

**The Ministry of Justice
Stockholm**

March 5, 2013

ACT ON THE PROTECTION OF TOPOGRAPHIES FOR SEMICONDUCTOR PRODUCTS(Swedish Statute Book, SFS, 1992:1685, as amended up to April 1, 2009)

Unofficial translation

The Subject Matter of Protection

Article 1.In order for a right in a topography to be conferred protection under this Act it has to constitute the result of its creator's own intellectual effort and is not commonplace in the semiconductor industry. Where the topography consists of elements that are commonplace in the semiconductor industry, it shall be protected only if the combination of such elements fulfils the conditions.

The Scope of the Protection

Article 2. The right in a topography for a semiconductor product confers an exclusive right to

1. make copies of the topography,
2. import, for commercial purposes, copies of the topography, and
3. make the topography available to the public by offering copies of the topography for sale, rental, lending or distribution to the public in any other manner.

As a copy of the topography is considered also a semiconductor product that has been manufactured by using the topography.

Beneficiary of the Protection

Article 3. The right in a topography shall apply in relation to the natural person who created the topography provided that of, he is a national or has his habitual residence in, a State member of the European Economic Area and that the provisions of the second Paragraph do not apply.

The right in a topography that has been created by an employee in the course his employment belongs to the employer unless there is an agreement to the contrary and provided that the employer is a natural person who is a national of, or has his habitual residence in, a State member of the Economic Area or is a legal person that has a real and effective industrial or commercial establishment on the territory of such a State.

If a right in a topography does not exist pursuant to the provisions under the first and second Paragraphs, such a right shall apply in favour of such natural or legal persons who, or which, meet the requirements under the second Paragraph in respect of attachment to the Economic Area, provided that such a person has obtained an exclusive right to exploit commercially the topography throughout the Economic Area and first commercially exploits the topography in a State member of the Area.

The right in a topography shall apply also for the benefit of any person who has acquired the right from the persons referred to in the first to third Paragraphs.

Term of Protection

Article 4. The right to a topography comes into existence when it has been created and expires at the end of the tenth year from the year when the topography was first commercially exploited in any part of the world.

The right expires fifteen years from the end of the year when the topography was created, if it has not yet, within that time, been commercially exploited.

Limitations on the Protection

Article 5. Notwithstanding the provisions in Article 2 copies may be prepared of the topography exclusively for teaching about, or analysis of, the topography. Single copies may also be prepared for private use.

Copies that have been prepared pursuant to the first Paragraph may not be used for any other purposes.

Article 6. The right in a topography does not extend to copies that have been distributed to the public within the European Economic Area by the right-owner or with his consent.

Article 7. Where a copy of a topography forms part of a public document, the copy shall, notwithstanding the provisions of Article 2, be made available as prescribed in Chapter 2 of the Freedom of the Press Act.

Transfer of the Right

Article 8. The transfer of a copy of a topography does not include a transfer of the right in the topography.

If the person who holds the right in a topography has granted a right to another person to exploit the topography commercially (license), this person may further transfer the right only if an agreement has been concluded to that effect. If the license forms part of a business activity, it may, however, be transferred together with the transfer of the business or part of it.

Penal Liability, etc.

Article 9. Anyone who wilfully or by gross negligence commits an act that constitutes an infringement of the rights pursuant to Article 2, shall be punished by fines or imprisonment for not more than two years. A person who has violated an injunction issued under penalty of a fine pursuant to Article 9 b may not be adjudicated to a criminal liability for infringements covered by the injunction.

Attempts to commit offences pursuant to the first Paragraph, or preparatory acts, shall be punishable pursuant to the provisions in Chapter 23 of the Criminal Code.

A public prosecutor may bring a criminal action for offences under the first or second Paragraph only if injured party files a complaint or such an action is called for in the public interest. *Act (2005:304).*

Article 9 a. Property in relation to which an offence has occurred pursuant to Article 9 shall be declared forfeited, if that is not considered obviously unreasonable. Instead of the property itself, its value may be declared forfeited. Also profits from such an offence shall be declared forfeited, if it is not obviously unreasonable. The same applies to what someone has received in compensation for costs related to such an offence, or the value

of what has been received, where the act of receiving constitutes an offence pursuant to Article 9.

Property that has been used as a tool for an offence according to Article 9 may be declared forfeited, where this is needed in order to prevent offences or where there are otherwise special reasons. The same applies to property that has been intended to be used as a tool in connection with such an offence, where the offence has been carried out or has constituted a punishable attempt or a punishable preparation. Instead of the property itself, its value may be forfeited.

