

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

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## CONTENTS\*\*

		<i>Articles</i>
Chapter I:	Subject Matter of Protection .....	1 - 5
Chapter II:	Right to Protection .....	6 - 11
Chapter III:	Registration of Topographies .....	12 - 18
Chapter IV:	Rights .....	19 - 29
Chapter V:	Transfer of Rights .....	30 - 35
Chapter VI:	Exhaustion of Rights .....	36 - 39
Chapter VII:	Defense of Rights .....	40 - 43
Chapter VIII:	Fees .....	44 - 47
Chapter IX:	Final Provisions .....	48 - 49

## Chapter I Subject Matter of Protection

*Art. 1.* Topographies of integrated circuits shall be protected in Romania by registration with the State Office for Inventions and Trademarks according to the provisions of this Law.

*Art. 2.* For the purposes of this Law, “integrated circuit” means a product in its final form or in an intermediate form comprising a set of active and passive components, interconnections included, which belong integrally or partially to the body or to the surface of a piece of material, said product being intended to perform an electronic function. For the purposes of this Law, “topography of an integrated circuit”–hereinafter referred to as “topography”–means a three-dimensional disposition, however expressed, of certain elements of an integrated circuit, at least one of which is active, and of all or some interconnections of the integrated circuit or such a three-dimensional disposition prepared for the manufacturing of an integrated circuit.

*Art. 3.* Original topographies shall be protected under this Law. Topographies shall be deemed original if they are the result of an intellectual effort made by their creators and if they are not commonplace among the creators of topographies and manufacturers of integrated circuits, at the time of their creation.

A topography made up of a combination of commonplace elements and interconnections may be protected only if the whole combination is original as provided by the first paragraph.

*Art. 4.* The right of the proprietor of a protected topography in an integrated circuit shall not depend on whether the circuit is incorporated in a product or not.

*Art. 5.* The rights in a protected topography shall apply neither to the technological projects, processes and means involved in making the topography or an integrated circuit nor to the information stored by the integrated circuit.

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\* *Romanian title:* Lege privind protectia topografiilor circuitelor integrate.

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*Source:* Monitorul Oficial al României, of March 9, 1995, No. 45, pp.1 to 5.

*Note:* Translation by the International Bureau of WIPO on the basis of an English translation communicated by the Romanian authorities.

\*\* Added by WIPO.

## **Chapter II**

### **Right to Protection**

*Art. 6.* Romanian natural and legal persons as well as foreign natural persons having their domicile in Romania and foreign legal persons having their place of business in Romania may enjoy the protection of a topography according to the provisions of this Law.

Foreign natural and legal persons having their domicile or place of business abroad may enjoy the provisions of this Law as provided by the international conventions to which Romania is a party or, where there are no such conventions, on a reciprocal basis.

*Art. 7.* A person entitled to legal protection of a topography may be represented before the State Office for Inventions and Trademarks by a professional representative.

Foreign natural and legal persons having their domicile or place of business abroad shall be required to be represented by a professional representative; such representative shall have his domicile or place of business in Romania.

*Art. 8.* The right to protection of a topography of an integrated circuit shall belong to the creator of the topography or to his successor in title. Where there are several creators, as joint authors, the rights shall belong to them jointly.

*Art. 9.* Where the topography has been created by an employee in the course of his duties, the right to the protection of the topography shall belong to the enterprise where the creator of the topography is employed.

Where the topography has been created as a result of an order placed by a natural or legal person, the right to protection of that topography shall belong to the person who placed the order.

Where there are contract provisions contrary to the provisions of the preceding paragraphs, the contract provisions shall prevail.

*Art. 10.* Where a topography has been exploited commercially, in Romania or abroad, such topography shall be protected according to this Law if the application for registration is filed at the State Office for Inventions and Trademarks within a time limit of two years from the date of first commercial exploitation.

*Art. 11.* Where a topography has not been exploited commercially for 15 years since it was created or first encoded, the right to protection shall lapse in the following cases:

- (a) if the topography has not been registered, it may no longer be the subject matter of an application for registration;
- (b) if the topography has been registered, the rights conferred by registrations shall terminate.

## **Chapter III**

### **Registration of Topographies**

*Art. 12.* The registration of a topography shall depend on the regular filing of an application for registration at the State Office for Inventions and Trademarks.

