

On the legal protection of integrated circuits topologies

Unofficial translation

Law of the Republic of Kazakhstan of June 29, 2001 N 217.

Unofficial translation

Article 1. Basic definitions used in this Law

The following basic definitions are used in this Law:

- 1) bulletin - the official periodical on the protection of integrated circuits topologies;
- 2) an integrated circuit - a microelectronic product of final or intermediate form, designed to perform the functions of an electronic circuit, which elements and connections are inseparably formed in the volume and (or) on the surface of the material on which basis the product is made;
- 3) the topology of an integrated circuit (hereinafter - the topology) - spatial-geometric arrangement of the set of elements of the integrated circuit and connections between them fixed on the material carrier;
- 4) the right holder - the author, his successor, as well as any individual or legal entity who has the exclusive right obtained by virtue of the law or the contract;
- 5) license contract - an contract under which the right holder (licensor) grants the other party (licensee) the right to use temporarily the topology in a certain way;
- 6) patent attorneys - citizens of the Republic of Kazakhstan who, in accordance with the legislation of the Republic of Kazakhstan, have been granted the right to represent individuals and legal entities before the authorized body;
- 7) the exclusive right to topology - the property right of the right holder to use the topology in any way at his discretion;
- 8) use of topology – application, importation, offer for sale, sale or other introduction of topology, an integrated circuit with this topology or a product, including such an integrated circuit, in civil circulation, carried out for commercial purposes, unless otherwise provided by this Law;
- 9) the authorized body - the central executive body, carrying out, within its authority, the leadership in the field of legal protection of the integrated circuits topologies.

Footnote. Article 1 is in the wording of the Law of the Republic of Kazakhstan dated 10.07.2012 No. 34-V (shall be enforced from the date of its first official publication).

Article 2. Relations regulated by this Law

This Law regulates property as well as related with it personal non-proprietary relations arising in connection with the creation, legal protection and use of topologies.

Article 3. Legislation on the protection of topologies

1. Legislation on the protection of topologies is based on the Constitution of the Republic of Kazakhstan and consists of the norms of the Civil Code of the Republic of Kazakhstan, this Law and other regulatory legal acts of the Republic of Kazakhstan.

2. If an international treaty ratified by the Republic of Kazakhstan establishes other rules than those contained in this Law, the rules of the international treaty shall be applied.

Article 4. Authorized body

The competence of the authorized body shall include:

1) participation in the implementation of state policy in the field of legal protection of rights to topologies;

2) development and approval of:

the rules of examination of applications for registration of topologies;

the rules of entering topologies in the State register of integrated circuits topologies and issuing of certificates of registration, certificates of authors;

the rules of registration in the State register of integrated circuits topologies of the exclusive right transfer, granting the right to use topologies;

the rules for provision of extracts from the State register of integrated circuits topologies; the rules for consideration of objections by the appeals council;

the provisions on the attestation commission;

the provisions on the appeals council;

the provisions on the appeals commission;

3) determination of the order of publication in the bulletin of information on registered topologies;

4) certification of individuals applying for the activity of a patent attorney, their registration in the register of patent attorneys, exclusion from the register of patent attorneys, recognized as invalid of the certificate of a patent attorney and cancellation of information in the register of patent attorneys;

5) organization of the activity of the certification commission, the appeals council and the appeals commission;

6) carrying out other powers provided for by this Law, other Laws of the Republic of Kazakhstan, acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

Footnote. Article 4 is in the wording of the Law of the Republic of Kazakhstan dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after its first official publication); as amended by the Law of the Republic of Kazakhstan dated 20.06.2022 № 128-VII (shall enter into force upon expiry of sixty calendar days after the day of its first official publication).

