

# NORMS FOR IMPLEMENTING THE LAW NO. 16/1995 ON THE PROTECTION OF TOPOGRAPHIES OF SEMICONDUCTOR PRODUCTS,

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Table of contents

[Rule 1 General Provisions](#)

[Rule 2 Definitions](#)

[Rule 3 Conditions Required for Registration of Topographies](#)

[Rule 4 Subject - Matter of Application](#)

[Rule 5 Regular Filing of Application](#)

[Rule 6 Official Language](#)

[Rule 7 Application for Registration of Topography](#)

[Rule 8 Technical Documentation for Identification of Topography](#)

[Rule 9 Payment of Fees](#)

[Rule 10 Representation by Professional Representative](#)

[Rule 11 Filing of Applications](#)

[Rule 12 Examination of Applications](#)

[Rule 13 Decision to Grant Protection](#)

[Rule 14 Registration of Topographies](#)

[Rule 15 Publication of Topography Registration](#)

[Rule 16 Issuance of Registration Certificate](#)

[Rule 17 Consulting the Materials Constituting the Application Filing](#)

## **Rule 1**

### **General provisions**

The present norms establish the conditions and procedure for registration of topographies of semiconductor products.

## **Rule 2**

### **Definitions**

For the purposes of the present norms, the terms below are defined as follows:

a) law - Law no.16/1995 on the protection of topographies of semiconductor products, as republished;

- b) O.S.I.M. - the State Office for Inventions and Trademarks;
- c) topography - the topography of semiconductor product, within the meaning of Art. 2 letter c) of the law;
- d) application printed form - the written application containing the express request for the grant of protection for a topography;
- e) applicant - the person requesting the registration of a topography;
- f) owner - the natural person or legal entity having the rights conferred by the registration of the topography;
- g) professional representative - the industrial property attorney carrying on the activity within the meaning of the Government Ordinance no. 66/2000 on the organization and exercise of the profession of industrial property attorney, as republished).

Government Ordinance no. 66/2000 published in the Official Gazette of Romania, Part I, no. 1019 of December 21, 2006.

### **Rule 3**

#### **Conditions Required for Registration of Topographies**

- (1) O.S.I.M. shall register the topographies in the National Register of Topographies, if:
  - a) the subject-matter of the application fulfils the provisions of Art. 2 letters b) and c) and of Art. 3 of the law;
  - b) the applicant is entitled to obtain protection for the topography that is the subject-matter of the application, in compliance with Art. 6, 8 and 9 of the law;
  - c) the regular filing of the application is constituted according to Art. 13 of the Law;
  - d) the topography was not previously registered with O.S.I.M.;
  - e) the application was filed with O.S.I.M. within 2 years from the date of the first commercial exploitation of the topography, or, as the case may be, if the topography was not exploited commercially and the application was filed with O.S.I.M. before the expiry of a 15-year period from the date of creating or coding the topography for the first time.
- (2) In case of non-compliance with the provisions of paragraph (1), the topography cannot be registered and O.S.I.M. shall refuse the application

### **Rule 4**

#### **Subject - Matter of Application**

- (1) The following cannot be the subject-matter of an application:
  - a) designs, technological processes and means used for carrying out the topographies of semiconductor products;
  - b) information stored in the semiconductor products;
  - c) semiconductor products carried out based on the topographies;

d) other creations that can be named topographies, but which do not correspond to the meaning defined in Art. 2 letter c) of the law.

(2) The applications having as a subject-matter creations belonging to the category of those already mentioned in paragraph (1) are refused.

(3) The applicant can claim the originality of the topography as a whole or only of a part thereof. In case where only a part of the topography is original, the protection conferred by the registration refers only to this claimed part, the non-original part of the topography not constituting an object of protection.

(4) A topography consisting of a combination of usual elements and interconnections is original if the combination in whole is original; an original combination may also consist of usual elements and interconnections associated with original elements and interconnections.

(5) An application shall be unitary, namely it shall have one single topography as a subject-matter.

(6) The application having two or more topographies as a subject-matter is not unitary and the applicant has the possibility to divide it into a number of unitary applications corresponding to the number of topographies that are the subject-matter of this application.

(7) In case of a non-unitary application, the subject-matter of the application is a single topography, namely the one indicated by the applicant within a two-month period from the date on which O.S.I.M. notified the lack of unity of the application; in case when the applicant does not communicate, within the said time period, the topography that shall remain the subject-matter of the application, the subject-matter thereof shall be the first of the topographies mentioned in the application.

(8) The subsequently filed applications, which have as a subject-matter the other topographies of the non-unitary application, are deemed being divisional applications resulting from this application filing, if they are submitted to O.S.I.M. within 3 months from the date of notifying the lack of unity and are accorded as a filing date, the date of filing the initial non-unitary application; if filed with O.S.I.M. after the expiry of the 3-month period, the applications are no longer recognized as divisional applications and are accorded as a filing date, the date of filing at the General Registry of O.S.I.M.