Article 9 b. Upon a petition by the holder of the topography or by a party that, on the basis of a license, has the right to exploit the topography, the Court may render an injunction prohibiting, on penalty of a fine, a party that commits, or contributes to, an act that constitutes an infringement to continue that act.

If the plaintiff shows a probable cause that an infringement, or a contribution thereto, takes place and if it can reasonably be expected that the defendant, through the continuation of the act, or the contribution thereto, diminishes the value of the exclusive right in the topography, the Court may render an injunction, on penalty of a fine, for the time until the case has been finally adjudicated or otherwise is decided. No injunction may be rendered before the defendant has been given an opportunity to respond, unless a delay would entail a risk for damage.

The provisions in the first and second Paragraphs shall apply also to acts constituting attempts, and preparatory acts, relating to infringements.

An injunction mentioned in the second Paragraph may be issued only if the plaintiff deposits a security with the Court for the damage that may be caused to the defendant. If the plaintiff is not capable of depositing such a security, the Court may liberate him from it. As regards the type of security, the provisions of Chapter 2, Article 25, of the Enforcement Code shall apply. The security shall be examined by the Court unless the defendant has accepted it.

When the case is adjudicated, the Court shall decide whether a prohibition issued under the second Paragraph shall continue to apply.

As regards appeals against decisions under the second or fourth Paragraph and as regards the proceedings in higher Courts, the provisions on appeal against decisions in Chapter 15 of the Code of Judicial Procedure shall apply.

An action for the imposition of a fine may be made by the party that has requested the injunction and shall be processed in accordance with the provisions in the Code of Judicial Procedure relating to actions in cases where a higher penalty than fines is not prescribed. In connection with such an imposition, an action may be brought for a new injunction to be rendered on penalty of a fine. *Act (2009:114)*

Article 9 c. If the applicant shows a probable cause that someone has committed an infringement of a topography, the Court may order, on penalty of a fine, one or several of the parties referred to in the second Paragraph to provide information to the applicant concerning the origin and distribution networks for the goods or services in respect of which the infringement has been committed (*order to provide information*). Such an order may be issued upon a petition by the holder of the integrated circuit or by a party that, on the basis of a license, has the right to exploit the topography. It may be

issued only if it can be assumed that the information would facilitate the inquiry into the infringement relating to the goods or services.

The obligation to provide information relates to any party that

1. has committed, or contributed to, the infringement,
2. has on a commercial scale been exploiting the goods that the infringement concerns,
3. has on a commercial scale been exploiting the service that the infringement concerns,
4. has on a commercial scale made available an electronic communication service or another service that has been used in connection with the infringement, or
5. has been indicated by a party referred to in items 2 to 4 as being involved in the production or distribution of the goods, or the making available of the service, that the infringement concerns.

The information on the origin or distribution network of goods or services may, in particular, include

1. the names and addresses of producers, distributors, suppliers and others who have previously held the goods or made available the services,
2. the names and addresses of intended wholesalers and retailers, and
3. information on how much has been produced, delivered, received or ordered and the price obtained for the goods or services.

The provisions in the first to third Paragraphs apply also to acts constituting attempts, and to preparatory acts, relating to infringements. *Act (2009:114)*

Article 9 d. An order to provide information may be rendered only if the reasons speaking in favour of the measure outweigh the inconvenience or other harm that the measure would cause to the party against which it is directed or to any other opposite interest.

The obligation to provide information pursuant to Article 9 c does not include information the revelation of which would disclose that the provider of the information or any person closely related to him or her as referred to in Chapter 36, Article 3, of the Code of Judicial Procedure has committed a criminal offence.

The Act (1998:204) on Personal Data contains provisions that limit the use than can be made of personal data received. *Act (2009:114)*

Article 9 e. A decision on an order to provide information may be rendered by the Court where a trial on the infringement is pending. In other respects, the issue of the competence of the Court is governed by the provisions in the Code of Civil Procedure in respect of civil cases related to infringements. The provisions in the Code of Judicial Procedure relating to limitation of the competence of a Court in disputes that have to be initiated in a way other than before a Court shall, however, not apply.

If the petition for an order to provide information is directed against the applicant's opposite party in an infringement case, the provisions on court proceedings for that case apply. Decisions on orders to provide information may be appealed separately.

