

Pursuant to Article 82 paragraph 1 item 2 and Article 91 paragraph 1 of the Constitution of Montenegro, the Parliament of Montenegro in its 24th convocation, and at the fifth session of the second regular meeting in 2010 on 9 December 2010, hereby enacts the

LAW ON THE PROTECTION OF TOPOGRAPHIES OF INTEGRATED CIRCUITS

I. BASIC PROVISIONS

Subject-Matter

Article 1

This Law shall regulate the requirements for the protection of topographies of integrated circuits, the rights of their creators and the rights of holders of the protected topographies.

Right to Protection

Article 2

The right to the protection of the topography of an integrated circuit (hereinafter: the topography) shall belong to its creator.

If a topography has been created jointly by two or more creators, all creators of such topography shall be entitled to the protection right.

The employer of the creator of a topography or a person who has commissioned the creation of a topography shall be entitled to the protection of any such topography created in the course of the

creator's employment or on the basis of a commission, unless otherwise provided by the contract.

Definitions

Article 3

An integrated circuit, for the purposes of the present Law, shall mean a finished or semi-finished product intended for the performance of an electronic function and incorporating, in a piece of material, one or more interconnected layers consisting of integrated elements, one of which at least is an active element.

A topography, for the purposes of the present Law, shall be a unique set of three-dimensionally disposed images, however expressed or coded for each layer, comprising an integrated circuit.

Commercial use of topographies of integrated circuits, for the purposes of the present Law, shall mean the manufacture, sale, leasing or renting of a topography, or of an integrated circuit manufactured on the basis thereof, or the marketing of such topography or integrated circuit by other means, unless the use of the topography is subject to provisions concerning confidentiality.

Topographies Register

Article 4

The provisions of the law governing general administrative procedures shall be applicable to the procedure for topography registration and protection unless otherwise prescribed by the present Law.

The Register of Topographies (hereinafter: the Register) shall be maintained by the competent authority responsible for intellectual property issues (hereinafter: the competent authority).

The Register shall be open to the public.

Decisions handed down by the competent authority shall be subject to an appeal filed with the government department in charge of industrial property issues (hereinafter: the Ministry).

Equality of Foreign and National Persons

Article 5

Foreign legal and natural persons shall have the same rights as national legal and natural persons with respect to the registration and legal protection of topographies in Montenegro, provided this results from ratified international agreements or the principle of reciprocity.

Proof of the existence of reciprocity as referred to in paragraph 1 of the present article shall be provided by the person claiming reciprocity.

In any proceedings before a competent authority, a foreign legal or natural person shall be represented by a legal or natural person (hereinafter: the Representative) entered in the Register of Patent Representatives maintained by the competent authority or by a lawyer entered in the Montenegro Bar Association Register.

II. REQUIREMENTS FOR PROTECTION

Originality of Topography

Article 6

A topography may be protected if it is original.

A topography shall be considered original if it is the result of an intellectual effort on the part of its creator, and if it was not known at the time of its creation and/or was not in use in the integrated circuit industry.

If a topography consists of a combination of elements which are well known in the integrated circuit industry, protection shall be granted only for the combination of such elements, provided that it

meets the requirements referred to in the second paragraph of the present article.

Content, Limitations and Lapse of Exclusive Rights

Article 7

The holder of rights in a protected topography shall have an exclusive right to its commercial use.

The protected topography rights holder referred to in the first paragraph of the present article shall be entitled to prevent other persons from:

- 1) reproducing the protected topography in any way or in any form without authorization
- 2) importing or marketing without authorization a topography or an integrated circuit manufactured on the basis of a protected topography.

The exclusive rights referred to in the first paragraph of the present article shall not apply to the following:

- 1) a reproduction of a topography intended for non-commercial use
- 2) a reproduction of a topography intended for analysis, evaluation or familiarization with the blueprint, process, system or techniques used in the manufacture of a topography or in the topography itself.

