

# Law on the Protection of Topographies of Integrated Circuits\*

(of October 30, 1992)

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## Part I General Provisions

### Art. 1.

This Law regulates the principles and procedure for obtaining rights by registration in the topographies of integrated circuits and the execution thereof in economic activities.

### Art 2.

The provisions of this Law shall be without prejudice to the provisions of international agreements.

### Art. 3.

Foreign natural and legal persons shall enjoy the rights afforded by this Law in accordance with the international agreements to which the Republic of Poland is party or under the principle of reciprocity.

### Art. 4.

References in this Law:

1. to an integrated circuit shall mean a three-dimensional product having one or more layers, composed of elements of semiconducting material forming a continuous layer and of conducting interconnections and insulating spaces, inseparably interconnected, intended to perform electronic functions;
2. to a topography of an integrated circuit shall mean any solution consisting of a three-dimensional arrangement of the elements, however expressed, at least one of which is an active element, and of all or some interconnections in an integrated circuit;

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\**Polish title:* Ustawa o ochronie topografii układów scalonych.

*Entry into force:* January 28, 1993.

*Source:* Dziennik Ustaw, No. 100, of December 28, 1992, Text No. 498.

\*\*Added by WIPO

3. to the material identifying an integrated circuit shall mean the particulars necessary for the explicit definition of a topography of an integrated circuit;
4. to the holder of the registration shall mean a natural or legal person in whose name a topography of an integrated circuit has been registered;
5. to the exploitation of a topography of an integrated circuit for commercial purposes shall mean any form of commercial distribution of such topography or of offering for such purposes;
6. to a creator of a topography of an integrated circuit shall also mean joint creators;
7. the Patent Office shall mean the Patent Office of the Republic of Poland.

## **Part II**

### **Subject of the Right to Registration**

#### Art. 5.

Any topography of an integrated circuit, hereinafter referred to as a «topography,» shall be registrable if it is original.

#### Art. 6.

(1) A topography shall be considered original if it is the result of its creator's own intellectual effort and is not commonplace at the time of its filing for registration, in due form, with the Patent Office.

(2) A topography shall also be considered original if, before the day of its filing for registration with the Patent Office, it has been commercially exploited, provided that the topography has been filed for registration within two years of its first marketing.

#### Art. 7.

A topography shall not be registrable if it explicitly results from the function of an integrated circuit in which it is applied.

## **Part III**

### **Right to Registration; Generation and Content of Rights in Registrations**

#### Art. 8.

(1) The right to topography registration shall belong to the creator. Where a topography has been created by more than one person, the right to topography registration shall belong to them jointly.

(2) The right to registration of a topography which has been made in the course of employment or the execution of a commission shall belong to the employer or the commissioning party, unless otherwise agreed by the parties concerned.

(3) Where a topography has been created by its creator with the assistance of an economic entity, the latter shall enjoy the right to reproduce the protected topography and to exploit it commercially. In an agreement on assistance, the parties may define the scope of the right to use the topography by the economic entity in a different manner and agree that the right to topography registration shall belong, in whole or in part, to the economic entity.

(4) Agreements concluded between economic entities may state to which of them the right to registration shall belong in cases where a topography has been created as a result of the execution of an agreement.

#### Art. 9.

(1) The right to topography registration and the right in a registration may be assigned or be subject to succession.

(2) An agreement for transfer of the rights mentioned in paragraph (1) shall be in writing on pain of invalidity.

(3) The transfer of the right in a registration shall be binding on third parties as from its entry in the Topography Register.

Art. 10.

(1) Where registration of a topography is applied for by a person not entitled thereto, the entitled person may require that the registration proceedings be discontinued or the topography be registered in his name.

(2) Where a topography has been registered in the name of a person not entitled thereto, the person entitled to registration may require that the right in the topography registration be invalidated or transferred to him against reimbursement of the costs of obtaining the right in a topography registration.

Art. 11.