Article 4-1. Expert organization

1. An expert organization established by the decision of the Government of the Republic of Kazakhstan in the organizational and legal form of a republican state enterprise on the right of economic management, subordinated in its activity to the authorized body shall:

- 1) examine applications for registration of topologies;
- 2) enter the topologies in the State register of integrated circuits topologies and issue certificates of registration, certificates of authors;
- 3) register in the State register of integrated circuits topologies a transfer of the exclusive right, granting the right to use topologies;
- 4) keep the State register of integrated circuits topologies, a bulletin and place them on its Internet resource;
- 5) provide extracts from the State register of integrated circuits topologies;
- 6) publish in the bulletin of the expert organization information on the registered topologies;

7) excluded by the Law of the RK dated 29.06.2020 № 352-VI (shall enter into force upon expiry of ten calendar days after the day of its first official publication).

2. The expert organization in coordination with the authorized body shall approve the prices of services in the field of topologies protection on condition of ensuring full compensation of the costs incurred by this organization for their rendering, break-even of its activity and financing at the expense of own income.

Footnote. The Law is supplemented by Article 4-1 in accordance with the Law of the Republic of Kazakhstan dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after its first official publication); as amended by the Law of the RK dated 29.06.2020 № 352-VI (shall enter into force upon expiry of ten calendar days after the day of its first official publication).

Article 5. Terms of legal protection of topologies

1. The legal protection provided by this Law extends only to the original topology.
2. The original one is the topology created as a result of the creative activity of the author. The topology is recognized as original until proven otherwise.
3. Topologies, which set of elements is well known to developers and manufacturers of integrated circuits on the date of its creation, shall not be given legal protection by this Law. Topologies consisting of elements that are well known to developers and manufacturers of integrated circuits on the date of its creation shall be given legal protection only if the set of such elements as a whole meets the requirements of paragraph 2 of this Article.
4. The legal protection provided by this Law shall not extend to ideas, methods, systems, technology or coded information that may be embodied in a topology.

Article 6. Authorship on the topology

1. The author of a topology is an individual whose creative work it is.

2. If several individuals participated in the creation of the topology, all of them are considered to be its authors (co-authors). The procedure for the use of the rights belonging to the co-authors is determined by contract between them.

3. Individuals who did not make a personal creative contribution to the creation of the topology, but who provided the author only technical, organizational or material assistance or who contributed to the design of the right to it and its use, shall not be recognized as authors

4. The right of authorship on the topology shall be an inalienable personal non-proprietary right and is protected indefinitely.

Article 7. Exclusive right to topology

1. The exclusive right to topology belongs to the author of the topology or to the employer, or the customer in the cases provided for in Article 9 of this Law, or their successors.

2. The right holder shall have the right to use the topology in any way at his discretion, in particular, by making integrated circuits with such a topology, including the right to prohibit other people from using this topology without the relevant permission of the right holder, except as provided for in Article 10 of this Law.

3. The procedure for the use of the exclusive right belonging to several authors of the topology or other right holders shall be determined by contract between them.

In the absence of such a contract, each of them may use the protected topology at his own discretion, but does not have the right to grant a license to it or transfer the exclusive right to another person without the consent of the other right holders.

4. A violation of the exclusive right to a topology shall be the performance of the following actions without the permission of the right holder:

1) copying the topology in whole or in part by incorporating it into an integrated circuit or in any other way, with the exception of copying only that part that is not original;

2) application, import, offer for sale, sale and other introduction of topology into civil circulation, an integrated circuit with this topology or a product including such an integrated circuit.

Article 8. Transfer of the exclusive right

1. The exclusive right to the topology may be transferred in whole or in part to another person under the contract, as well as transferred in the order of universal succession by inheritance and as a result of reorganization of the legal entity - the right holder.

2. Under the license contract, the right holder (licensor) shall grant the other party (licensee) the right to use temporarily the topology in a certain way.