If the petition for an order to provide information is directed against a party other than the one referred to in the second Paragraph, the provisions in the Act (1996:242) on Court Matters shall apply. For the purpose of the inquiry into the issue, also an oral hearing may be held pursuant to Chapter 37 of the Code of Judicial Procedure. The Court may decide that each party shall bear its own litigation costs.

An action for the imposition of a fine may be brought by the party that has applied for the order and shall be processed in accordance with the provisions in the Code of Judicial Procedure on actions in criminal cases for which no higher penalty than a fine is prescribed. In connection with such an action, an action may be brought for a new order to provide information. *Act (2009:114).*

Article 9f. Anyone who, pursuant to the provisions in Article 9 c, second Paragraph, items 2 to 5, has been ordered to provide information pursuant to the first Paragraph of the same Article has a right to a reasonable compensation for the costs and the inconvenience caused. The compensation shall be paid by the party that has applied for the order to provide information.

Anyone who makes available an electronic communication service and who has, pursuant to an order to provide information, delivered information referred to in Chapter 6, Article 20, of the Act (2003:389) on Electronic Communication, shall send a written notice on this to the person whom the information concerns not earlier than one month and not later than three months from the delivery of the information. Costs for the notice shall be compensated in accordance with the first Paragraph. *Act (2009:114).*

Article 9g. Notwithstanding the prohibition in Article 21 of the Act (1998:204) on Personal Data, personal data on violations of the law that constitute criminal offences pursuant to Article 9 may be processed if this is necessary in order for a legal claim to be established, asserted or defended. *Act (2009:114).*

Article 9h. Upon a petition of the plaintiff, the Court may, in infringement cases, order the party that has committed, or contributed to, the infringement to pay a pecuniary compensation for appropriate measures to disseminate information about the judgment in the case.

The provisions in the first Paragraph apply also to acts constituting attempts, and to preparatory acts, relating to infringements. *Act (2009:114).*

Article 11. Anyone who exploits a topography in violation of this Act shall pay a compensation for the exploitation to the holder of the right in the topography if and to the extent that this is reasonable.

Where the act has been carried out wilfully or with negligence, compensation shall be paid also for the further damage that the infringement has caused. When the amount of the compensation is decided, particular consideration shall be given to

1. lost profit,
2. profit that has been made by the party that committed the infringement,
3. damage caused to the reputation of the topography,
4. moral damage, and
5. the interest of the holder in that infringements are not committed. *Act (2009:114).*

Article 12. Upon petition by the holder of the right in the topography, the Court may, in so far as is reasonable, decide that the property in respect of which an infringement exists shall be recalled from the channels of commerce, be altered or destroyed or that some other measure shall be taken in respect of it. The same applies to implements that have been, or have been intended to be, used in connection with the infringement.

The provisions of the first Paragraph apply also to acts constituting attempts, and to preparatory acts, relating to infringements.

A decision on a measure pursuant to the first Paragraph must not imply that the party that holds the right in the topography has to pay a compensation to the party against which the measure is directed.

Any measure pursuant to the first Paragraph shall be paid for by the defendant where there are no specific reasons against it.

No decision referred to in this Article shall be rendered, if forfeiture or a measure for the prevention of wrongful acts shall be decided pursuant to Article 9 a or the Criminal Code. *Act (2009:114).*

Article 12 a. Where it can reasonably be assumed that someone has committed, or contributed to, an infringement, the Court may, for the purpose of preserving evidence relating to the infringement, order that an investigation be undertaken in respect of that party in order to search for objects or documents that can be assumed to be of importance for the investigation of the infringement (*infringement investigation*).

An order for an infringement investigation may be rendered only if the reasons speaking in favour of the measure outweigh the inconvenience or other harm that would be caused to the party against which it is directed or to any other opposite interest.

The provisions in the first and second Paragraphs apply also to acts constituting attempts, and to preparatory acts, relating to an infringement.

Article 12 b. An order for an infringement investigation is rendered by the Court where proceedings relating to the infringement are pending. Where legal proceedings have not yet been initiated, the issue of the competence of the Courts is governed by the provisions for civil infringement cases in the Code of Judicial Procedure. The provisions in the Code of Judicial Procedure relating to limitation of the competence of a Court in disputes which have to be initiated otherwise than before a Court shall, however, not apply.

Issues relating to infringement investigations may be taken up for consideration only upon a petition by the holder of the topography or by anyone who, on the basis of a license, has a right to exploit the topography. Where legal proceedings have not yet been initiated, the petition shall be submitted in writing.