An application for registration shall have as its subject matter only one topography; a topography may be registered only once.

*Art. 13.* An application for registration shall be deemed to have been regularly filed if the following documents have been submitted:

- (a) written request for the registration of the topography specifying at least
  - creator's (creators') full name and address;
  - applicant's full name or designation and address where the applicant differs from the creator of the topography;
  - indications with respect to the applicant's right to register the topography;

- designation and purpose of the integrated circuit to be manufactured by using the topography;
- date of creation or of first encoding of the topography;
- date of the first commercial exploitation of the topography where appropriate;
- full name or designation and address of the professional representative, where appropriate;
- applicant's signature or that of his professional representative, where appropriate;

(b) technical documentation comprising graphic materials and texts providing sufficient information for the identification of the topography and for pointing out the electronic function of the integrated circuit incorporating the topography;

(c) two copies of the integrated circuit, if manufactured and exploited commercially;

(d) power of attorney, for the professional representative (where appropriate);

(e) receipt of payment of fees as provided in Article 44(a) to (e).

All the above-mentioned documents shall be filed in typewritten form in the Romanian language.

*Art. 14.* The State Office for Inventions and Trademarks shall examine whether applications for the registration of topographies meet the legal requirements for regular filing; where the requirements are met, the Office shall register the topography in the National Register of Topographies and shall publish the topography as provided in Article 17 and shall also issue a certificate of registration within three months of the official date of regular filing.

The official date of regular filing shall be the date when the application is filed.

*Art. 15.* Where, upon examining the application, deficiencies are found in relation to the documents specified by Article 13, the applicant shall be notified in writing within 15 days from the date of filing and shall be given two months for the necessary remedies.

Where all remedies have been made within the prescribed time limit, the State Office for Inventions and Trademarks shall follow the procedure provided by Article 14.

In such case, the official date of regular filing shall be the date when all the necessary rectifications and additions are received.

Where the necessary rectifications and additions have not been submitted within the given time limit, the application shall be refused and the grounds of refusal shall be made known to the applicant in writing.

*Art. 16.* Refusal of an application for the registration of a topography may be contested by administrative means, addressed to the Director General of the State Office for Inventions and Trademarks within three months of communication; the notice of appeal shall be examined within two months from filing. The decision taken by the Director of the State Office for Inventions and Trademarks shall be transmitted to the parties concerned within one month and may be appealed at the Law Court of Bucharest within three months of the date of communication.

*Art. 17.* The registration of topographies shall be published in the Official Bulletin of the State Office for Inventions and Trademarks within two months of the date when the registration certificate was issued.

The proprietor shall be required to inform the State Office for Inventions and Trademarks, in the shortest time possible, of any changes in the name of the applicant or his representative. The Office shall make the necessary changes in the National Register of Topographies and shall publish them within three months of the date when the communication was received.

*Art. 18.* The documents which have been regularly filed may be laid open to public inspection at the State Office for Inventions and Trademarks after the publication of the registration.

Documents comprising information declared as a trade secret by the applicant shall not be made available to the public.

## **Chapter IV**

### **Rights**

*Art. 19.* A topography of an integrated circuit registered at the State Office for Inventions and Trademarks shall be protected throughout the territory of Romania over a period starting with the official date of registration of the topography or with the date of the first commercial exploitation of the topography, whichever is earlier, and ending with the last day of the tenth calendar year following the year when the period of protection started.

*Art. 20.* The proprietor of a registered topography shall have the right, over the whole period of protection, to exploit the topography as well as the right to allow or to forbid other persons to exploit the topography.

*Art. 21.* The proprietor shall have the right to mark the integrated circuits manufactured on the basis of the protected topography, by using a capital "T".

*Art. 22.* For the purposes of this Law, "exploitation of a topography" shall mean:

- (a) reproduction of the topography, in whole or in part, except those parts which are not original according to the provisions of Article 3, either by incorporating it in an integrated circuit or by other means;
- (b) importation, sale or distribution in any manner, for commercial purposes, of the topography or of the integrated circuit incorporating it.

*Art. 23.* Creators of topographies shall have the right to have their name and capacity as creators mentioned in the certificate of registration and in the texts concerning the registered topographies published by the State Office for Inventions and Trademarks.

*Art. 24.* Creators of topographies who are not proprietors according to Article 9 shall have the right to compensation established by a contract concluded between them and the proprietors of the protected topography.