(9) The lack of unity of an application does not constitute a reason for rejection thereof.

## **Rule 5**

### **Regular filing of application**

(1) The application filing is regularly constituted if the following elements are filed with O.S.I.M. in two copies:

a) printed form of the application for registration of the topography, drawn up according to the provisions of Rule 7 and signed;

b) the technical documentation, drawn up in compliance with the provisions of Rule 8, necessary for the identification of the topography and for underlining the electronic function of the semiconductor product carried out based on the topography;

c) the semiconductor product made on the basis of the topography, if the topography was exploited commercially;

d) empowerment for the representation of the professional representative, where appropriate;

e) proof of payment of the fees for: filing the application, examination of the application, registration of the topography, publication of the topography registration and issuance of the topography registration certificate.

(2) All the documents subsequently submitted by the applicant or the professional representative thereof in connection with the application, the documents drawn up by the examiner with regard to solving the application as well as the correspondence O.S.I.M. had with the applicant or with the professional representative thereof shall be annexed to the regular filing of the application.

## **Rule 6**

### **Official language**

(1) All the documents filed with O.S.I.M. in connection with the protection of the

(2) topographies as well as the correspondence held by O.S.I.M. with the applicants and the professional representatives thereof shall be drawn up in Romanian.

(2) The use of specialized technical terms in English is allowed in the technical documentation of the application filing, if these terms have already been taken over and used as such in the Romanian language by the specialists in the field. Otherwise, these terms can only be used if accompanied by equivalent terms expressed in the Romanian language.

## **Rule 7**

### **Application for Registration of Topography**

(1) The application for the registration of a topography is submitted on a printed form, according to the model established by O.S.I.M. and rendered available to the public.

(2) The application printed form shall compulsorily contain:

a) the applicant's identification data, namely the surname and name, or where appropriate, the applicant's denomination as well as full address of the applicant, the phone number, fax and e-mail included; if there are more applicants, the identification data will be presented separately for each of them; in case of foreign legal entities having subsidiaries or branch offices in Romania, there shall be specified the names and headquarters of these subsidiaries or branch offices;

b) declaring the creator of the topography in case this is other person than the applicant, there being mentioned the surname, name and domicile of the creator; if there are more creators, co-authors, the same mentions shall be made for each of them; in case the creators of the topography do not desire to have their name and authorship of the topography mentioned in the registration certificate and/or in the publications issued by O.S.I.M. in connection with the registered topography, the applicant will make a statement to this effect and will inscribe the creators' names only on one copy of the application;

c) indicating the legal ground according to which the applicant is entitled to the topography protection, namely: Art. 8 of the law when the applicant is the creator of the topography; Art. 9 paragraph (1) of the law when the topography was created within the tasks deriving from an employment contract; Art. 9 paragraph (2) of the law when the topography was created based on a research/designing agreement;

d) where appropriate, indication of the fact that the applicant acquired the right to register the topography by assignment or succession;

e) denomination and destination of semiconductor product carried out on the basis of the topography; the denomination of the product will be formulated briefly, preferably within maximum 15 words;

f) applicant's statement that the topography was not previously registered with O.S.I.M;

g) applicant's statement concerning the originality of the topography; there will be stated precisely whether the topography is original in whole or the originality relates only to a part of the topography, in such case, there will be stated precisely the manner in which the original part is pointed out in the technical documentation annexed to the application;

h) making known the date of the first commercial exploitation in case the topography was exploited commercially;

i) making known the date of creation or of first coding of the topography;

j) the professional representative's identification data, in case a professional representative is appointed; the identification data will be similar to the ones mentioned under letter a) for the applicant; if there are 2 or more applicants and a professional representative has not been appointed, there will be mentioned the one who will be the representative of the applicants in the proceedings before O.S.I.M., and in default of such a mention, O.S.I.M. shall consider the first one inscribed in the application as the representative of the applicants;

k) list of documents annexed to the file;

l) applicant's signature/applicants' signatures; when the applicant is a legal entity, the application will be signed by the leader of the institution and stamped; if a professional representative is appointed, this can sign the application on behalf of the applicant, provided that the power of attorney is submitted to O.S.I.M. at the time of filing the application or within two months, at the most, from the date of filing the same, otherwise, the application will be refused..

## **Rule 8**

### **Technical documentation for Identification of Topography**

(1) The technical documentation for identifying the topography consists of graphical materials and an explanatory text.