The opposite party shall be given an opportunity to respond before an order for an investigation is rendered. Where a delay would entail a risk that objects or documents of importance for the inquiry into the infringement would be removed, destroyed or distorted, the Court may, however, immediately issue an order to be valid until otherwise decided.

In other respects, any issue relating to an infringement investigation which arises before legal proceedings have been initiated shall be processed in the same way as if the issue had arisen in the course of legal proceedings. *Act (2009:114)*

Article 12 c. An order for an infringement investigation may be rendered only where the applicant posts a security at the Court for the injury which may be caused to the opposite party. Where the applicant is not able to post a security, the Court may liberate him from it. As regards the type of security, the provisions of Chapter 2, Article 25, of the Enforcement Code shall apply. The security shall be examined by the Court, unless the opposite party has accepted it.

As regards appeals against the decision by the Court relating to an infringement investigation and as regards the proceedings in higher Courts the provisions concerning appeal against decisions prescribed in Chapter 15 of the Code of Judicial Procedure apply. *Act (1998:1459)*.

Article 12 d. Any order for an infringement investigation shall contain information about

1. the purpose of the investigation,
2. the objects and document which may be searched for, and
3. which venues may be searched.

Where necessary, the Court shall set also other conditions for the execution of the order. *Act (1998:1459)*.

Article 12e. An order for an infringement investigation is immediately enforceable. If an application for its execution has not been filed within one month from the order, the order becomes invalid.

Where the applicant does not, within a month from the conclusion of the execution, file an action or initiates in some other manner a proceeding relating to the issue, any measure which has been undertaken in the context of the execution of the infringement investigation shall immediately be invalidated to the extent possible. The same applies where an order for an infringement investigation is invalidated after the execution has been concluded. *Act (1998:1459)*.

Article 12 f. An order for an infringement investigation is executed through the local Enforcement Authority in accordance with the conditions prescribed by the Court and in applying Chapters 1 to 3, Chapter 17, Articles 1 to 5, and Chapter 18 of the Enforcement Code. The applicant's opposite party shall be informed about the execution only if the order for an infringement investigation has been rendered after hearing the opposite party. The Authority has the right to take photographs and to make video and sound recordings of such objects for which it is authorized to search. The Authority may also make copies of, and extracts from, such documents for which it is authorized to search.

An infringement investigation must not concern written documents referred to in Chapter 27, Article 2, of the Code of Judicial Procedure. *Act (2006:713)*.

Article 12 g. The opposite party has the right to summon an attorney when an order for an infringement investigation is to be executed. The execution must not begin before the attorney has arrived. This does, however, not apply if

1. the investigation is thereby unnecessarily delayed, or
2. there is otherwise a risk that the purpose of the measure will not be achieved.

In the course of the execution the Enforcement Authority is authorized to engage, as necessary, the services of an expert.

The Authority may permit the applicant or a representative of the applicant to attend the investigation in order to provide information. If such a permission is granted, the Authority shall see to it that the applicant or the representative is not being informed about the findings at the investigation more than can be justified by the execution. *Act (2006:713)*.

Article 12 h. Photographs and video and sound recordings of objects as well as copies of, and extracts from, documents shall be listed and shall be held available for the applicant and the opposite party. *Act (1998:1459)*.

Article 13. Property referred to in Article 12 may be seized, if it can reasonably be assumed that an offence under this Act is taking place. As regards such seizures, the provisions on seizures in criminal cases in general apply.

Article 14. *(Repealed by Act (2005:304))*.

Applicability of the Act

Article 15. The Government may, on condition of reciprocity or if it follows from such an agreement with a foreign State or Intergovernmental Organization that has been approved by the Parliament, provide for the applicability of the Act to States other than those that form part of the European Economic Area.

Transitional Provisions

Act 1992:1685

1. This Act enters into force on the date decided by the Government, when the Act (1986:1425) on the protection of topographies for semiconductor products shall cease to apply.

2. The Act applies also to topographies that have been created before the entry into force except as regards measures undertaken or rights acquired before. If copies of topographies have been produced before April 1, 1987, they may, however, notwithstanding Article 2, be further distributed.

Act 2005:304.

1. This Act enters into force on July 1, 2005.

2. As regards offences committed before this Act entered into force, the provisions of Article 12 in their previous wording apply.

Act 2009: 114

1. This Act enters into force on April 1, 2009.

2. The provisions of Articles 9 c – 9 f and 9 h shall not apply when the infringement or the attempt, or the preparations, in respect of the offence were committed before the entry into force.