

REPUBLIC OF LITHUANIA
LAW
ON THE LEGAL PROTECTION OF
TOPOGRAPHIES OF SEMICONDUCTOR PRODUCTS

16 June 1998 No. VIII-791

Vilnius

(As last amended on 8 June 2006 – No. X-652)

CHAPTER I
GENERAL PROVISIONS

Article 1. Objective of the Law

1. This Law shall provide for the legal protection of topographies of semiconductor products and regulate the rights and duties of natural and legal persons arising after the creation and during the exploitation of topographies of semiconductor products.

2. The provisions of this Law have been harmonized with the legal act of the European Union specified in the annex to this Law.

Article 2. Definitions

1. **Semiconductor product** shall mean the final or an intermediate product having one or more layers of semiconducting material and one or more layers of conducting or insulating material, the layers being arranged in accordance with a predetermined three-dimensional pattern. This product is intended to perform an electronic function exclusively or together with other functions.

2. **Topography of a semiconductor product** (hereinafter - topography) shall mean a series of related images, representing the three-dimensional pattern of the layers of which a semiconductor product is composed. Each image has the pattern or part of the pattern of a layer. The image may consist of standard marking symbols, various conventional signs and other graphic images.

3. **Commercial exploitation** shall mean the sale, rental, leasing or any other method of commercial distribution, or an offer for these purposes.

CHAPTER II PROTECTION OF TOPOGRAPHIES

Article 3. The Object of Legal Protection

1. Legal protection provided by this Law shall apply only to such a topography which is original and is the result of its creator's intellectual effort and is not commonplace in the semiconductor industry.

2. Where the topography consists of elements that are commonplace in the semiconductor industry, it shall be protected only to the extent that the combination of such elements, taken as a whole, fulfils the conditions mentioned in paragraph 1.

3. The protection granted to a topography shall not be extended to any concept, process, system, technique or encoded information embodied in the topography.

Article 4. Subjects of the Rights

1. A natural person who has created a topography shall be the author of the topography. The author shall benefit from the right of authorship, the right to the author's name and the right to the inviolability of the topography. The author shall be extended exclusive rights to dispose of the topography subject to the registration of the topography at the State Patent Bureau.

2. Where a topography is the product of more than one author, the right shall apply in favour of all such persons.

3. Where a topography is created in the course of the creator's employment, the exclusive rights to the topography shall apply in favour of the creator's employer unless the terms of employment provide to the contrary.

4. Where a topography is created under a contract other than a contract of employment, exclusive rights to the topography shall apply in favour of a party to the contract by whom the topography has been commissioned, unless the contract provides to the contrary.

5. A person who has provided material, technical or organisational assistance to the creator of the topography or who has helped to prepare the registration documents needed for obtaining legal protection of the topography shall not be regarded a co-author.

Article 5. Exclusive Rights

The exclusive rights include the rights to authorise or to prohibit any of the following acts:

- 1) reproduction of a topography in any form and in any way;
- 2) commercial exploitation or the importation for that purpose of a topography or of a semiconductor product manufactured by using the topography.

Article 6. Acts not Infringing Exclusive Rights

1. Exclusive rights shall not apply to:

- 1) reproduction of a topography privately for non-commercial purposes;
- 2) reproduction of the topography for the purpose of analysing, evaluating or teaching;
- 3) the use for commercial purposes of a new topography created on the basis of an analysis and evaluation of the protected topography meeting the requirements of Article 3, paragraphs 1 and 2.

2. A person who, when he acquires a topography or a semiconductor product, does not know, or has no reasonable grounds to believe, that the product is protected by an exclusive rights shall not be prevented from commercially exploiting that product. If these acts are committed after that person knows, or has reasonable grounds to believe, that the topography or the semiconductor product is so protected, on the demand of the right holder the user must make the payment of adequate remuneration.

3. When the original or a copy of the topography or the semiconductor product manufactured by using the topography is distributed by the owner of the topography or when the original or a copy is distributed with his explicit consent the exclusive rights referred to in Article 5 paragraph 2 shall not be applied to the person who has obtained the topography.

