

# LAW ON THE PROTECTION OF TOPOGRAPHIES OF INTEGRATED CIRCUITS<sup>1</sup>

## I. BASIC PROVISIONS

### Article 1

This Law regulates the subject matter, the requirements for the protection and subjects of protection of topographies of integrated circuits (hereinafter referred to as: topography), the rights of subjects and the method of exercising such rights, as well as the rights of the companies or other legal entities where the topography has been created as well as the limitations concerning the topographies of integrated circuits.

## II. SUBJECT MATTER AND TERMS OF PROTECTION

The subject matter of protection

### Article 2

Topography, for the purposes of this Law, is a three-dimensional disposition of elements - however expressed - at least one of which is active, and of the interconnections of an integrated circuit, or a three-dimensional disposition of that kind prepared for manufacturing a certain integrated circuit.

An integrated circuit, for the purposes of this Law, is a finished or an intermediate product within which a certain electronic function is performed, its elements - one of which at least is an active element - and interconnections being integrally formed in, or on, a piece of material, and/or both in, and on, a piece of material.

### Article 3

This Law does not provide protection for the technology used in the production of a topography or an integrated circuit, nor for the information protected within the integrated circuit, or the ideas, procedures, processes, systems, work methods, concepts, principles or discoveries, irrespective of the way they are described or explained.

Protection Requirements

### Article 4

Protection may be granted only for a topography which is the result of an intellectual effort by its creator, and for one which was not well-known among the creators of topographies and integrated circuit manufacturers at the time of its creation.

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<sup>1</sup> Adopted on 11 December 2009, published on 16 December 2009 (Official Gazette of the Republic of Serbia No 104/09, entered into force on 24 December 2009.

A topography consisting of a combination of elements and interconnections which are well known shall be granted protection only if, viewed as a whole, it meets the requirements under Paragraph 1 of this article.

#### Article 5

Protection for a topography may be applied for within a term of two years from the date of its first commercial exploitation anywhere in the world.

If a topography has not been commercially exploited, protection of the topography may not be applied for within a period of 15 years from the date of its creation.

#### Subjects of Protection

#### Article 6

The right to the protection of a topography belongs to its creator and/or the creator's legal successor or employer, and/or the latter's legal successor. If a topography has been created by several creators, they shall be entitled to joint protection rights.

Protection of a topography created in the course of employment shall be subject to the provisions of the law regulating patents, accordingly.

#### Article 7

Foreign persons shall be entitled to the protection of topographies in the Republic of Serbia in accordance with reciprocity requirements. In the case of any doubt, proof of the existence of reciprocity shall be provided by the person invoking reciprocity.

### III. PROTECTION PROCEDURE

#### Common Provisions

#### Article 8

Legal protection for a topography shall be acquired in administrative proceedings conducted by the public administrative authority competent for intellectual property matters (hereinafter referred to as: the competent authority).

Decisions issued by the competent authority shall be final and administrative disputes may be initiated against them.

#### Article 9

The competent authority shall keep a Register of Topography Applications (hereinafter referred to as: the Register of Applications) and a Register of Topographies.

The Register of Applications shall contain, in particular: the number of the topography application, if the topography has not been commercially exploited; the date and the place of

the first commercial exploitation of the topography, and/or integrated circuit, manufactured according to the topography; data about the applicant, data about the creator of the topography, data about any changes relating to the application.

The Register of Topographies shall contain, in particular: the registration number of the topography; the application number and the date of filing of the application; data about the topography right holder; data about the creator of the topography, and/or a designation that the creator has requested non to have his name mentioned; the number and the date of the decision granting the right; the topography registration date; the date and the place of the first commercial use, the data about any changes referring to the topography.

The Government shall prescribe the particulars of the content of the Registers under Paragraph 1 of this article.

#### Article 10

During the course of the proceeding for granting protection before the competent authority, a foreign person may have a representative whose profession is representation and who is a local national or a local legal entity.

#### Initiating the Procedure for the Protection of a Topography

#### Article 11

The procedure for the protection of a topography shall be initiated by filing an application for the protection of the topography (hereinafter referred to as: the application) with the competent authority.

The competent authority shall not examine whether the applicant is entitled to the protection.

A separate application shall be filed for each individual topography.

#### Article 12

A local person may request the protection of a topography abroad after the expiry of three months from the date of filing the application with the competent authority.

