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Protection of integrated circuit topographies in Russia

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The Russian PTO (Rospatent) adopted new guidelines on administrative procedures for registration of integrated circuit topographies on May 3, 2018. These guidelines are advisory in nature but serve the purpose of making uniform topographies registration practices. We provide below a general overview on integrated circuit topographies in Russia.

Russia introduced protection for topographies in 1992 by adoption of a special federal law, that was later replaced by chapter 74 of the RF Civil Code, now in force. An integrated circuit topography, for the purpose of its legal protection, is defined as a space and geometric disposition of the assembly of elements of an integrated circuit and connections between them fixed on a tangible medium. Legal protection is granted only to an original topography created as a result of the creative activity of an author and unknown to specialists in the area of topographies on the date of its creation. A topography is presumed original unless proved otherwise (presumption of originality). Legal protection is not granted to ideas, methods, systems, technologies and coded information that may be embodied in a topography.

The author of a topography, who must always be an individual, holds the moral right (right to be recognized as an author) and exclusive exploitation right (right to use a topography). A legal entity can obtain the exclusive right but can never own the moral right, which cannot be waived by the author. When a topography is created in the course of labor duties and under an employer's instructions, which is very often the case, the employer would hold the exclusive right to use the topography.

Legal protection of a topography is not subject to any formalities and, so, its registration is not mandatory. However, the Code offers the possibility of voluntary registration (deposit) of topographies with the federal authority according to a procedure prescribed by special regulations and guidelines. A topography can be registered during the legal term of its protection, which is 10 years, unless it was used before. In the latter case, the topography can be registered only within 2 years from the date of its first use.

A topography is registered by filing with Rospatent an application along with the prescribed identifying materials, including a topography abstract. Rospatent conducts a formal examination of the submitted documents, and if such documents meet the prescribed formal and technical requirements, records the topography in the Register, issues a certificate of registration to the applicant and publishes the registration in the

official bulletin. Rospatent does not examine a topography for its originality or novelty. However, registration enables the topography holder to claim his (her) rights towards the public and officially certify topography's distinctive features, thus facilitating its protection in case of illegal use.

Another measure for protecting a topography from illegal use is affixing it or a product embodying it with a warning mark in the form of a capital letter "T", claiming the date of the exclusive right to the topography, with information identifying topography's holder.

As previously mentioned, the term of legal protection of a topography is 10 years, which is calculated either from the date of its first use, or from the date of its registration with Rospatent, whichever occurs first. The date of first use is the earliest date of introduction of a topography, or an integrated circuit embodying such topography, or a product embodying such integrated circuit, in the Russian or a foreign market, that must be proved by documentary evidence.

The Code provides for a concept of topography "fair use", which includes personal use without aiming at making a profit, as well as use for the purposes of evaluation, analysis, research and education. If a person uses integrated circuits that illegally embody a topography without knowledge that such use is illegal, it may continue to use product stock and products previously ordered even after receiving a notice from a topography holder, however, subject to payment of a reasonable compensation to the latter. The Code likewise provides for exhaustion of the right to topography after its introduction in the Russian market by the right holder or with its consent.