3. The license contract may provide for the provision of a licensee:

1) the right to use the topology while retaining the ability of the licensor to use it and the right to issue a license to others (a simple, non-exclusive license);

2) the right to use the topology without preserving the licensor's ability to use it and without the right to issue a license to others (exclusive license);

3) is excluded by the Law of the Republic of Kazakhstan dated 21.01.2019 No. 217-VI (shall be enforced upon expiry of ten calendar days after its first official publication).

If the license contract does not provide for the type of license, it shall be assumed as simple, non-exclusive.

4. The contract on granting by the licensee to another person (sub-licensee) of a non-exclusive license to use the topology (sub-license contract) may be concluded only in cases stipulated by the license contract.

Responsibility to the licensor for the actions of the sublicensee is the licensee, unless otherwise provided by the license contract.

The licensee shall be liable to the licensor for the actions of the sublicensee, unless otherwise provided in the license contract.

5. The contract on assignment of the exclusive right to topology, licensing and sub-licensing contracts shall be concluded in written form.

The contract on assignment of the exclusive right to a registered topology, licensing and sublicensing contracts shall be subject to registration with an expert organization.

The contract on assignment of the exclusive right to a topology, which registration has not been carried out, licensing and sub-licensing contracts may be registered with an expert organization by an agreement of the parties.

Non-compliance with the written form and (or) registration requirements shall entail the nullity of the contract on the transfer of the exclusive right.

Registration in the State register of integrated circuits topologies, introduction of changes to it, correction of technical errors, and cancellation of registration shall be carried out in the manner established by this Law.

Footnote. Article 8 as amended by the Law of the Republic of Kazakhstan dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after its first official publication); dated 21.01.2019 No. 217-VI (shall be enforced upon the expiry of ten calendar days after its first official publication).

Article 9. The exclusive right to topology, created in the order of performance of official duties and under the contract with the customer

1. The exclusive right to a topology created in the order of performance of official duties or a specific task of the employer belongs to the employer, unless otherwise provided by the contract between him and the author.

2. The size, conditions and procedure for paying remuneration to the author for the topology specified in paragraph 1 of this Article shall be determined by the contract between the author and the employer. If it is impossible to measure the contribution of the author and the employer to the creation of the topology, the size, conditions and procedure for paying remuneration to the author shall be determined by the legislative acts of the Republic of Kazakhstan.

3. The author may assume under the contract the obligation to create a topology and provide the customer, who is not his employer, with exclusive right to the topology.

Footnote. Article 9 as amended by the Law of the Republic of Kazakhstan dated 31.10.2015 No. 382-V (shall be enforced upon expiry of ten calendar days after its first official publication).

Article 10. Actions that are not recognized as violation of the exclusive right of the right holder

Not recognized as a violation of the exclusive right of the owner:

1) commission of the actions specified in subparagraph 2) of paragraph 4 of Article 7 of this Law in respect of integrated circuits with illegally reproduced topology or products containing such integrated circuits, if the person carrying out such use did not know and should not have known that these integrated circuits or products containing such integrated circuits are manufactured and distributed in violation of the exclusive right to topology. After receiving the appropriate notification from the right holder, this person shall have the right to take any action in relation to the existing stock or ordered before that time, products subject to payment to the right holder adequate remuneration, which would be paid under free licensing of the topology;

2) use of topology for personal purposes without profit, as well as for the purposes of evaluation, analysis, research or training;

3) inclusion of the protected topology in the other original topology created on the basis of its assessment or analysis and performance of actions specified in paragraph 4 of Article 7 of this Law regarding such topology;

4) distribution of an integrated circuit with a protected topology entered into civil circulation by legal means;

5) performance of the actions specified in paragraph 4 of Article 7 of this Law in respect of the identical original topology, independently created by another author of the topology.

Article 11. Registration of the topology

1. The author of the topology or other right holder shall have the right to register the topology by submitting an application for registration to an expert organization.

The application for registration of topology and the documents attached to it shall be submitted in Kazakh or Russian. In case of submission of these documents in another language, the expert organization shall have the right to demand translation of the information contained in the documents attached to the application. The translation must be submitted simultaneously with the application or within two months from the date of receipt of the application.

