No. 399/2000 Coll.

Complete wording of Act

No. 529 /1991 Coll. on the Protection of Topographies of Semiconductor Products, as follows from amendments implemented by Act No. 116 / 2000 Coll.

ACT

on the Protection of Topographies of Semiconductor Products

Subject of Protection

Section 1

(1) Protection under this Act shall apply to topographies of semiconductor products (hereinafter "topographies") that are the result of its creator's own intellectual effort and which are not commonplace in the semiconductor industry. Protection under this Act shall also apply to the parts of topography that are independently usable and to representations used in manufacture of topographies.

(2) A topography consisting of commonplace elements shall be protected insofar as the combination of such elements meets the requirements of paragraph 1.

(3) Protection under paragraph 1 shall not apply to the technology used for producing the topography or for manufacturing the semiconductor product or to any information stored in the product.

Section 2

(1) For the purposes of this Act, a topography shall mean a series of interrelated images, fixed or coded in any manner, that represent a given three-dimensional arrangement of layers of which the product is made, where each image refers to a model of one layer of the semiconductor product or of a part thereof, or of a surface of the semiconductor product, or of a part thereof, at any individual manufacturing stage.

(2) For the purposes of this Act, a semiconductor product shall mean a final or intermediate form of a microelectronic product intended to fulfil an electronic function, consisting of a basic body containing a layer of a semiconducting material comprising at least one predetermined layer of conducting, insulating, or semiconducting material.

(3) For the purposes of this Act, the commercial exploitation shall mean the sale, rental, leasing, offer or any other method of commercial distribution of the topography or of the semiconductor product containing the topography or of the product containing the semiconductor product.

Right to Protection

Section 3

(1) The right to protection of the topography shall apply in favour of the creator or of his successor in title.

(2) If topography has been created in the course of employment or a similar relationship, the right to protection shall apply in favour of the employer or of the person by whom the topography has been commissioned, unless provided otherwise by contract.

Section 4

The right to protection of a topography shall be transferable.

Section 5

The right to protection of a topography shall expire after 15 years from the date of its creation, if the topography has not been commercially exploited, other than confidentially, or has not been filed with the Industrial Property Office (hereinafter "the Office").

Section 6

(1) The nationals of the Czech Republic, as well as persons having their residence or headquarters on the territory of a state being member of the World Trade Organisation, [1a] can claim their right of protection; if the state, where the applicant has his residence or headquarters is not member of the World Trade Organisation, [1a] the right of protection can only be awarded on condition of the reciprocity.

(2) If the persons referred to in Section 3 do not claim the right of protection, it can be claimed by persons, who with the exclusively authorisation by the person referred to in Section 3 have exploited as the first in the Czech Republic the topography, which has not yet been exploited anywhere in the world.

Application of Topography

Section 7

(1) Any person who wishes to apply for the right to topography protection (hereinafter "the applicant") shall file an application in writing in respect of the topography for which protection is sought (hereinafter "the application") with the Office. A separate application shall be filed for each topography.

(2) The application shall contain:

a) a request for registration in the Register of Topographies (hereinafter "the Register"), designating the title of the topography;

b) material identifying the topography, or the semiconductor product, which contains the topography;

c) statement of the date of the first public commercial exploitation of the topography, provided such date is earlier than the date on which the application has been filed;

d) documents establishing the right to topography protection under Section 4 and data giving evidence of the right to topography protection under Section 6.

(3) The applicant is entitled to declare some of the required material identifying the topography or its parts as trade or industrial secrets; in such case the file shall contain a

[1a] Agreement establishing the World Trade Organisation (WTO), published under No. 191/1995 Coll.

separate copy of those documents, wherein the corresponding parts designated as trade or industrial secrets have been made illegible. The material may not be designated as a trade or industrial secret in its entirety.

(4) The Office shall be empowered to establish detailed requirements for the application.

Section 8

Topography Registration

(1) If the application complies with the requirements of Section 7, the Office shall record the application in the Register. The Office shall issue to the applicant whose topography has been recorded in the Register (hereinafter "the topography owner") a registration certificate and shall publish the registration of the topography in the Official Bulletin of the Industrial Property Office (hereinafter "the Bulletin").

