-2 in accordance with the Law of the Republic of Kazakhstan dated 12.01.2012 No. 537-IV (shall be enforced upon expiry of ten calendar days after its first official publication); as amended by the Law of the Republic of Kazakhstan dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of 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 enjoy the rights provided for by this Law along with the citizens and legal entities of the Republic of Kazakhstan by virtue of international treaties which party the Republic of Kazakhstan is, or on the basis of the principle of reciprocity.

2. Stateless persons residing in the Republic of Kazakhstan shall enjoy the rights provided for by this Law and other acts relating to the legal protection of topologies, on an equal basis with citizens and legal entities of the Republic of Kazakhstan, unless otherwise provided by this Law and other legislative acts of the Republic of Kazakhstan.

*The President of the
Republic of Kazakhstan*

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