(1) Protection for topographies is obtained by registration.

(2) The competent authority for the registration of topographies and the issue of documents confirming registration shall be the Patent Office.

(3) The right holder may indicate that his topography has been registered by affixing a capital letter «T» in a circle on the topography.

Art. 12.

(1) Registration of a topography confers on the holder of a registration the exclusive right to:

1. reproduce a registered topography;
2. exploit for commercial purposes or import for such purposes a copy of a registered topography or a product embodying such copy.

(2) The following acts shall not be considered infringement of the exclusive right referred to in paragraph (1):

1. acts referred to in paragraph (1)2, if they have been performed in respect of a registered topography put on the market by the right holder or with his consent;
2. reproduction done by a third person privately or solely for the purposes of analysis, evaluation or teaching;
3. acts referred to in paragraph (1)2, if a person who has performed such acts or ordered the performance thereof in respect of the product embodying an unlawfully copied topography, did not know and, acting with due diligence, had no reasonable grounds to believe that it embodied such unlawfully copied topography; after having been informed that topography protection exists, he is entitled to continue the exploitation of the topography on terms agreed with the right holder;
4. exploitation of the topography for attaining objectives of the State on the basis of non-exclusivity; in such case, the right holder is entitled to claim reasonable compensation equivalent to the market value of the topography.

(3) The creation of another original topography resulting from the analysis of the registered topography and the reproduction or commercial exploitation of this new original topography shall not be considered an infringement of the right in a topography registration.

Art. 13.

Topography protection shall terminate at the latest after 10 years from the end of the calendar year in which a topography or an integrated circuit embodying such topography was first commercially exploited or from the end of the calendar year in which the topography was filed for registration with the Patent Office, whichever term expires earlier.

Art. 14.

(1) Any person who, before a topography was filed for registration or before its first commercial exploitation, if it occurred before the filing date, had exploited the topography on the territory of the State, may continue to exploit it to the same extent in his enterprise free of payment. This right shall also be

available to a person who had already at that time made substantial preparations for exploiting the topography.

(2) The right referred to in paragraph (1) shall, at the request of the person concerned, be recorded in the Register. The right may be assigned to another person, but only together with the economic entity.

Art. 15.

(1) The holder of a topography registration may authorize (license) by contract another person to exploit his topography (license agreement).

(2) The license agreement shall give authorization to exploit the topography to the extent covered by the content of the right in the registration, unless the parties agree otherwise. As regards license agreements, Article 9(2) shall apply.

(3) A sublicense may only be granted with the consent in writing of the holder of a registration.

Art. 16.

(1) The Patent Office may, in litigation proceedings, give an authorization (a compulsory license) to exploit a topography that is the subject matter of a right in a registration belonging to another person, where:

1. this is necessary to prevent or eliminate a state of national emergency;
2. it has been found that the exclusive right has been abused for purposes contrary to public interest, particularly for prohibited monopolistic practices.

(2) Information on the possibility of obtaining a compulsory license shall be published in the official gazette *Wiadomosci Urzedu Patentowego*.

(3) A person exploiting a topography under a compulsory license shall be required to pay to the holder of the registration a royalty according to the market value of the license.

(4) The decision regarding the grant of a compulsory license shall specify, in particular, the scope and duration of the license, the detailed conditions for its exercise, the amount of the royalty and the manner and time of its payment.

(5) A compulsory license may not give an exclusive right to exploit the topography.

## **Part IV**

### **Protection of the Right to Topography Registration and of the Right in Topography Registration**

Art. 17.

A person entitled to a topography registration may require from a person not entitled, referred to in Article 10, the surrender of the unlawfully realized profits to him or the redress of any damage caused to him, in accordance with the general rules of law.

Art. 18.

(1) The holder of a topography registration may require that the acts infringing his right in the registration or acts threatening infringement of this right cease and that the consequences be remedied.

(2) The holder of a registration may also require the surrender of any profits realized as a result of the infringement of the right in the registration or the redressing of any damage caused to him, in accordance with general rules of law.