(2) Where the application does not comply with the requirements of Section 7, the Office shall invite the applicant to remedy the defects within a prescribed time limit. If the applicant does not remedy the defects within the prescribed time limit, the Office shall terminate the procedure. The applicant shall already be notified thereof by the Office when the time limit for remedying the defect is set. If the defect concerns the requirements of Section 7 paragraph 2 letters a) to c), the date of receipt of the rectified application shall be deemed the date of the application. If the application has been filed contrary to the provisions of Section 6 and Section 9 paragraph 1 letter a), the Office shall refuse registration.

(3) When the topography has been recorded in the Register, the Office shall make the material referred to in Section 7 paragraph 2 available to third parties for direct inspection. Third parties shall not be permitted to copy or reproduce such materials or parts thereof**.** The Office can only make available documents containing a trade secret, [1b] to third persons, if they are involved in the procedure on the cancellation of the topography from the Register according to Section 13, or based on the order of a court, if they are involved in the procedure on the infringement of rights under Section 10.

Section 9

Commencement and Duration of Protection

(1) Topography protection shall commence:

(a) on the date of the first commercial exploitation, other than confidential, of the topography, if the later has been duly filed with the Office within two years of such exploitation; or

(b) on the date of filing of regular application with the Office pursuant to the provisions of Section 7, provided the topography has not been previously exploited commercially (Section 11), other than confidentially.

(2) Protection of a topography shall expire 10 years from the end of the calendar year in which this protection came into existence.

(3) Failure to comply with the time limit stated in paragraph 1 letter a) may not be excused.

[1b] Sections 17 to 20 of the Commercial Code.

Effect of Protection

Section10

(1) Without the consent (license) of the topography owner, all persons shall be prohibited:

(a) from reproducing the topography or its independently usable parts, and from making representations of the topography for the purpose of manufacture;

(b) from producing the semiconductor product which contains the protected topography;

(c) from exploiting commercially the topography or the semiconductor product containing the protected topography or its independently usable parts or the representation of the topography, which serves for its manufacture or to import them for this purpose.

(2) The effects of protection can only be asserted with regard to third parties after the topography has been recorded in the Register.

3) If the owner of the topography proves that a third person, before the date referred to in Section 9 paragraph 1, fraudulently reproduced, commercially used, or imported the topography for these purposes, he is entitled to seek compensation against the third person.

Section 11

(1) The effect of topography protection shall not extend to:

a) activities carried out for non-commercial purposes;

b) reproduction of the topography for the purposes of analysis, research, development or teaching;

c) commercial exploitation of a topography that has been created as a result of analysis, research or development in accordance with letter b), above, if the new topography satisfies the requirements of Section 1 paragraph 1;

d) subsequent commercial exploitation of the topography or of a semiconductor product containing the protected topography, provided the topography or the product have been distributed by the topography owner or with his explicit consent.

(2) The effect of protection shall not extend to a person who acquires in good faith a semiconductor product containing a protected topography and distributed without the consent of the topography owner. From the date such person knows or there is a reasonable ground to believe that he can have known that the product contains the protected topography, the topography owner shall be entitled to claim reasonable compensation for continued commercial exploitation of the product; the extent of such exploitation shall determine the level of the compensation.

Section12

Deleted

Cancellation of Topography

Section13

(1) The Office shall cancel a topography in the Register, at the request by any person:

a) if the registered topography does not qualify for protection under the provisions of Section 1;

b) if the application has not been filed within the time limit stated in Section 9 paragraph 1 letter a) or the right to protection has expired under Section 5;

c) if the applicant or the topography owner is not entitled to protection under Section 6;

d) if the material required according to the provisions of Section 7 paragraph 2 letter b) is at variance with the semiconductor product attached to the application.

(2) Cancellation of a topography in the Register shall have the same effect as if the topography had never been registered.

Section14

(1) A request for cancellation of the topography in the Register shall be filed in writing with the Office in duplicate.

(2) A request for cancellation of the topography shall contain material evidence and shall state the grounds on which it is based.

(3) The Office shall invite the topography owner to file observations concerning a request for cancellation of the topography within a time limit prescribed by the Office. The topography owner shall file observations in writing and in duplicate.