The exclusive rights referred to in the first paragraph of the present article shall lapse when the protected topography and/or integrated circuit containing such topography is put on the market by the rights holder or by a person authorized by the rights holder.

III. REGISTRATION PROCEDURE

Filing of the Application

Article 8

The procedure for registering a topography shall be initiated by filing an application with the competent authority for the entry of the topography in the Register (hereinafter: the application).

The application referred to in the first paragraph of the present article shall consist of the application for the recognition of the right to a topography and the relevant annexes.

The application for the recognition of the right to a topography shall comprise:

- 1) the name of the topography
- 2) information about the applicant and the creator of the topography if the applicant is not the creator of such topography
- 3) the application's filing date
- 4) the date of the topography's creation if the topography has not been commercially exploited, or the date and place of its first commercial exploitation anywhere in the world.

The application for the recognition of the right to a topography shall be accompanied by the following annexes:

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

A separate application shall be filed for each topography.

The application and supporting documents for the topography's registration shall not be made available to the public before the date of publication of the topography's registration without the prior consent of the applicant.

The regulations issued by the Ministry shall prescribe the particulars of the content of the application referred to in the first paragraph of the present article.

Processing the Application

Article 9

An application shall be deemed correct and complete if it meets the requirements referred to in Article 8 of the present Law and if the prescribed administrative fee has been paid.

The competent authority shall enter on the application its filing date and application number.

If the competent authority establishes that the application is not correct and complete, it shall notify the applicant accordingly, requesting that he/she eliminate the deficiencies within sixty days of receiving the notification.

If the applicant remedies the deficiencies within the period referred to in the third paragraph of the present article, the application shall be deemed to have been correct and complete *ab initio*.

Should the applicant fail to remedy the deficiencies within the period referred to in the third paragraph of the present article, the application shall be deemed to have been withdrawn, and the competent authority shall take a decision rejecting the application.

At the request of the applicant, the competent authority may extend the time limit referred to in the third paragraph of the present article for a maximum of sixty days.

Proceedings before a competent authority shall be subject to the payment of administrative fees pursuant to the law governing administrative fees, procedural fees and fees for information services.

The regulations of the Government of Montenegro shall determine the amounts of procedural fees and of fees for information services.

Topography Registration

Article 10

The competent authority shall take a decision on the registration of a topography and shall enter the topography in the Register on the basis of a correct and complete application.

The date on which the decision to register a topography is issued shall be considered as the date on which the topography was entered in the Register.

The Register of Topographies shall contain in particular: registration number, application number and date, date of entry in the Register, information on the rights holder, information on the creator, and rights expiry date.

The data given in the decision referred to in the first paragraph of the present article shall be published in the Official Gazette issued by the competent authority.

Final court decisions and decisions of competent authorities shall be entered in the Register.

The regulations issued by the Ministry shall prescribe the content of the Register in more detail.

IV. TERM AND LAPSE OF PROTECTION

Commencement and Term of Protection

Article 11

Protection shall commence on the date of the topography's entry in the Register.

Rights in the topography shall subsist for ten years commencing on the day the application is filed with the competent authority.

If the topography has been used commercially for the first time anywhere in the world prior to the application's filing date referred to in the second paragraph of the present article, protection shall subsist for ten years from the date on which the topography was used for the first time.

The application may not be filed after the expiry of a two-year period following the first commercial use of the topography.

During the protection period the holder of the protected topography shall be entitled to mark the integrated circuit with the letter T.

Lapse of Protection

Article 12

Rights in the topography shall lapse on the expiry of a ten-year period commencing at the end of the calendar year in which the application was filed and/or at the end of the calendar year in which the topography was used commercially for the first time anywhere in the world.

The validity of topography rights shall expire before the period referred to in the first paragraph of the present article if the prescribed administrative fees have not been paid or if the holder of the protected topography waives his/her rights therein.

Notwithstanding the second paragraph of the present article, the rights in the protected topography shall lapse fifteen years after the topography was registered or coded for the first time if it has not been used commercially since and if the application referred to in Article 11 of the present Law has not been filed.