(3) Claims referred to in paragraph (2) may not be asserted in respect of acts performed before the filing of a topography for registration with the Patent Office.

(4) When deciding an action for infringement of the right in a topography registration, the court may, at the request of the right holder, take a decision with regard to any unlawfully manufactured products containing the protected topography and the means used for manufacturing them.

Art. 19.

The limitation period for actions based on the infringement of the right in a topography registration shall be three years. The period shall run, separately for each infringement, from the date on which the holder obtains knowledge of the act of infringement.

## **Part V**

### **Lapse and Invalidation of the Right in Topography Registration**

Art. 20.

(1) The right in a topography registration shall lapse:

1. on expiry of the term of protection referred to in Article 13;
2. on relinquishment, with the consent of any person having rights in the right in the topography registration, of the right by the holder of the topography registration;
3. if payment of the fee referred to in Article 41 is overdue by more than six months.

(2) In the cases referred to in paragraph (1)2 and 3, the Patent Office shall decide that the right in the topography registration has terminated.

Art. 21.

(1) The right in a topography registration may be invalidated, at the request of any person having a legitimate interest, in whole or in part by the Patent Office if the statutory requirements for obtaining a right in a registration have not been met.

(2) The General Public Prosecutor of the Republic of Poland may, in the public interest, request that the right in a registration be invalidated or may intervene in a pending action in such matter.

## **Part VI**

### **Procedure Concerning Topography Protection**

#### **1. General Provisions**

Art. 22.

Unless otherwise stipulated by this Law, the Code of Administrative Procedure shall apply to procedural matters before the Patent Office in respect of topography protection.

Art. 23.

The time limit for lodging an appeal against a decision of the Patent Office shall be two months as from notification of the decision to the party concerned and the time limit for objecting to a finding by the Patent Office shall be one month as from notification.

Art. 24.

The President of the Patent Office, the Ombudsman and the Minister for Justice may initiate an extraordinary procedure for review in the case of any final decision and any final order given by the Patent Office or the Board of Appeals which terminates the proceedings and is clearly contrary to law. The provisions of the Code of Civil Procedure shall be applicable to such extraordinary procedure.

Art. 25.

Cases concerning civil law claims in the field of topography protection, which are not within the competence of the Patent Office, shall be settled by the civil courts.

## 2. Registration Procedure

### Art. 26.

An application for registration of a topography shall be deemed to have been filed on the day on which a petition for registration is received by the Patent Office.

### Art. 27.

The subject of the application shall be determined by the material identifying the topography, however fixed or coded.

### Art. 28.

(1) The application for a topography registration shall contain:

1. a petition for registration of the topography;
2. material identifying the topography; where the topography has been exploited before its filing for registration, a product embodying the topography should be deposited as well;
3. a statement as to the date of the first commercial exploitation of the topography where it precedes the date of the application for registration.

(2) When depositing the material referred to in paragraph (1)2, the applicant shall not be required to disclose those parts which are industrial or trade secrets unless such disclosure is required to identify the topography.

(3) Once the application for a topography registration is filed, the applicant shall not be allowed to make any amendments or additions thereto.

### Art. 29.

(1) During the registration proceedings, the Patent Office shall fix time limits to be observed by the applicant, which shall not be shorter than the time limit for objecting to a finding by the Patent Office.

(2) The time limits referred to in paragraph (1) may be extended for two months at the request of the applicant submitted before the expiry of these time limits.

### Art. 30.

During the registration proceedings, the Patent Office may direct the applicant to complete the application within a fixed time limit or to remedy any specified omission or major defect on pain of discontinuance of the proceedings. Such directions shall be subject to objection. If the objection is admitted, the time limit shall start to run again.

### Art. 31.

(1) Where, during the registration proceedings, the applicant fails to comply with a procedural time limit, the Patent Office shall, at the request of the applicant, decide to restore the time limit, if the applicant is able to prove that failure to comply was without fault on his part.