#### Content of the Application

#### Article 13

The application shall contain the request for the grant of the right to a topography and the relevant annexes.

The application for the grant of the right to a topography shall contain:

- 1) name of the topography;
- 2) data about the applicant and the creator of the topography, if the applicant is not the creator;

- 3) date of filing of the application;
- 4) date of creation of the topography, if the topography was not commercially exploited, or the date and the place of the first commercial exploitation of the topography anywhere in the world.

The application for the grant of the right to a topography shall be filed with the following annexes:

- 1) description of the topography including data defining the electronic function performed by the integrated circuit manufactured according to the topography;
- 2) graphic representation or representation of the topography in another appropriate form identifying the topography;
- 3) a copy of the integrated circuit manufactured according to the topography for which protection is sought, if the integrated circuit has been commercially exploited;
- 4) proof of commercial exploitation of the topography;
- 5) statement of entitlement to filing the application if the applicant is not the creator of the topography.

At filing the application, the applicant may request that parts of the annexes under Paragraph 3 Item 2) of this article representing a trade secret not be disclosed or made available to third parties, provided the other parts of the annexes under Paragraph 3 Item 2) of this article are sufficient for identifying the topography.

The Government shall prescribe the particulars of the content of the application for the grant of the right to a topography and the annexes to be filed with the application.

#### Examination of the application

#### Article 14

After the receipt of an application, the application shall be examined for conformity of the subject matter to the topography within the meaning of Article 2 Paragraph 1 of this Law, and for timely filing of the application within the time limit under Article 4 of this Law.

After establishing that the requirements under Paragraph 1 of this Article have been met, the competent authority shall check whether:

- 1) in the case where the applicant is a foreign national, the application has been filed via a representative within the meaning of Article 10 of this Law;
- 2) a separate application has been filed for each topography for the purposes of Article 11 Paragraph 3 of this Law;
- 3) the application contains all the data specified for the request for the grant of rights within the meaning of Article 13 Paragraph 2 of this Law and the annexes within the meaning of Article 13 Paragraph 3 of this Law;
- 4) the prescribed fee has been paid;
- 5) the application for the grant of the right to the topography and the annexes filed with the application have the prescribed content within the meaning of Article 13 Para. 6 of this Law.

If the competent authority establishes, on the basis of a examination of the application referred to in Paragraphs 1 and 2 of this article that all the requirements specified in the paragraphs have been met, it shall render a decision granting the right to the topography.

If the application has not been filed within the time limit under Article 5 of this Law, the competent authority shall render a decision rejecting the application.

If the competent authority, having carried out the application examination procedure under Paragraphs 1 and 2 of this article, establishes that the subject matter of the application is not a topography within the meaning of Article 2 Paragraph 1 of this Law, and/or that the application has not been filed in accordance with the provision of Paragraph 2 of this article, the competent authority shall invite the applicant, within 30 days from the date of receipt of the application, to remedy the deficiencies noted, assigning a time limit therefore, which may not be shorter than 30 days nor longer than three months.

If the applicant fails to remedy the deficiencies under Para. 5 of this article within the given time limit, the competent authority shall pass a decision refusing the request for the grant of rights and/or a decision rejecting the application.

### Registration, Issuing of a Certificate and Publication of the Grant of Rights

#### Article 15

The grant of the right to a topography shall be registered in the Register of Topographies.

After registration in the Register of Topographies, the applicant shall be issued a certificate of protected topography with the prescribed content.

The prescribed data about the right granted under Paragraph 1 of this article shall be published in the official gazette of the competent authority (hereinafter referred to as: the official gazette).

### Availability of the Topography for Public Inspection

#### Article 16

After the registration in the Register of Topographies, everyone shall be entitled to inspect the application and obtain a copy of the application for the grant of the right to the topography and the annexes under Article 13 Paragraph 3 Item 1), 2), 4) and 5) of this Law.

The parts of the annexes designated as trade secret shall not be available to third parties without approval by the right holder or without a court decision.

## IV. CONTENT, LIMITATION AND DURATION OF RIGHTS

### Content of Rights

#### Article 17

The topography right holder shall have the exclusive right to:

- 1) reproduce the protected topography as a whole or its essential parts;
- 2) produce integrated circuits containing the protected topography or its essential parts;

- 3) import, offer for the purpose of trading, or trade in, or otherwise commercially exploit, the specimens of the protected topography or its essential parts, or integrated circuits comprising the protected topography, or its essential parts.