Article 7. Duration of Exclusive Rights

1. The exclusive rights shall come into existence on the earlier of the following dates:

- 1) the date when the topography is first commercially exploited anywhere in the world;
- 2) the date when an application for registration of the topography has been filed at the State Patent Bureau.

2. The exclusive rights to the topography shall come to an end 10 years from the earlier of the following dates:

- 1) the end of the calendar year in which the topography or a semiconductor product manufactured using the topography is first commercially exploited anywhere in the world;
- 2) the end of the calendar year in which the application for registration has been filed with the State Patent Bureau.

3. Where a topography has not been commercially exploited anywhere in the world within a period of fifteen years from its first fixation protection of the rights to the topography shall come to an end unless an application for registration has been filed. The right to file an application for registration of the topography with the State Patent Bureau shall come to an end after the termination of the time limit specified in Article 10 paragraph 3.

Article 8. The Right of Early Exploitation

1. Natural and legal persons who are exploiting the topography legally or who are fully prepared for its exploitation before the date of the application for its registration or the date of its first commercial exploitation may continue exploitation of the topography as before or as they were planning to do.

2. The right of an early use may be transferred only together with the undertaking or with that part of the undertaking or its activities where the topography was used.

Article 9. Marking of the Topography

The topographies or semiconductor products manufactured using protected topographies may carry an indication - a capital T.

CHAPTER III REGISTRATION OF TOPOGRAPHIES

Article 10. Filing of the Application

1. A person wishing to register a topography must file an application with the State Patent Bureau. An application maybe filed by several legal or natural persons, or in common by natural persons and legal persons.

2. An applicant may file an application through his representative, who is entered on the list of patent attorneys of the Republic of Lithuania. An applicant who permanently resides in the Republic of Lithuania or has a head office, a registered branch or representative office in the Republic of Lithuania or in any other member state of the European Economic Area, may be represented by an employee authorised in accordance with the procedure laid down by the law. Natural or legal persons of foreign states, who do not permanently reside in the Republic of Lithuania or who do not have a head office, a registered branch or representative office in the Republic of Lithuania or in any other member state of the European Economic Area, shall file applications to the State Patent Bureau and perform all actions relating to the registration of a topography with the State Patent Bureau, including representation at the Appeals Division of the

State Patent Bureau, through the patent attorney who is entered on the list of patent attorneys of the Republic of Lithuania.

Foreign natural or legal persons shall file applications for registration with the State Patent Bureau and shall perform all the necessary formalities only through patent attorneys of the Republic of Lithuania.

3. The application must be filed within two years of the first commercial exploitation of the topography anywhere in the world.

4. The application shall contain:

1) the application for registration with the date of first commercial exploitation of the topography where it precedes the date of the application for registration;

2) the description of the topography and all the material identifying or exemplifying it;

3) a statement as to the date of first commercial exploitation of the topography where it precedes the date of the application for registration;

4) a receipt certifying payment of a fee;

5) an authorisation if the application is filed by a representative of the applicant;

6) an application for authorship or a document proving transfer of the author's rights.

5. The application for registration shall be in Lithuanian. If the other submitted documents are not in Lithuanian their translation into Lithuanian must be submitted to the State Patent Bureau within three months from the date of filing the application.

6. The date on which the State Patent Bureau receives the documents listed above in subparagraphs 1-4 of paragraph 4 of this Article shall be considered the date of filing the application.

7. Before making the application public, the applicant or his representative may supplement, particularise or alter the data in the submitted documents except the topography.

8. The State Patent Bureau shall ensure that that the materials submitted for the registration of the topography shall not be made public if the applicant states that it is a commercial secret. This provision does not prevent from submitting the material if this is an express request of judicial or any other competent authority.

9. Regulations for the application documents shall be specified by the State Patent Bureau.

Article 11. Expert Examination

1. The State Patent Bureau shall examine whether the application meets the requirements of paragraph 3, Article 3 and of Article 10 of this Law.

2. Upon finding that the application is not in conformity with the requirements specified in paragraph 3, Article 3 of this Law the State Patent Bureau shall adopt a decision to refuse to register the topography.