2. Application for registration can be made in a period not exceeding two years from the date of the first use of the topology, if it has taken place.

3. Application for registration must refer to one topology and shall contain:

- 1) an application for registration of the topology indicating the author and the persons in whose name the registration is requested, as well as their place of residence or location, date of first use of the topology, if it has taken place;
- 2) materials identifying the topology, including the abstract;
- 3) a letter of attorney if the application for registration is filed through a representative;
- 4) (is excluded)

Requirements for the preparation and design of an application for registration shall be established by the authorized body.

4. On the received application for registration of the topology, an examination shall be carried out.

If the result of the examination is positive, the topology shall be registered in the State register of integrated circuits topologies and a certificate of registration shall be issued.

Before registration, the applicant shall have the right to add, clarify and correct the application materials.

The author of the topology, who is not the right holder, shall be issued the author's certificate by the expert organization.

5. Information entered into the State register of integrated circuits topologies shall be considered reliable until the contrary is proved.

The applicant shall be responsible for the accuracy of the information.

6. Is excluded by the Law of the Republic of Kazakhstan dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after its first official publication).

Footnote. Article 11 as amended by the Law of the Republic of Kazakhstan dated 09.07.2004 N 586; dated 22.11.2005 N 90 (the procedure of enforcement, see Article 2 of the Law); dated 12.01.2012 No. 537-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after its first official publication); dated 20.06.2022 № 128-VII (shall enter into force upon expiry of sixty calendar days after the day of its first official publication).

Article 12. Warning marking

To notify about their rights, the right holder shall have the right to use warning labels in the form of a capital T, the start date of the exclusive right to the topology, and information allowing identification of the right holder on the products including topology.

Article 13. Duration of the exclusive right to topology

1. The exclusive right to topology is valid for ten years, starting from the date of registration of the topology.

2. If registration of the topology has not been carried out, the specified ten-year period shall be calculated from the documentary confirmed date of first use in any country of the world of this topology or an integrated circuit with this topology.

3. When registering the topology, which use began before the date of registration of the topology, the duration of the exclusive right shall be calculated in accordance with paragraph 2 of this Article.

4. The appearance of an identical original topology, independently created by another author, shall not interrupt or terminate the validity period of the exclusive right specified in paragraphs 1, 2 of this Article, and the total period of validity of the exclusive right to topology cannot exceed ten years.

Article 14. Protection of the rights to topology

1. Protection of the rights to topology shall be carried out by the court by:

- 1) recognition of rights;
- 2) restoration of the situation, existed before the violation of the right;
- 3) suppression of actions infringing the right or creating the threat of its violation;
- 4) compensation by the violator of the damage caused and compensation for non-pecuniary damage;
- 5) collection of income received by the violator of the exclusive right, instead of reimbursement of losses;
- 6) payments by the violator of the exclusive right of compensation in the amount of from ten to fifty thousand monthly calculated indicators established by the legislation. The amount of compensation shall be determined by the court instead of reimbursement of losses or collection of income;
- 7) destruction or seizure in favor of the right holder of integrated circuits and products, including such circuits, introduced into civil circulation or stored for this purpose and recognized as infringing the exclusive right, as well as materials and equipment specifically designed for their manufacture;
- 8) mandatory publication of the violation with inclusion in it of information about who owns the violated right;
- 9) adoption of other measures provided for by legislative acts related to protection of the rights to topology.

2. Requirements for the violator of the exclusive right may be also declared by the licensee if it is provided by the license contract.

Article 15. Patent attorneys

1. A patent attorney shall have the right to be a capable citizen of the Republic of Kazakhstan, permanently residing in its territory, having a higher education, having passed certification and registered in the register of patent attorneys.