*Art. 25.* The reproduction of the topography by a third party, according to the provisions of Article 22(a) shall not be deemed an infringement if:

- (a) it has been carried out in private, without any commercial purpose;
- (b) it has been made for the purposes of evaluation, analysis, research or teaching.

*Art. 26.* Any person who, starting from the evaluation or analysis of a protected topography, creates a new topography which fulfills the condition of originality provided by Article 3 shall have the right to exploit the new topography; such action shall not be deemed an infringement of the rights of the proprietor of the first topography.

*Art. 27.* The exploitation of a topography according to Article 22(b) by a person who has purchased the integrated circuit in good faith without being able to know that such integrated circuit incorporated a protected topography which was reproduced illegally, shall not be deemed an infringement of the rights of the proprietor of the topography.

As of the date on which such person learns that the topography is protected, he shall no longer have the right to purchase similar integrated circuits without the proprietor's authorization, but will be permitted to further exploit commercially the integrated circuits that were purchased or contracted before that date, against payment of fair compensation to the proprietor.

*Art. 28.* Where the protected topography or the integrated circuit incorporating it have been sold by the proprietor of the topography himself or with his authorization, exploitation of it by a third party shall not be deemed an infringement of the proprietor's rights.

*Art. 29.* Any person who, previous to the date of entry into force of this Law, has manufactured or certified for production an integrated circuit the topography of which was later registered with the State Office for Inventions and Trademarks by another person, shall have the right to manufacture and sell that

circuit; this action shall neither be deemed an infringement of the proprietor's rights nor be assimilated to the rights conferred by the registration of the topography.

## **Chapter V Transfer of Rights**

*Art. 30.* The right to protection as well as the right deriving from the registration of a topography may be transferred in whole or in part by assignment or by legal or testamentary succession.

*Art. 31.* The rights conferred by the registration of a topography may be transferred by grant of exclusive or non-exclusive licenses.

*Art. 32.* The transfer of rights provided by Articles 30 and 31 shall have effect for third parties starting with the date on which the transfer is registered with the State Office for Inventions and Trademarks.

*Art. 33.* The Law Court of Bucharest may grant a non-voluntary license for exploitation to those persons who, despite their efforts, have not been able to obtain the proprietor's authorization to exploit a protected topography where:

(a) the grant of a license is necessary in states of emergency as far as national defense and security are concerned or for the prevention or elimination of the effects of natural disasters, or where infringement of competition law or non-observance of the national standards concerning environmental pollution occurs.

(b) four years at least have passed since the beginning of the period of protection and the topography has not been commercially exploited on the territory of Romania.

Non-voluntary licenses are non-exclusive and may only be transferred with the assets needed for their application.

Voluntary licenses shall be notified to the State Office for Inventions and Trademarks which shall enter them in the National Register of Topographies.

The owner of a voluntary license shall pay reasonable compensation to the rightholder.

*Art. 34.* A non-voluntary license may be revoked by the Law Court of Bucharest, upon the rightholder's request where the conditions provided by Article 33(1)(a) and (b) have ceased to exist.

*Art. 35.* The State Office for Inventions and Trademarks shall publish in its Official Bulletin all the assignments and licenses registered in respect of a protected topography as well as the changes thereto, within three months of registration.

## **Chapter VI Exhaustion of Rights**

*Art. 36.* The rights conferred on the proprietor by the registration of the topography shall come to an end on expiry of the period of protection, at which time the topography shall enter the public domain and may be exploited by any person without restriction.

The rights of the proprietor shall come to an end before the expiry of the period of protection if the conditions provided by Article 11(b) are fulfilled.

*Art. 37.* The proprietor may renounce the protection of a registered topography any time during the period of protection; renunciation shall result in the exhaustion of the proprietor's rights, having all the consequences mentioned in Article 36(1) starting with the date of registration at the State Office for Inventions and Trademarks or the date of the declaration of renunciation.

*Art. 38.* The registration of a topography in the National Register of Topographies may be cancelled, in whole or in part, upon the request of a third party where the legal conditions for the grant of protection have not been fulfilled. The request of cancellation may be filed during the whole period of protection of the topography and shall be decided by the Law Court of Bucharest.

Cancellation shall result in the revocation of the rights in the topography or, where appropriate, in that part of the topography that was cancelled retroactively, starting with the first day of protection conferred by registration.