3. Upon finding that the application does not conform to the requirements specified in Article 10 of this Law the State Patent Bureau shall notify the applicant or his representative. If the requirements are not met within 3 months from the day of mailing such a notification the application shall be deemed to be withdrawn.

4. Upon adopting a decision to register the topography the State Patent Bureau shall, within 1 month, duly inform the applicant or his representative.

Article 12. Appeal

1. The applicant who contests the decision of the State Patent Bureau to deem the application to be withdrawn may, within 3 months from the day of mailing the application, appeal to the Appeals Division of the State Patent Bureau.

2. The appeal shall be filed in writing.

3. The procedure for stating the appeal and its examination shall be specified by the State Patent Bureau.

Article 13. Registration and Publication of the Topography

1. The topography shall be entered in the Topographies Register of the Republic of Lithuania.

2. The registration entry shall be published in the Official Bulletin of the State Patent Bureau.

3. Upon request, the State Patent Bureau shall issue an extract from the Topographies Register of the Republic of Lithuania to every person. The certified extract from the Register shall be an official document.

Article 14. Appeal

1. Interested persons, in accordance with the provisions of Article 3 of this Law, may file an appeal against the registration of the topography within 3 months from the registration of the topography. The procedure for filing an appeal and its examination shall be prescribed by the State Patent Bureau.

2. The appeal shall be filed in writing. The owner of the topography shall be entitled to submit a reasoned reply within 3 months from filing of the appeal.

3. If the Appeals Division dismisses the appeal, the State Patent Bureau shall duly notify the person who filed the appeal and the owner of the contested topography.

4. If the Appeals Division finds the appeal valid, the registration shall be cancelled. The decision of the State Patent Bureau shall be published in the Official Bulletin.

Article 15. Issuance of the Certificate

If, under the conditions specified in Article 14, no appeal is filed or if the appeal is dismissed the State Patent Bureau shall issue to the owner the certificate of registration of the topography.

CHAPTER IV TRANSFER OF EXCLUSIVE RIGHTS

Article 16. Transfer of Exclusive Rights

1. Exclusive rights to the topography shall be transferred to another person, in full or in part, under a written agreement.

2. The agreement on the transfer of exclusive rights to the topography is valid subject to entry of the agreement into the Topographies Register of the Republic of Lithuania.

3. Exclusive rights to the topography may be inherited in the manner prescribed by law.

Article 17. Licensing of the Exploitation of the Topography

1. The owner of the topography shall be entitled to grant to another person an exclusive or non-exclusive licence for the exploitation of the topography.

2. The licence agreement shall be entered in the Topographies Register of the Republic of Lithuania and shall become effective from the day of recording the entry.

CHAPTER V
INVALIDATION OF THE REGISTRATION OF THE TOPOGRAPHY.
CANCELLATION OF THE REGISTRATION

Article 18. Invalidation of the Registration of the Topography

1. Following the issuance of a certificate, the court may invalidate registration of the topography at the request of an interested person.
2. Upon passing an order to invalidate registration of the topography, the court shall mail a copy of the order to the State Patent Bureau. The latter shall publish the invalidation of the topography registration in the Official Bulletin.

Article 19. Waiver of Exclusive Rights

1. The owner of the topography may waive the exclusive rights by submitting a written application to the State Patent Bureau to cancel the registration of the topography. The registration shall be cancelled from the day of receipt of the application by the State Patent Bureau.
2. Cancellation of the registration of the topography shall be published in the Official Bulletin of the State Patent Bureau.

CHAPTER VI
DISPUTE SETTLEMENT. ENFORCEMENT OF RIGHTS

Article 20. Institutions having Jurisdiction in Disputes relating to the Legal Protection of Inventions

Disputes relating to the registration and exploitation of the topography shall be settled by the following authorities:

- 1) disputes relating to the registration of the topography before the issuance of the certificate - by the Appeals Division of the State Patent Bureau;
- 2) disputes relating to the decisions of the Appeals Division of the State Patent Bureau and other disputes arising after the issuance of the certificate - by the Vilnius County Court.