Certification of individuals applying for the activity of a patent attorney shall be carried out in the form of testing for knowledge of the legislation of the Republic of Kazakhstan and international treaties ratified by the Republic of Kazakhstan in the field of intellectual property.

The certification committee, created under the authorized body, shall consist of an odd number of employees of the authorized body.

The procedure for certification of individuals applying for the activity of a patent attorney, registration in the register of patent attorneys and introduction of amendments to it shall be determined by the authorized body.

The register of patent attorneys shall be posted on the Internet resource of the authorized body.

2. The following individuals shall not be allowed for certification:

1) which, in accordance with the Laws of the Republic of Kazakhstan, shall be prohibited to engage in entrepreneurial activities;

2) employees of the authorized body and its subordinate organizations, as well as their close relatives, spouse;

3) having an outstanding or unrecorded criminal record for committing a crime in accordance with the procedure established by the Law;

4) excluded from the register of patent attorneys in accordance with this Law.

3. Individuals who have experience in the field of safety and protection of intellectual property rights for at least four years or who have completed an internship in the chamber of patent attorneys for at least one year are allowed to be certified.

4. The activity of the patent attorney shall be suspended by the protocol decision of the attestation committee:

1) on the basis of the application of the patent attorney filed with the attestation committee;

2) for the period of assignment to individuals who, in accordance with the Laws of the Republic of Kazakhstan, shall be prohibited from engaging in entrepreneurial activities, to employees of the authorized body and its subordinate organizations;

3) in order to clarify the circumstances provided for by paragraph 1 of Article 15-2 of this Law.

In the case specified in subparagraph 3) of the first part of this paragraph, the activity of the patent attorney shall be suspended until the relevant decision shall be made by the attestation committee within three months.

The activity of the patent attorney shall be resumed by a protocol decision of the attestation committee in case of elimination of the grounds that served to suspend its activities

5. The patent attorney as a representative of the applicant, the copyright holder shall carry out activities related to the conduct of cases with the authorized body and the expert organization. Case management with the authorized body and expert organization can also be carried out by the applicant and (or) the copyright holder independently.

Individuals residing outside the Republic of Kazakhstan or foreign legal entities exercise their rights of the applicant, copyright holder, as well as the rights of the interested person in the authorized body through patent attorneys.

Individuals permanently residing in the Republic of Kazakhstan, but temporarily located outside of it, can exercise their rights of the applicant, copyright holder, as well as the rights of the interested individual without a patent attorney when specifying the address for correspondence within the Republic of Kazakhstan.

The information that the patent attorney shall receive from the client in connection with the fulfillment of his order shall be considered confidential subject to the requirements imposed by the Laws of the Republic of Kazakhstan on confidential information or other secret protected by the Law.

Footnote. Article 15 - as amended by the Law of the Republic of Kazakhstan dated 20.06.2022 № 128-VII (shall enter into force upon expiry of sixty calendar days after the day of its first official publication).

Article 15-1. Rights and obligations of the patent attorney

1. The patent attorney shall have the right:

1) advise on the protection of the topologies of integrated circuits, the acquisition or transfer of the rights to the topologies of integrated circuits;

2) carry out work on the execution and preparation of applications for registration of the topology of integrated circuits on behalf of and on behalf of the customer, principal, employer ;

3) interact with an authorized body and (or) an expert organization on the registration of topologies of the integrated circuit;

4) assist in the preparation, consideration of license (sublicense) agreements and (or) assignment agreements, as well as in the subsequent registration of the transfer and granting of rights in an expert organization;

5) be a member of the Chamber of patent attorneys;

6) carry out other activities related to the safety and protection of intellectual property, not prohibited by the Laws of the Republic of Kazakhstan.

2. The powers of the patent attorney shall be certified by power of attorney.

When conducting cases related to filing an objection with the appeal board, the patent attorney shall be obliged to submit to the authorized body the original power of attorney.

3. If the power of attorney is drawn up in a foreign language, then a notary-certified translation of the power of attorney into Kazakh or Russian must be submitted, depending on the language in which the objection is filed.