Import and/or export of integrated circuits comprising protected topographies, which are on the National Control List for Dual-Use Goods or on the National Control List for Weapons and Military Equipment adopted in accordance with The Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods (Official Gazette of S&M, No. 7/05 and 8/05-correction) shall be subject to approval by the competent ministry.

### Limitation of Rights

#### Article 18

Reproduction of a topography shall not be deemed an infringement of the rights under Article 17 Item 1) of this Law if made:

- 1) for personal use intended for non-commercial purposes;
- 2) for teaching purposes referring to topography, as well as for professional analyses or research work.

No infringement of the right under Article 17 of this Law shall be deemed to have been perpetrated by a person who has created - on the basis of an analysis or examination of a protected topography - a topography conforming to the requirements under Article 4 Para. 2 of this Law, and who uses such topography in accordance with the provisions of Article 17 of this Law.

### Exhaustion of Rights

#### Article 19

Acts under Article 17 Item 3) of this Law shall not be deemed to be an infringement, if they refer to the sample of a protected topography and/or an integrated circuit comprising the protected topography, which was put into circulation for the first time by the right holder and/or a person who has obtained the right holder's approval.

### Term of Validity of Rights

#### Article 20

The term of validity of the right to a topography commences on the date of filing an application which conforms to the conditions laid down in Article 13 Paragraph 3 Items 1) and 2) of this Law or from the date of the first commercial use of the topography, depending on which of the two dates occurs first.

## V. ASSIGNMENT OF RIGHTS

#### Article 21

The right to a topography may be subject to assignment, as a whole or in part, based on an assignment agreement or on the basis of inheritance.

Certain or all of the authorities arising from the right to a topography may be the subject of licensing, including or excluding restrictions, on the basis of a license agreement.

The agreements under Paragraphs 1 and 2 of this article shall be legally binding only if drawn up in writing.

Upon the request of one of the contractual parties, the agreements under Paragraphs 1 and 2 of this article shall be entered in the Register of Topographies.

The Agreements under Paragraphs 1 and 2 of this article shall produce effect in relation to third parties only if entered in the Register of Topographies.

The person last entered in the Register of Topographies shall be deemed to be the topography right holder.

## VI. ANNULMENT OF RIGHTS

### Article 22

The competent authority shall annul the decision granting the right to a topography, ex officio or at the proposal of the interested party, during the term of the validity of the right, if it establishes that, at the moment of rendering the decision:

- 1) the subject matter of protection was not a topography within the meaning of Article 2 Paragraph 1 of this Law;
- 2) the topography did not conform to protection requirements within the meaning of Article 4 of this Law;
- 3) the application was not filed within the time limit under Article 5 of this Law;
- 4) the topography right holder is not entitled to protection within the meaning of Article 7 of this Law and/or if he did not have a representative within the meaning of Article 10 of this Law;
- 5) the annexes under Article 13 of this Law do not have the prescribed content;
- 6) the annexes under Article 13 Paragraph 3 Items 1) and 2) of this Law do not correspond to the integrated circuit enclosed with the application for the grant of protection.

If the party requesting the annulment of the decision granting the right to a topography withdraws its request during the course of the proceedings, the competent authority may continue the proceedings ex officio.

### Article 23

The request for the annulment of the right to a topography shall be filed with the competent authority in writing, in two copies, and it shall contain reasoned and requisite evidence.

The request for the annulment of the right to a topography shall be filed with proof of the payment of the prescribed fee.

### Article 24

The competent authority shall notify the topography right holder about the request for annulment, inviting him to submit his reply in writing, in two copies, within a term which may not be longer than 60 days.

If the right holder fails to submit his reply within the set time limit, the competent authority may render a decision on the request for the annulment on the basis of the evidence available.

If the right holder submits a reply within the set time limit, the competent authority shall submit a copy of the reply to the party requesting annulment and shall set a date for a hearing.

If the parties fail to appear at the hearing, the competent authority may render a decision on the request for annulment on the basis of the evidence available.

The party in whose favor the decision has been rendered shall be entitled to a reimbursement of the costs of the proceedings.

The prescribed data in the decision annulling the rights to a topography shall be published in the official gazette in the prescribed manner.

