

contain samples of relevant analogues of handwritten signatures (the definition of these signatures is contained in article 3 of the Law of Ukraine “On Electronic Commerce”).

Regarding the third of the specified forms of acceptance, it is worth saying that electronic contracts concluded using this form are the most common type of contracts.

Summarizing the above, it should be noted that, as of today, the main requirements for electronic contracts are legally established, but they require more detail. Different forms of offer and acceptance are considered. It was emphasized that clear and unambiguous requirements regarding the form of the offer and acceptance are of decisive importance for the validity of the electronic transaction.

Therefore, electronic contracts are used in various spheres of legal relations and are regulated by a number of special legislative acts. The considered effective legislative mechanisms are aimed at protecting the rights and legitimate interests of the parties to electronic transactions, but they need to be improved for more effective functioning of this institution of law.

References

1. Civil Code of Ukraine: Law of Ukraine. Code of January 16, 2003 N 435-IV. URL: <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

2. On electronic commerce: Law of Ukraine dated September 3, 2015 N 675-VIII. URL: <https://zakon.rada.gov.ua/laws/show/675-19#Text>.

3. United Nations Convention on the Use of Electronic Communications in International Treaties: Convention, International Document dated November 23, 2005. URL: https://zakon.rada.gov.ua/laws/show/995_e71#Text.

4. On electronic trust services: Law of Ukraine dated October 5, 2017 N 2155-VIII. URL: <https://zakon.rada.gov.ua/laws/show/2155-19#Text>.

UDC 347.77/.78:341.232.7(477)(043.2)

Musica O.M., judge,
October District Court of the city of Mariupol, Mariupol, Ukraine

LEGAL PROTECTION OF SEMICONDUCTOR PRODUCT ASSEMBLY: PROBLEM ISSUES

In the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand [1], norms aimed at the protection of intellectual property rights are fixed. In particular, chapter 9 of subsection IV, which covers 96 of the 486 norms of the Agreement (Articles 157–252), among which subsection 6 of Article 224–227 is separately assigned to such an object of

intellectual property law as the composition of a semiconductor product. This indicates the importance of the sphere of protection of rights to objects of intellectual property law in general and to the composition of semiconductor products, in particular, for the European Community.

In the field of protection of rights to the composition of semiconductor products, the parties confirm the fulfillment of their obligations on the basis of the main international conventions.

Consequently, Ukraine has undertaken to provide adequate legal protection, which includes the right to allow or prohibit any of the following actions:

- the reproduction of topography to the extent that it is protected under Article 225(2) of the Association Agreement between Ukraine, on the one hand, and the European the Union, the European Atomic Energy Community and their member states, on one hand [1];

- commercial use or import for this purpose of topography or a semiconductor product produced by using topography (Article 226 of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand) [1].

In order to implement the ratified Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand [1], Law of Ukraine dated September 19, 2019 N 111-XII “On Amendments to Certain Legislative acts of Ukraine on improving the protection of rights to the layout of semiconductor products” also amended the Law of Ukraine “On the Protection of Rights to the Topography of Integrated Microcircuits”, which changed its name to the Law of Ukraine dated November 5, 1997 N 621/97 “On the Protection of Rights to the Layout of Semiconductor Products products” [2] and, accordingly, the specified scope of its application, namely, it is intended to regulate relations that arise in connection with the acquisition and exercise of rights to the composition of semiconductor products in Ukraine.

The Civil Code of Ukraine [3] established the norm regarding the scope of legal protection of the layout of a semiconductor product, which is determined by the set of related images of this layout on a material medium.

The Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand [1], establishes that for its purposes:

- a) “semiconductor product” means the final or intermediate form of any product: consisting of a body of material that contains a layer of semiconductor material; and has one or more interlayers consisting of a conductive, insulating or semiconducting material, with the interlayers arranged according to a previously defined three-dimensional structure; and intended to perform an electronic function exclusively or together with other functions;

b) “topography” of a semiconductor product means a set of interconnected images that are recorded or encoded: which represent a three-dimensional structure of layers that make up a semiconductor product; and in such a set, each image has a structure or part of a structure with the surface of a semiconductor product at any stage of production.

The norms of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand [1], specify the provisions on requirements for the protection of the composition of semiconductor products. In particular, it is provided that the protection of the topography of semiconductor products to the extent that it meets the conditions that it is the result of its creator’s own intellectual activity and is not generally known in the semiconductor industry.

If the topography of a semiconductor product consists of elements that are generally known in the semiconductor industry, it is protected only to the extent that the combination of such elements, taken as a whole, meets the conditions mentioned above.