(4) If a topography owner does not file observations within the prescribed time limit, the Office shall cancel the topography in the Register.

(5) If a topography owner files observations concerning a request for cancellation of his topography within the prescribed time limit, the Office shall dispatch his observations to the person who requested the cancellation and shall set a date for oral proceedings.

(6) Non-attendance of participants at the oral proceedings concerning the requested cancellation of a topography in the Register shall not prevent the Office from reaching a decision in the matter.

(7) Should the Office incur some costs in connection with the proceedings concerning a request for cancellation of a topography, the Office shall be entitled to a reimbursement of such costs by the unsuccessful party.

Section15

Annulment of Protection and Transfer

(1) Upon request, the Office shall annul the protection extended to a topography if the Office establishes on the basis of a court ruling that the topography owner was not entitled to the right of protection under Section 3.

(2) The request under paragraph 1, above, may be filed only by a person who, according to the court ruling, is entitled to protection for the topography, or his successor in title.

(3) Upon request, filed within one month after the court ruling has become legally valid, by a person who is entitled to protection for the topography and who may claim a right to protection under Section 6, the Office shall register that person as the topography owner. A request for transfer of topography ownership must be supported by a court ruling.

(4) If no request for a change of topography ownership under paragraph 3, above, is filed, the Office shall cancel the topography in the Register ex officio.

Section 16

Register and Particulars of Topographies Published in the Bulletin

(1) The Office shall keep the Register of Topographies and enter therein the particulars of application and registered topographies.

(2) The following items shall be entered in the Register for each topography:

a) number of registration (certificate);

b) date of registration;

c) date of publication of registration of the topography in the Bulletin;

d) title of the topography;

e) filing date of the application, the identification reference or the first commercial exploitation of the topography, whichever is earlier;

f) applicant (name or company), residence (headquarters) and representative, where appropriate,

g) topography owner (name or company), headquarters (residence) and representative, where appropriate;

h) assignment of topography;

i) license;

j) cancellation of topography;

k) annulment of protection or transfer of ownership;

l)expiration of protection.

(3) The Office shall publish in the Bulletin all matters relevant to the registered topographies and additional data of importance for the protection of the topographies, as well as official statements and decisions of fundamental nature.

Section 17

Archiving of Documents

(1) The Office shall keep the documents that permit identification of topographies under Section 7 paragraph 2 letter b) for 6 years after expiration of protection.

(2) If a filed application does not result in recording of the topography in the Register, the Office shall keep the documents stated in Section 7 paragraph 2 letter b) for 1 year after the date on which the final decision on the application has been made.

(3) After the time limits stated in paragraphs 1 and 2, above, have elapsed, the Office shall invite the person registered as the topography owner to collect the documents; if that person does not comply, the Office shall destroy the documents.

Common and Final Provisions

Section 18

(1) The general statutory rules on administrative procedure shall apply to procedure before the Office, subject to the exceptions laid down by this Act and excluding the provisions on suspension of procedure, declarations of honour, time limits for decisions and measures in the event of failure to act. [1]

(2) The provisions of the Act on Inventions, Industrial Design and Rationalisation Proposals [2] concerning the rights of co-owner(s) of a topography, compulsory licences and licensing agreements on exploitation of a topography, transfer of topographies, representation of persons in negotiations with and before the Office, termination of proceedings, registration of topographies kept secret according to special regulations, legal remedies, infringement of rights and right of information shall apply mutatis mutandis.

(3) The Office shall collect special fees for separate operations. [3]

Section 19

Protection under this Act shall apply only to topographies created after entry into force of this Act.

Section 20

The Act shall enter into force on January 1, 1992.

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The Act 116/2000 Coll. Amending some Acts on the Protection of the Industrial Property entered into force on May 10, 2000.

[1] Sections 29,39,49 and 50 of the Act 71/1967 Coll. on administrative procedure (Administrative Code)
[2] Sections 14 to 16, 20, 64, 68, 70, 71, 75 paragraph 1, Section 75a and 75b of the Act 527/1990 Coll. on inventions, industrial designs and rationalisation proposals in the wording of the Act 519/1991 Coll.
[3] Act 368/1992 on administrative fees as amended.