Article 21. Enforcement of the Rights

1. The applicant, the owner of a topography or their successors in title, when enforcing their rights, and the licensees of exclusive licences, when protecting the rights granted to them, shall be entitled to apply to the court in accordance with the procedure laid down by the law and to seek:

- 1) recognition of the rights;

- 2) an injunction intended to terminate infringing activities;
- 3) prohibition to carry out activities by reason of which the rights may be actually infringed or the prejudice suffered;
- 4) compensation for the material damage, including lost income and other incurred expenses;
- 5) application of other remedies set out by this Law and other laws.

2. In order to ensure enforcement of an injunction intended to forbid the continuation of infringing activities, as well as an injunction intended to prevent activities by reason of which the rights may be actually infringed or the prejudice suffered, the court may, upon request of the persons referred to in paragraph 1 of this Article, order an infringer to lodge adequate assurance intended to ensure compensation for any possible prejudice.

3. Where there is no fault in the activities, in connection with the infringement of the rights established by this Law, of a person in respect of whom an injunction intended to terminate the continuation of infringing activities or the corrective measures specified in Article 21⁴ are applied, the court may, at the request of this person, order him to pay pecuniary compensation to the injured party, if execution of the measures referred to in this paragraph of the Article would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonable and satisfactory.

4. The persons referred to in paragraph 1 of this Article, when enforcing their rights, shall be entitled to apply to the court for an injunction against intermediaries whose services are used by a third party to infringe the rights established by this Law. Such an injunction shall include the suspension of communication of information related to the infringement of the rights established by this Law or, if an intermediary is capable of performing this technically, the elimination of information infringing the said rights, or prohibition to obtain information infringing these rights. Such compliance with the judicial decision shall not exempt an intermediary from the responsibility for any act or omission related to keeping or communication of such information, which was the case before coming into effect of this decision.

Article 21¹. Right of information

1. When hearing a case concerning an infringement of the rights established by this Law, the court, in response to a justified request of the claimant, may, in the context of proceedings, order the persons to immediately provide information on the origin and distribution networks of the products which infringe the rights of the owner of topographies, particularly:

1) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the products infringing the rights established by this Law, as well as the wholesalers and retailers for whom the indicated objects have been intended;

2) information on the quantities of the produced, manufactured, delivered, received or ordered products which infringe the rights established by this Law, as well as the price which has been obtained or ought to have been obtained for those products.

2. The infringers of the rights established by this Law, other persons who were in possession on a commercial scale of the goods infringing the rights established by this Law, who were using on a commercial scale the services infringing the rights established by this Law or who were providing on a commercial scale the services which a third party used to infringe the rights established by this Law, as well as those who were indicated by the said persons as being involved in the production, manufacture or distribution of the goods infringing the rights established by this Law or the provision of the services infringing the rights established by this Law may be ordered to provide information referred to in paragraph 1 of this Article.

Article 21². Evidence

1. On application by a party which has presented reasonably available evidence sufficient to support its claims, and has, in substantiating those claims, specified evidence which lies in the control of the opposing party, the court may, in accordance with the procedure laid down by the Code of Civil Procedure, order that such evidence be presented by the opposing party, subject to the protection of confidential information. A reasonable sample of a substantial number of products shall be considered by the court to constitute reasonable evidence of the infringement of the rights established by this Law.

2. In the case of an infringement of the rights established by this Law, which has been committed on a commercial scale and under the conditions specified in paragraph 1 of this Article, the court may, in accordance with the procedure laid down by the Code of Civil Procedure, order that banking, financial or commercial documents be communicated by the opposing party, subject to the protection of confidential information. In the event of failure to present such evidence without strong reasons within the time limit set by the court or where the use of the evidence is denied, the court shall have the right to take a decision on the grounds of the evidence presented to it.

Article 21³. Provisional measures and measures for preserving evidence

1. Application of provisional measures and measures for preserving evidence shall be regulated by the Code of Civil Procedure and this Law.