The provisions of the Law of Ukraine “On Protection of Rights to Composition of Semiconductor Products” (N 621/97) [2] do not protect rights to ideas, methods, systems, technologies or coded information that may be embodied in composition.

In this context, the problem of law enforcement of the protection of the composition of a semiconductor product arises, since the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand, protects a coded semiconductor product (paragraph b of Article 224–225) [1], at the same time, the provisions of domestic legislation do not protect the rights to coded information that can be embodied in the composition (Part 2 of Article 4 of the Law of Ukraine “On Protection of Rights to the Composition of Semiconductor Products” (No 621/97) [2]).

Therefore, there are apparently differences between the approaches to the legal protection of the composition of a semiconductor product, defined in the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other [1] and on its implementation of approaches implemented in national legislation.

Regulatory regulation of the protection of the right to layout of semiconductor products has a number of issues that need to be clarified. In particular, these are: raising the level of civil law protection of rights to industrial property in general and to the composition of semiconductor products, in particular, improving national legislation, harmonizing it with international and European standards.

However, the existence of these and the appearance of new problematic aspects in the current legislation of Ukraine on the composition of semiconductor products exacerbates the need to address the regulatory and legal protection of this sphere of social relations.

Civil law protection of the composition of a semiconductor product is impossible without the development of effective legal mechanisms and improvement of legislation, which will make it possible to ensure both proper legal protection and the protection of the rights of the owners of such objects, as well as the growth of the scientific and technical potential of Ukraine.

The Law of Ukraine “On Protection of Rights to Layout of Semiconductor Products” (N 621/97) defines the conditions for granting legal protection (Article 4), in particular, that the state provides legal protection of layout by registering it with the National Intellectual Property Authority [2]. Features of the protection of composition rights classified as state secrets are determined by separate legislation.

As mentioned, the Law of Ukraine “On the protection of rights to the composition of semiconductor products” (N 621/97) [2] does not protect the rights to coded information that can be embodied in the composition.

However, the registration with the National Intellectual Property Authority of a composition of semiconductor products that comprises a collection of related images, fixed or encoded in some way, which constitute a three-dimensional configuration of the layers of which the semiconductor product is composed and in which each image contains a configuration or part of a configuration of the semiconductor product on at any stage of its production, and at the same time, the refusal to protect the right to coded information that can be embodied in a composition somewhat contradicts the very scope of rights to a composition, which is determined by a set of related images of a composition on a material medium, because without protection of both the method and the system, the technology, as a result of coded information, the meaning of acquiring a protected right is lost, which is the risk of obstacles to the exercise of rights to the composition of semiconductor products in Ukraine.

The terms of protectionability of the layout of semiconductor products provide for their recognition as original only if the set of such elements (methods, systems, technologies and coded information) were not created by direct reproduction (copying) of another layout and were not known in the field of microelectronics before the date of application to National intellectual property authority or before the date of first use of the composition.

The systematic analysis of the researched issue shows the obvious problematic of the scope of legal protection of the composition of semiconductor products in Ukraine, because it is limited only by state registration and the refusal to check the totality of elements (methods, systems, technology and coded information) for originality, as well as restrictions

(prohibition) on attribution to the legal protection of coded information, is a consequence of incomplete and not comprehensive verification of the conditions of protection capability and its effectiveness in the field of intellectual property law.

The above testifies to the problematic nature of issues of normative and legal regulation of intellectual property rights in general and the composition of semiconductor products, in particular. And it can be said that today, the national legislation in the field of composition of semiconductor products contains contradictory provisions, which are enshrined both in the conventions on the protection of the right to composition of semiconductor products, and in the provisions enshrined in the directives of the European Union (EU).

A significant number of provisions of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand [1] need to be implemented at the level of codified regulation, as by amending Book 4 of the Civil Code of Ukraine [3], as well as by improving special legislation on the protection of the composition of semiconductor products as individual objects of intellectual property law.

The specified changes should refer directly to the provisions of the special Law: assignment of specifically defined coded information to the protected right, full and objective verification of the set of elements (methods, system, technology and coded information) for originality.

References

1. Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand No 984-011 dated June 27, 2014. URL: https://zakon.rada.gov.ua/laws/card/984_011.

2. On the protection of rights to the composition of semiconductor products: Law of Ukraine N 621/97 dated November 5, 1997. URL: <https://zakon.rada.gov.ua/laws/show/621/97-%D0%B2%D1%80>.

3. Civil Code of Ukraine N 435-IV dated January 16, 2003. URL: <http://zakon2.rada.gov.ua/laws/show/435-15>.