(2) The request referred to in paragraph (1) shall be submitted to the Patent Office within two months from the day on which the cause of the failure to comply with the time limit ceased to exist, but not later than one year from the day on which the time limit expired. At the same time as submitting the request, the applicant must perform the act in respect of which the time limit was fixed.

(3) The time limit for submitting the request referred to in paragraph (2) may not be restored.

(4) If a decision is taken to discontinue the proceedings on the ground of failure to comply with a procedural time limit, the applicant may appeal against the decision, if he is able to prove that failure to comply was without fault on his part, whilst at the same time performing the act in respect of which the time limit was fixed.

### Art. 32.

(1) After ascertaining compliance with the formal requirements for registration, the Patent Office shall take the decision to register the topography.

(2) The Patent Office shall register the topography if the fee for the first protection period has been paid by the applicant. Where the fee has not been paid within the prescribed time limit, the Patent Office shall reverse the decision to register.

(3) After it has taken a decision to register the topography and the applicant has complied with the requirements of paragraph (2), the Patent Office shall make an entry in the Topography Register and issue a document confirming the registration.

(4) Notice of the registration of a topography shall be published in the official gazette *Wiadomosci Urzedu Patentowego*.

Art. 33.

(1) The Patent Office shall keep a Topography Register in which it shall make the entries required by this Law.

(2) The Register shall contain the data relating to the registered topography and the data relating to the holder of the topography registration.

(3) The Register shall also contain the data relating to the generation, lapse and invalidation of rights in topography registrations, rights of the persons referred to in Article 14(1), the transfer of rights in registrations and the grant of licenses.

Art. 34.

(1) The material identifying the topography submitted together with a petition for registration and deposited integrated circuits shall be stored at the Patent Office for a period of six years after the expiration of topography protection. After the expiry of this period, the material and the integrated circuit shall, at the request of the right holder, be given back to him or, if no such request is made, shall be destroyed.

(2) Where a decision to refuse to register a topography is taken by the Patent Office, the identifying material and the integrated circuit shall be stored at the Patent Office for one year after the date on which the decision to refuse to register the topography becomes final and valid. The second sentence of paragraph (1) shall apply *mutatis mutandis*.

Art. 35.

The President of the Patent Office shall lay down the detailed requirements relating to the form and contents of an application for topography registration and the detailed rules governing the registration procedure, keeping the Register, conditions and manner of consulting the Register and receiving copies, extracts and certificates of entries in the Register.

Art. 36.

In proceedings before the Patent Office in matters relating to the filing and examination of a topography and maintaining the topography protection a patent agent may act as representative. Foreign natural and legal persons may only act when represented by an agent who is a permanent resident of Poland.

### 3. Litigation and Appeal Proceedings

Art. 37.

(1) The Patent Office shall apply the litigation procedure when taking a decision on:

1. the invalidation of the right in a topography registration;
2. the grant of a compulsory license;
3. the transfer of the right in a topography registration obtained by a person not entitled thereto.

(2) The Patent Office shall take its decisions in the matters specified in paragraph (1) according to the procedures and principles laid down in the Law on Inventive Activity.<sup>1</sup>

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<sup>1</sup> See *Industrial Property Laws and Treaties*, POLAND—Text 2-001 (Editor's note).

Art. 38.

Appeals against decisions and objections to findings by the Patent Office shall be heard by the Board of Appeals at the Patent Office, hereinafter referred to as the «Board of Appeals,» to be composed as stipulated by the Law on Inventive Activity. The Board of Appeals shall hear appeals and objections according to the procedures and principles laid down in the Law on Inventive Activity.

#### 4. Fees

Art. 39.

(1) The protection of topographies shall be subject to single and periodic fees.

(2) The President of the Patent Office, in agreement with the Minister for Finance, shall, by an order as referred to in Article 35, determine the amount and manner of payment of the fees relating to topography protection and the division of the term of protection into protection periods. The fees shall constitute income to the State Budget.