(2) The graphical materials will be presented in one or more of the following forms:

a) drawing or photo representing the layout of the set of layers of the semiconductor product;

b) drawings or photos of the individual layers of the semiconductor product;

c) drawings or photos of masks employed for manufacturing the semiconductor product.

(3) The drawings and photos shall be clear and carried out at a sufficiently large scale to allow the identification of the topography; the A4 format or another format which, by folding, can be brought to A4 format will be used.

(4) In case when only one part of the topography is original, this part will be pointed out in a distinct manner in the graphical materials.

(5) In the case when the applicant declares that a part of the graphical materials for the identification of the topography contains trade secrets, said part shall be covered, by hatching or by other process, on one of the copies of these graphical materials; the second copy of said graphical materials shall not be covered, so that all required information for the identification of the topography should exist in the application filing.

(6) The explanatory text shall be drawn up briefly and shall contain the presentation of the minimum information strictly required for the identification of the topography, pointing out the original part of the topography (where appropriate), pointing out the electronic function of the semiconductor product and stating precisely the destination of this circuit.

(7) The semiconductor product denomination as mentioned in the application shall be inscribed on all documents for the identification of the topography.

(8) Besides the materials mentioned in paragraphs (2) and (6) above, the applicant can file with O.S.I.M. data carriers on which the topography is recorded in a coded form.

## **Rule 9**

### **Payment of Fees**

(1) The fees owed for the registration of a topography or for the services carried out by O.S.I.M. in compliance with the provisions in force are deemed being paid, if said sums of money have been paid, in the amount provided for by the law, into the O.S.I.M. account and if a copy of the payment document has been submitted to O.S.I.M.

(2) The amounts paid in smaller values than the legal amounts are not considered as payment of the fees; if these sums have subsequently been completed to the level of the amount provided for by the law, said fees shall be deemed to have been paid at the date when the sum corresponding to the legal amount has been completed.

## **Rule 10**

### **Representation by professional representative**

(1) Any applicant may be represented in the proceedings before O.S.I.M. by an authorized representative, with the domicile and residence or professional headquarters in Romania.

(2) A professional representative can only be an industrial property attorney attested by O.S.I.M. for the field of protection of topographies of semiconductor products and entered in the National Register for Industrial Property Attorneys.

(3) The professional representative can be appointed by the applicant upon filing the application or subsequently. If the applicant is a foreigner with the domicile abroad, the representation by professional representative is compulsory even from the filing of the application.

(4) In all the cases when a professional representative was appointed, the power of attorney for the representation thereof shall be submitted to O.S.I.M.. Failure to submit the power of attorney, O.S.I.M. shall not take into account the representation by the professional representative mentioned in the application or in other documents.

## **Rule 11**

### **Filing of applications**

(1) The applications for registration of the topographies may be filed directly to the General Registry of O.S.I.M, open to the public on work days, or can be transmitted to O.S.I.M by mail, as registered letter with acknowledging of receipt. The General Registry of O.S.I.M. writes the number and the date of filing with O.S.I.M. on each application received directly or by mail, thereafter the application is sent to the Topography Examination Bureau.

(2) The applications for the registration of topographies can also be filed electronically.

## **Rule 12**

### **Examination of applications**

(1) The applications registered in the accounts of the Topography Examination Bureau are examined in respect of fulfilling the conditions necessary for the registration of the topographies, mentioned in Rule 3.

(2) If after the application examination there has been ascertained that the conditions for constituting the regular filing and the other legal conditions for the grant of protection have been fulfilled, the topography is registered in the National Register of topographies; the regular filing date is the date of submitting the application with O.S.I.M.

(3) In case when drawbacks or deficiencies of the documents necessary for constituting the regular filing result from the application examination, the examiner shall notify the ascertained facts to the applicant, within 15 days from the date of submitting the application, granting the same a two-month time period for remedying such drawbacks or deficiencies; if the applicant submits to O.S.I.M. all required completions and corrections within the granted time period, the application filing is regular and the topography is registered in the National Register of Topographies; in this case, the regular filing date of the application is the date when all the required completions and corrections were received with O.S.I.M; if the required completions and corrections are not submitted to O.S.I.M. within the granted time period, the application shall be rejected.

(4) The applications for which the filing and examination fees have not been paid shall be returned to the applicant, accompanied by a notification communicating the grounds for the return. O.S.I.M. shall keep a copy of the application as a witness copy.

(5) Where from the application examination it results that:

- the subject-matter of the application does not constitute a topography within the meaning of Art. 2 letter c) of the law, or cannot be the subject-matter of an application according to Rule 4 paragraph (1);

- the applicant is not entitled to obtain protection for the topography that is the subject-matter of the application;

- the topography was previously registered with O.S.I.M.;
- the application was filed after the expiry of the 2-year time period from the date of the first commercial exploitation of the topography;
- the topography was not exploited commercially and the application for registration was filed after the expiry of the 15-year time period from the creation or first encoding of the topography;
- the examiner of the application notifies the applicant about the ascertained facts and that the legal conditions for the registration of the topography have not been fulfilled, granting the same a two-month time period for preparing the answer.