*Art. 39.* The State Office for Inventions and Trademarks shall enter in the National Register of Topographies all changes concerning the protection of topographies resulting from the application of the provisions of Articles 36 to 38 and shall publish them in its Official Bulletin.

## **Chapter VII Defense of Rights**

*Art. 40.* Infringement of the proprietor's rights by the exploitation of a registered topography without his authorization shall be deemed infringement or, where appropriate, sale of counterfeit goods, and shall be punishable by imprisonment of three months to three years or by fine of 500,000 to 1,000,000 lei. Prosecution shall be initiated upon the complaint of the injured party.

The proprietor shall be entitled, for the prejudice caused to him, to damages as provided in civil law and the counterfeit products may be confiscated as provided in criminal law.

*Art. 41.* Disputes concerning authorship or ownership of the rights deriving from the registration of topographies, including creators' economic rights, or from assignment or license contracts shall be settled by the law courts.

*Art. 42.* Where the final and irrevocable decision of the law court states that a person, other than the owner of a certificate for registration, is entitled to the protection of the topography, the State Office for Inventions and Trademarks shall issue the certificate of registration to the entitled person, shall enter the change concerning the owner in the National Register of Topographies and shall publish it in its Official Bulletin.

*Art. 43.* If the rights in a registered topography have ceased to exist with respect to a certain period of time as a result of renunciation of protection, of forfeiture or of cancellation of the registration, the compensation and the other economic rights of the owner, corresponding to the above-mentioned period, shall be returned by him to the persons from whom he has obtained them.

## **Chapter VIII Fees**

*Art. 44.* The protection of the topographies of integrated circuits as well as the activities and services carried out by the State Office for Inventions and Trademarks as far as topographies are concerned shall be subject to the payment of the following fees:

	<i>Lei</i>	<i>US dollars</i>
(a) filing an application for the registration of a topography	60,000	30
(b) examination of an application for the registration of a topography	400,000	200
(c) registration of a topography	3,400,000	1,700
(d) printing of the registration of a topography	30,000	15
(e) issue of a certificate of registration	30,000	15
(f) examination of an opposition according to Article 16	200,000	100
(g) registration and printing of an assignment or license	200,000	100
(h) registration and printing of a change concerning the professional representative, the owner, assignment, license	50,000	25
(i) inspection of the public documents in a regular filing	20,000	10
(j) issue of a certified copy of regularly filed public documents or of pages of the National Register of Topographies, each page	20,000	10

The creators of topographies, whether applicants or proprietors, who have yearly gross revenue of up to 10,000,000 lei and who have not transferred the right of exploitation of the topography, shall pay 5% of the amount of fees provided by the first paragraph.

Public institutions as well as trade companies which have a gross profit of less than 50,000,000 lei per year and less than 200 employees and which have not transferred the right of exploitation of the topography shall pay 50% of the amount of fees provided by the first paragraph.

Schoolchildren, students and soldiers shall be exempt as creators of topographies from the payment of the fees provided by the first paragraph both individually and in teams composed exclusively of such categories of persons for as long as they have such status, for all the procedures carried out during the period they maintain that status.

*Art. 45.* The fees provided by Article 44 shall be paid to the account of the State Office for Inventions and Trademarks and shall be considered a contribution to the State budget. The Government shall update the amount of fees and the income ceiling in lei regularly, depending on the evolution of inflation.

The amounts representing the fees shall be transferred by the State Office for Inventions and Trademarks to the State budget according to the methodology determined by the Ministry of Finance.

Foreign natural and legal persons shall pay fees in valuta. Foreign natural and legal persons who have companies registered in Romania shall pay in lei.

*Art. 46.* The fees provided by Article 44 shall be paid in advance. Lack of payment shall result in refusal of the requested service or activity, with all the effects possible according to law.

*Art. 47.* The fees provided by Article 44 shall be returned to the payer, at his request, where the activities that were paid for, have not been initiated, except those provided by (a) and (b) where no money shall be refunded.

## **Chapter IX**

### **Final Provisions**

*Art. 48.* The Romanian Government shall issue the Implementing Regulations concerning the Registration of Integrated Circuits, according to the provisions of this Law. The Implementing Regulations shall enter into force at the same time as this Law.

*Art. 49.* This Law shall enter into force three months after the date of its publication in the Official Gazette of Romania.

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