#### Article 25

Annulment of the decision granting the right to a topography shall not have a retroactive effect on legally binding court decisions relating to establishing whether infringement is involved, or on assignment agreements and/or license agreements signed, if, and to the extent, the agreements have been executed, provided the petitioner and/or the right holder has acted bona fide.

### VII. CONFIDENTIAL APPLICATIONS

#### Article 26

Topography applications by residents, which are of significance for the defense or security of the Republic of Serbia shall be deemed confidential.

Confidential applications shall not be published.

Confidential applications shall accordingly be subject to the provisions of the law regulating patents.

### VIII. CIVIL LAW PROTECTION

#### Action Against Infringement of Rights

#### Article 27

The topography right holder or exclusive licensee in respect of a protected topography may file an action with the competent court on grounds of infringement of his exclusive rights under Article 17 of this Law.

In establishing the existence of an infringement of a topography, the court shall take into account in particular, the limitation of rights under Article 18 of this Law, and the exhaustion of the rights under Article 19 of this Law.

The following may be claimed based on the action referred to in Paragraph 1 of this article:

- 1) determining an infringement of rights;
- 2) ceasing of the infringement of rights;
- 3) compensation for material damage (actual damage and profit loss);
- 4) publication of the judgment at the expense of the defendant.



The action under Paragraph 1 of this article may be filed within a term of one year from the date of becoming aware of the infringement and the perpetrator, however not after the expiry of a period of three years from the date of perpetration of the infringement.

#### Article 28

Utilization of an integrated circuit in the manner prescribed by Article 17 Item 3) of this Law by a person who has provided the integrated circuit from another person, and who was not aware or could not have been aware that the integrated circuit comprised a protected topography, shall not be deemed an infringement of rights.

From the moment when the person referred to in Paragraph 1 of this article becomes aware or is in the position to become aware that the integrated circuits comprise protected topography, the person is obliged to pay the topography right holder a fee for the utilization of the integrated circuit in the manner prescribed in Article 1 Item 3) of this Law.

The amount of the fee belonging to the right holder under Para. 2 of this article shall be determined as equaling the reimbursement the right holder gets for a voluntarily stipulated license for that topography.

If the infringement of the rights has been perpetrated deliberately, the plaintiff may claim damages from the defendant, instead of a compensation for material damage, in the triple amount of the usual license fee that would have been paid had the utilization of the topography been legal.

#### Action Challenging the Right to Protection

#### Article 29

The creator of the topography or his legal successor may request, on the basis of an action filed, that the court determine him as the topography right holder instead of, or together with, the person who has applied for the protection of the topography and/or the topography right holder.

The action under Paragraph 1 of this article may be filed within the term of duration of the protection of the topography.

If the particulars of the claim under Paragraph 1 of this article are upheld by the court decision, the competent authority shall register the plaintiff in the appropriate register, following the receipt of the judgment or upon the plaintiff's request, as an applicant and/or topography right holder.

The prescribed data about the change of the right holder shall be published in the official gazette.

### IX. TRANSITIONAL AND FINAL PROVISIONS

#### Article 30

The Register of Applications and the Register of Topographies established by the Law on the Protection of Topographies of Integrated Circuits (Official Gazette of S&M, No. 61/04), shall continue to be maintained in accordance with this Law.

Topographies which are valid on the date of this Law taking effect shall remain in effect and they shall be subject to the provisions of this Law.

The provisions of this Law shall also apply to the applications for the grant of the rights to topographies filed on the date of this Law taking effect, in respect of which the administrative procedure is pending, as well as to other proceedings initiated with regard to granted topographies which have not been finalized by the date of this Law taking effect.

#### Article 31

Secondary legislation for the enforcement of this Law shall be adopted within a term of four months from the date of this Law taking effect.

Until the adoption of the secondary legislation under Paragraph 1 of this article, the applicable regulations shall be those adopted on the basis of the Law on the Protection of Topographies of Integrated Circuits (Official Gazette of S&M, No. 61/04), if they are not contrary to this Law.

#### Article 32

The validity of the Law on the Protection of Topographies of Integrated Circuits (Official Gazette of S&M, No. 61/04) shall cease on the date of this Law taking effect.

#### Article 33

This Law shall take effect on the eighth day from the date of its publishing in the Official Gazette of the Republic of Serbia.