(6) If, within the granted period of time, the applicant does not submit to O.S.I.M. justifications, or where appropriate, relevant documents to demonstrate that the legal conditions for the registration of the topography are fulfilled, the application is rejected.

(7) Where the examination reveals that the application is not unitary, the examiner of the application shall notify the applicant about the ascertained facts, in compliance with the provisions of Rule 4 paragraph (7) concerning the manner of solving the non-unitary applications.

### **Rule 13**

#### **Decision to Grant Protection**

(1) The decision to grant protection shall be made based on an examination report and shall be justified.

(2) The decision shall be made in compliance with the procedures provided for by Art. 14 and 15 of the law, Rule 12 of the present Norms and within the time limits stipulated by the law.

(3) The decisions may be:

a) decision to enter the topography in the National Register for topographies;

b) the decision to reject the application for registration of the topography.

(4) The decision for registration of the topography shall be communicated to the applicant together with the topography registration certificate.

(5) The decision to reject the application shall be communicated to the applicant, within 15 days from the date it was made.

(6) Where during the application examination the applicant communicates to O.S.I.M. the request to withdraw the application, to abandon it or any other request that means the giving up of the registration of the topography, the application examination shall cease and a report is drawn up where through O.S.I.M. takes into account the request. The report shall be communicated to the applicant, and to the professional representative, respectively, within 15 days from the date it was concluded.

### **Rule 14 Registration of topographies**

(1) The decision to register a topography is entered in the National Register of Topographies.



(2) The date of registration of the topography is the date on which the regular filing of the application for registration was constituted.

(3) All the data concerning the legal status of the registered topography as well as all the modifications occurring during the protection period shall be entered in the National Register.

(4) The National Register of Topographies contains at least the following headings:

- topography registration number ;
- application filing date and number;
- denomination of semiconductor product that can be carried out based on the topography;
- application regular filing date;
- date of first commercial exploitation of the topography - date of creation or first encoding of the topography;
- owner's identification data ;
- surname, first name, locality and country of domicile of topography creator/creators;
- professional representative's identification data;
- assignments;
- licenses;
- modifications relating to the owner;
- modifications in respect of the creator/creators;
- ceasing the protection.

## **Rule 15**

### **Publication of Topography Registration**

(1) O.S.I.M. shall publish the registration of topographies in the Official Industrial Property Bulletin (B.O.P.I), "Patents Section", Subsection "Topographies of Semiconductor Products".

(2) The publication shall be made within two months from the date of registering the topography and shall contain the following data:

- topography registration number;
- regular filing date;
- denomination of semiconductor product that can be carried out based on the registered topography;
- owner's name/denomination;
- surname and first name of topography creator/creators;
- date of first commercial exploitation of the topography;

- date of creation or of first encoding of the topography;
- protection period.

(3) O.S.I.M. shall publish in B.O.P.I. all the modifications with regard to the registered topographies, in compliance with the provisions of Art. 17 (2), Art. 30, Art. 31 (3), Art. 32 (4), Art. 33, 37 and 40 of the law.

## **Rule 16**

### **Insurance of Registration Certificate**

- (1) The registration certificate of a topography shall be drawn up based on the decision of registration of the topography.
- (2) The topography registration certificate, signed by the Director General of O.S.I.M. shall be issued to the owner within 3 months from the date of publishing the topography registration.
- (3) Upon request, duplicates of the topography registration certificate shall be issued to the authors; the application shall be accompanied by the proof of payment of the legal fees for the issuance of the certified copies.

## **Rule 17**

### **Consulting the Materials Constituting the Application Filing**

- (1) After the publication of the registration of a topography, O.S.I.M. renders the documentation contained in the application regular filing available to the public for consultation; to this end, a file containing a copy of each document in the regular filing shall be drawn up.
- (2) In case of topographies where the applicant declares that a certain part of the technical documentation contains trade secrets, only the documents not disclosing trade secrets shall be introduced into the file meant for the public consultation.
- (3) In case where, according to the applicant's statement, the creators mentioned in the application do not want their names to be rendered available to the public, the application copy not mentioning the creators' names shall be introduced into the file rendered available for public consultation.
- (4) The files of rejected or withdrawn applications are not available for public consultation.
- (5) Upon request by any interested person, O.S.I.M. may issue certified copies of the public documents contained in the regular filing of the registered topographies or on the sheets of the National Register of Topographies. The request shall be accompanied by the proof of payment of the legal fees for the issuance of the requested copies