Art. 40.

(1) Single fees for filing applications, requests, appeals and objections shall be paid by the applicant in advance.

(2) Where, in consequence of lodging an appeal or an objection, the decision or the finding is reversed, the fee paid for the appeal or objection shall be reimbursed.

Art. 41.

(1) A periodic fee for the first topography protection period shall be paid within three months of the date a decision is served by the Patent Office on the registration of the topography.

(2) A fee for the second protection period shall be paid in advance, at the latest on the day the foregoing protection period expires.

(3) The fee referred to in paragraph (2) may also be paid within six months after the expiration of the term of payment, subject to a surcharge of 30%. This provision shall not apply to the fee referred to in paragraph (1).

(4) The term of payment of the fee for the second protection period shall not be restored.

(5) The fee referred to in paragraph (2) may also be paid within the year preceding the term of payment. The fee shall be reimbursed if, before the term of payment, the right in the topography registration is invalidated or expires. The fee for past periods and for the current period shall not be reimbursed.

### Part VII Final Provisions

Art. 42.

(1) Anyone who wrongly claims to be the creator of another's topography shall be liable to imprisonment for a term not exceeding one year, limitation of freedom or a fine.

(2) Prosecution shall be initiated at the injured person's request.

Art. 43.

(1) Anyone who, for profit-making purposes, infringes the right in a topography registration, shall be liable to imprisonment for a term not exceeding one year, limitation of freedom or a fine.

(2) Prosecution shall be initiated at the injured person's request.



## Part VIII

### Amendments to the Existing Provisions, Transitional Provisions and Final Clauses

Art. 44.

In the Law of December 22, 1990, on the Taxation of the Increase in Wages (*Dziennik Ustaw* [Law Gazette] of 1991, No. 1, Text No. 1, and of 1992, No. 21, Text No. 85, and No. 73, Text No. 361) in Article 2(4)18, the words «of remuneration for creators of inventions, rationalization projects and utility models» are replaced by the words «of remuneration for creators of inventive projects and topographies of integrated circuits.»

Art. 45.

In the Law of July 26, 1991, on Income Tax from Natural Persons (*Dziennik Ustaw*, No. 80, Text No. 350, and No. 100, Text No. 442, and of 1992, No. 21, Text No. 86, and No. 68, Text No. 341), the following changes are introduced:

1. in Article 18, after the words «of inventive projects,» the words «of rights to topographies of integrated circuits» are added;
2. in Article 22(3)4 and 5 shall have the following wording:
  - «4. expenditure for normalization, development and evaluation of inventive projects and topographies of integrated circuits,
  5. remuneration paid to creators of inventive projects and topographies of integrated circuits and awards relating to those projects»;
3. in Article 22(9)1 and 2, after the words «of an inventive project,» the words «of a topography of an integrated circuit» are added;
4. in Article 41(1)1, after the words «of inventive projects,» the words «of topographies of integrated circuits» are added.

Art. 46.

In the Law of February 15, 1992, on Income Tax from Legal Persons and on amendments to certain laws governing the principles of taxation (*Dziennik Ustaw*, No. 21, Text No. 86, No. 40, Text No. 174 and No. 68, Text No. 341), the following changes are introduced:

1. Article 15(2)4) shall have the following wording:
  - «4. expenditure for normalization, development and evaluation of inventive projects and topographies of integrated circuits,»;
2. in Article 15(2)5, the words «remuneration paid to creators of inventive projects, rationalization projects and utility models» are replaced by the words «remuneration paid to creators of inventive projects and topographies of integrated circuits.»

Art. 47.

This Law shall not apply to:

1. topographies reproduced by third persons before the entry into force of the Law;
2. copies of topographies or products embodying such a copy, commercially exploited or imported for such purposes, by the day of entry into force of this Law.

Art. 48.

The Law shall enter into force 30 days after the date of promulgation.