4. The patent attorney shall be obliged not to accept an order in cases where he has previously represented or advised individuals whose interests contradict the interests of the

person who applied for the conduct of the case, or took another part in his consideration, as well as if an official who is a close relative of the patent attorney, spouse or property is involved in the consideration of the case.

Footnote. The Law is supplemented by Article 15-1 in accordance with the Law of the Republic of Kazakhstan dated 12.01.2012 No. 537-IV (shall be enforced upon expiry of ten calendar days after its first official publication); as amended by the Law of the Republic of Kazakhstan dated 20.06.2022 № 128-VII (shall enter into force upon expiry of sixty calendar days after the day of its first official publication).

Article 15-2. Exclusion from the register of patent attorneys, invalidation of the certificate of patent attorney and cancellation of information in the register of patent attorneys

1. The patent attorney shall be excluded from the register of patent attorneys by the decision of the certification committee:

1) on the basis of a personal application of a patent attorney filed with the attestation committee;

2) upon termination of citizenship of the Republic of Kazakhstan or when leaving for permanent residence outside the Republic of Kazakhstan;

3) in the event of a break in the professional activities of the patent attorney for more than five years;

4) upon the entry into force of the conviction of the court by which the patent attorney was convicted of committing a crime;

5) in the event of the death of the patent attorney or the recognition of him as missing or declared dead;

6) if the patent attorney is found incapacitated or limited;

7) based on the results of consideration of complaints of individuals and (or) legal entities, as well as the submission of the Chamber of patent attorneys.

2. Based on the decision of the attestation committee or the decision or conviction of the court that has entered into legal force, the certificate of the patent attorney shall be recognized as invalid and the relevant information shall be entered in the register of patent attorneys.

3. A patent attorney excluded from the register of patent attorneys shall lose the right to carry out the activities of a patent attorney from the date of entering information about this, and his certificate of registration as a patent attorney shall be canceled.

4. In the event of a complaint from a physical and (or) legal entity or a submission of a chamber of patent attorneys to the actions of a patent attorney by an authorized body, an appeals committee is formed from an odd number of employees of the authorized body. For the period of consideration of the complaint of a physical and (or) legal entity or the submission of the chamber of patent attorneys, the validity of the certificate of the patent attorney is suspended, as noted in the register of patent attorneys.

Based on the results of the consideration of the complaint of a physical and (or) legal entity or the submission of the Chamber of patent attorneys, one of the following decisions shall be made:

1) revoke the certificate of the patent attorney and make a corresponding entry in the register of patent attorneys;

2) refuse to satisfy the complaint of a physical and (or) legal entity or the submission of the chamber of patent attorneys.

The decision of the appeal committee shall be adopted by a simple majority of votes, shall be formalized by a protocol and can be appealed to the court.

Footnote. The Law is supplemented by Article 15-2 in accordance with the Law of the Republic of Kazakhstan dated 12.01.2012 No. 537-IV (shall be enforced upon expiry of ten calendar days after its first official publication); as amended by the Law of the Republic of Kazakhstan dated 20.06.2022 № 128-VII (shall enter into force upon expiry of sixty calendar days after the day of its first official publication).

Article 16. Rights of foreigners, foreign legal entities and stateless persons

1. Foreigners and foreign legal entities shall enjoy the rights provided for by this Law along with the citizens and legal entities of the Republic of Kazakhstan by virtue of international treaties which party the Republic of Kazakhstan is, or on the basis of the principle of reciprocity.

2. Stateless persons residing in the Republic of Kazakhstan shall enjoy the rights provided for by this Law and other acts relating to the legal protection of topologies, on an equal basis with citizens and legal entities of the Republic of Kazakhstan, unless otherwise provided by this Law and other legislative acts of the Republic of Kazakhstan.

*The President of the
Republic of Kazakhstan*