2. If there are sufficient grounds to suspect that the rights established by this Law have been infringed, the court may, in accordance with the procedure laid down by the Code of Civil Procedure, apply provisional measures necessary to prevent imminent infringing activities, to promptly terminate infringing activities and to enforce a final decision of the court, that is:

1) to forbid persons to commit an imminent infringement of the rights established by this Law;
2) to order persons to temporarily terminate an infringement of the rights established by this Law;

3) to forbid an intermediary to provide services to a third party who uses such services by infringing the rights established by this Law;

4) to seize copies of the subject matters of the rights established by this Law as well as goods, prevent their entry into or remove them from the channels of commerce, if it is suspected that they are infringing the rights established by this Law;

5) to seize the property of the persons suspected of infringing the rights established by this Law, which is possessed by the said persons or a third party, including the accounts of banks and other credit institutions; also to order the communication of bank, financial or commercial documents, or appropriate access to these documents in the case of an infringement committed on a commercial scale;

6) to apply other measures laid down by the Code of Civil Procedure.

3. If the provisional measures which are referred to in subparagraphs 1 and 2 of paragraph 2 of this Article and which have been applied are being infringed and the infringement continues, the court may order the persons suspected of committing the infringement to lodge adequate assurance intended to ensure that a person who has applied for provisional measures will be compensated for a possible prejudice.

4. The court shall have the right to require the person who applies for provisional measures to provide any reasonably available evidence in order to satisfy the court with a sufficient degree of certainty that the said person or the person in whose interest provisional measures are applied for is the holder or user of the rights established by this Law and that the applicant's right is being infringed, or that such infringement is imminent.

5. The court may, on application by a person who has presented reasonably available evidence to support his claims that the rights established by this Law have been infringed or are about to be infringed, may apply provisional measures or measures for preserving evidence, subject to the protection of confidential information, thus preserve relevant evidence in respect of the alleged infringement, that is:

1) to describe in detail the products (goods) infringing the rights established by this Law and to seize them, or only to describe them;

2) to seize the products (goods) infringing the rights established by this Law and, in appropriate cases, the materials and implements used in the production and/or distribution of such products (goods) as well as the documents relating thereto;

3) to apply other prompt and effective provisional measures provided for in the Code of Civil Procedure.

6. Provisional measures and measures for preserving evidence may be applied without the defendant having been notified or heard, in particular where any delay would cause irreparable harm to the applicant or where there is a demonstrable risk of evidence being destroyed. Where provisional measures and measures for preserving evidence are applied without the defendant having been notified and heard, the defendant must be given notice without delay, i.e. after the execution of such measures at the latest. At the request of the parties, including a right to be heard, the provisional measures and measures for preserving evidence may be reviewed with a view to deciding, within a reasonable period after the notification of application of the measures, whether such measures must be modified, revoked or confirmed.

7. Where the applied provisional measures or measures for preserving evidence are revoked by the court or where they lapse due to any act or omission by the person who applied for them, or where a decision of the court establishing that there has been no infringement or threat of infringement of the rights established by this Law comes into effect, or where the person, who has applied for provisional measures or measures preserving evidence, does not institute proceedings within a period determined by the court, the defendant shall be entitled to request compensation for any injury caused by application of those measures.

Article 21⁴. Corrective measures

1. The persons specified in paragraph 1 of Article 21 of this Law shall be entitled to apply to the court and seek that goods be recalled, removed from the channels of commerce in such a manner as to avoid any harm being caused to these persons and to ensure the protection of their rights (e.g. to

remake the infringing goods into other goods or to apply similar measures), or to request that the goods, which the court has found to be infringing the rights established by this Law and, in appropriate cases, the materials and implements principally used in the creation or manufacture of the specified objects be destroyed.

2. The measures referred to in paragraph 1 of this Article shall be applied regardless of other requirements of a person, applying for these measures, for compensation of the prejudice suffered as a result of the infringement of his rights. Such measures shall be carried out at the expense of the infringer, without compensating and taking into account proportionality between the seriousness of the infringement and the measure applied as well as the legitimate interests of third parties.