V. CIVIL LAW PROTECTION

Challenging the Right to Protection

Article 13

Any legal or natural person may file a complaint with the competent authority challenging the right to topography protection registered in the name of the defendant and seeking to establish:

- 1) that the topography is not original
- 2) that the images of the topography do not enable it to be identified.

Infringement of Rights

Article 14

The topography rights holder may file a complaint requesting the competent authority to confirm that the topography rights have been infringed.

In the complaint filed with the competent authority, the plaintiff shall be entitled to demand the following:

- 1) confirmation that trade mark rights have been infringed
- 2) termination of the infringement of trade mark rights
- 3) compensation for material damage and reasonable reimbursement of costs incurred as a result of the proceedings
- 4) a ban on further reproduction of the topography
- 5) a ban on the export and marketing of integrated circuits manufactured on the basis of the protected topography
- 6) publication of the judgment at the defendant's expense.

The section of the patent law relating to civil law protection shall apply to the topography rights infringement procedure.

Unintentional Infringement

Article 15

A person using an integrated circuit containing a protected topography for commercial purposes without being aware or in a position to be aware that the product's topography is protected shall not be prevented from using such integrated circuit commercially.

The topography rights holder may seek payment of adequate compensation for further use of an integrated circuit from the moment the person referred to in the first paragraph of the present article becomes aware or is in a position to become aware that the protected topography rights have been infringed.

The amount of the compensation referred to in the second paragraph of the present article shall depend on the extent to which the protected topography has been used commercially.

The provisions of the present article shall apply to the legal successor of the person referred to in the first paragraph of the present article.

The right to commercial use referred to in the first paragraph of the present article shall be limited to the import, sale or distribution of integrated circuits or other products containing integrated circuits.

VI. TRANSITIONAL AND FINAL PROVISIONS

Recognized Rights

Article 16

Topographies entered in the Register of Topographies at the Serbia and Montenegro Intellectual Property Institute (hereinafter: the Serbia and Montenegro Institute) and/or the Serbia Intellectual Property Institute (hereinafter: the Serbia Institute) up to

28 May 2008 shall be valid until the expiry of their validity, and/or until the expiry of the period for which the Serbia Institute has been paid the rights renewal fee pursuant to the law, there being no registration requirement or requirement to pay a special fee.

Topographies for which the competent authority has issued a topography recognition certificate in the form of a note affixed to a copy of the certificate issued by the Serbia and Montenegro Institute or the Serbia Institute shall be entered in the Register by the competent authority within one year from the date on which this Law enters into force, there being no requirement for the filing of a separate application.

The competent authority shall issue the rights recognition certificate for topographies for which rights recognition applications have been filed and enter those topographies in the Register within one year from the date on which the present Law enters into force.

Topography renewal applications and topography assignment applications for the topographies referred to in the first paragraph of the present article shall be deemed to be applications for entry in the Register.

The existence of a topography as referred to in the first paragraph of the present article shall be confirmed by a topography document and/or certificate issued by the Serbia Institute.

By-laws

Article 17

By-laws for the enforcement of the present Law shall be adopted within six months from the date on which this Law enters into force.

Until the adoption of the by-laws referred to in the first paragraph of the present article, the by-laws adopted under the Law on the Protection of Topographies of Integrated Circuits (Official Gazette of Serbia and Montenegro No. 61/04) shall apply.

Cessation of Applicability

Article 18

The Law on the Protection of Topographies of Integrated Circuits (Official Gazette of Serbia and Montenegro No. 61/04) shall cease to apply as of the date on which the present Law enters into force.

Entry into force

Article 19

This Law shall enter into force on the eighth day from the date of its publication in the Official Gazette of Montenegro.

SU-SK No. 01-589/6

Podgorica

9 December 2010

**PARLIAMENT OF MONTENEGRO
IN ITS 24TH CONVOCATION**

SPEAKER OF THE PARLIAMENT

Ranko Krivokapić