Article 21⁵. Recovery of material damage

1. The procedure for recovery of material damage shall be regulated by the Civil Code and this Law.

2. When assessing the amount of the actual damage (losses) suffered as a result of the infringement of the rights established by this Law, the court shall take into account the substance of the infringement, the amount of the inflicted damage, lost income, incurred expenses, and other important circumstances. Profit made by the infringer may, at the request of the persons specified in paragraph 1 of Article 21 of this Law, be recognized as losses. Products (goods) infringing the rights established by this Law may be transferred to the holders of those rights upon their request.

3. The amount of income lost by the persons specified in paragraph 1 of Article 21 of this Law shall be set by taking into account the amount of income which would have been made if the topography had been used legally (i.e. taking account of the royalties which are usually paid for the legal use of the topography), as well as the concrete circumstances which might have created conditions for making income (works performed by the subjects of the rights, implements used, negotiations for conclusion of contracts concerning the use of the topography, etc.).

4. Instead of the recovery of the damage (losses) actually suffered by reason of the infringement of the rights established by this Law, the persons specified in paragraph 1 of Article 21 of this Law may claim the payment which would have been due if the infringer had used the topography legally (i.e. had acquired permission), and where the infringement has been committed intentionally or through gross negligence – the said persons may claim up to twice the amount of such payment.

5. Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing the rights established by this Law (i.e. there is no fault in his actions), the court may, upon request of the persons specified in paragraph 1 of Article 21 of this Law, order the recovery of profit made by the infringer. A total that the infringer has saved and/or made by infringing the rights established by this Law shall be regarded as the profit made by the infringer. The profit made by the infringer shall be ascertained and recovered regardless of whether or not the subject of the rights would have made the same profit as the infringer. When ascertaining the profit made by the infringer, the subject of the rights must provide only the evidence that would confirm the gross income received by the infringer; the amount of net profit of the infringer (after deducting the expenses) must be proved by the infringer.

Article 21⁶. Publication of judicial decisions

The court which takes a decision on the infringement of the rights established by this Law may, at the request of the persons specified in paragraph 1 of Article 21 of this Law, order the infringer to disseminate at his own expense the information concerning the adopted decision, including disseminating the decision in full or in part in the mass media or by any other means. A judicial decision or information concerning an adopted decision may be announced after the coming into effect of the decision, unless otherwise established by the court. The manner and extent of dissemination of a judicial decision shall be laid down in this judicial decision. The persons specified in paragraph 1 of Article 21 of this Law may request that the infringer pay in advance into the bank account, indicated by the court, a sum of money necessary to disseminate the information concerning an adopted judicial decision or an adopted judicial decision itself.

Article 21⁷. Application of customs supervision measures

Customs supervision measures determined by legal acts of the European Union and the Republic of Lithuania must be applied to the products (goods) which infringe the rights established by this Law) and are imported from third countries to the Republic of Lithuania or are exported from it to third countries.

CHAPTER VII INTERNATIONAL AGREEMENTS

Article 22. International Agreements. Rights of Natural and Legal Persons of Foreign Countries

1. Where international agreements signed by the Republic of Lithuania set forth stipulations different from this Law or other statutory acts, the stipulations of international agreements shall apply.

2. Natural and legal persons of foreign countries shall exercise all the rights provided by this Law and other statutory acts of the Republic of Lithuania regulating protection of topographies.

CHAPTER VIII FINAL PROVISIONS

Article 23. Entry into Force

1. Protection provided by this Law shall not be applicable to the topographies which were exploited for commercial purposes for over 2 years prior to the entry of this Law into force.

2. The Law shall enter into force from December 1, 1998.

I promulgate this Law passed by the Seimas of the Republic of Lithuania.

PRESIDENT OF THE REPUBLIC

VALDAS ADAMKUS

Annex to
Republic of Lithuania Law on
the Legal Protection of Topographies of Semiconductor Products

EU LEGAL ACTS IMPLEMENTED BY THE LAW ON THE LEGAL PROTECTION OF TOPOGRAPHIES OF SEMICONDUCTOR PRODUCTS

Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.
