

# Law on the Legal Protection of Topographies of Semiconductor Products

(of January 10, 1990)\*

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## Chapter I Exclusive Right in a Topography of a Semiconductor Product

### Part 1 Subject Matter and Holder of the Exclusive Right

1.–

The creator of a topography of a semiconductor product shall have the exclusive and temporary right to reproduce and commercially exploit the topography.

For the implementation of this Law, the terms topography, semiconductor product and commercial exploitation shall be understood in the meaning defined in Directive 87/54 of December 16, 1986, of the Council of the European Communities on the Legal Protection of Topographies of Semiconductor Products or in any amendment decided by the Council of the European Communities under Article 1.2 of that Directive.

2.–

The topography of a semiconductor product shall be protected insofar as it satisfies the conditions that it is the result of its creator's own intellectual effort and is not commonplace in the semiconductor industry. Where the topography of a semiconductor product 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, fulfills the above-mentioned conditions.

3.–

The protection afforded by this Law shall apply solely to the topography as such, to the exclusion of any concept, process, system, technique or encoded information embodied in the topography.

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\* *French title:* Loi concernant la protection juridique des topographies de produits semi-conducteurs.

*Entry into force:* February 5, 1990.

*Source:* *Moniteur belge*, January 26, 1990, pp. 1093 *et seq.*

\*\* Added by WIPO

4.–

(1) Where a topography of a semiconductor product is created by an employee in the course of his employment, the employer shall be deemed the creator, unless otherwise stipulated.

(2) Where a topography of a semiconductor product is created on commission, the person who has placed the commission shall be deemed to be the creator, unless otherwise stipulated.

5.–

The right to protection afforded by this Law shall be transferable to the successors in title of the person who holds the right in accordance with this Law.

## **Part 2**

### **Conditions of Nationality, Residence or Establishment**

6.–

The right to protection instituted by Section 1 shall be afforded to natural persons who are nationals of a Member State of the European Communities or who have their habitual residence on the territory of a Member State.

The right to protection afforded under Section 4 shall apply in favor of the natural persons referred to in the first paragraph and to companies or other legal persons which have a real and effective industrial or commercial establishment on the territory of a Member State of the European Communities.

7.–

The right to protection afforded by this Law shall also be available to those persons referred to in Sections 1 and 4 who are nationals of or who have their habitual residence or a real and effective industrial or commercial establishment in countries other than those referred to in the second paragraph of Section 6 where provided by an international instrument or decided by the Council of the European Communities.

8.–

Where no right to protection exists in accordance with this Part, the right to protection shall also apply in favor of the persons referred to in the second paragraph of Section 6 who:

- (a) first commercially exploit within a Member State a topography which has not yet been exploited commercially anywhere in the world; and
- (b) have been exclusively authorized to exploit commercially the topography throughout the Community by the person entitled to dispose of it.

## **Part 3**

### **Term and Expiry of the Exclusive Right**

9.–

(1) The exclusive right referred to in Section 1 shall come into existence when the topography is fixed or encoded for the first time.

(2) The exclusive right shall expire after a period of 10 years as from the end of the calendar year in which the topography was first commercially exploited anywhere in the world.

(3) Where a topography has not been commercially exploited anywhere in the world within a period of 15 years from the date on which it was first fixed or encoded, any exclusive right in existence pursuant to subsection (1) of this Section shall expire.

## **Chapter II**

### **Limitations on the Exclusive Right in a Topography of a Semiconductor Product**

10.–

The holder of the right to protection of a topography of a semiconductor product may not assert his exclusive right of reproduction or commercial exploitation afforded by this Law in respect of:

- (a) reproduction solely for the purposes of analysis, evaluation or teaching of the topography or the concepts, processes, systems or techniques embodied in the topography;
- (b) a topography resulting from the analysis and evaluation of another topography carried out in accordance with item (a), at least insofar as the new topography is the result of its creator's own intellectual effort and is not commonplace in the semiconductor industry.

11.–

(1) A person who, when he acquires a semiconductor product, does not know, or has no reasonable grounds to believe, that the topography of the product is protected by an exclusive right under Section 1 shall not be prevented from commercially exploiting that product.

(2) However, the holder of the exclusive right may require such person to pay to him an amount equivalent to that which would have normally been due to him in respect of commercial exploitation of the topography for acts committed after such person knows or has reasonable grounds to believe that the topography of the semiconductor product is protected by an exclusive right.

12.–

The exclusive right referred to in Section 1 shall not extend to the commercial exploitation of a topography or of a semiconductor product after it has been put on the market in a Member State of the European Communities by the holder of the exclusive right or with his explicit consent.

## **Chapter III**

### **Action in Respect of Rights in a Topography of a Semiconductor Product**

13.–

Notwithstanding the provisions of Section 14, the court shall order any infringer, at the request of the injured party:

1. to cease the infringement;
2. to pay to the plaintiff an indemnity to make good the prejudice caused by the infringement.

The court may also order publication of its findings.

14.–

In the event of bad faith, the court shall order confiscation in favor of the plaintiff of the semiconductor products fabricated in infringement of the exclusive right referred to in Section 1 and of the instruments or means specially intended for their fabrication. If the semiconductor products have been transferred in return for payment or free of charge, the court shall add an amount equal to the price or the value of the semiconductor products already transferred.

15.–

Action for infringement of the exclusive right referred to in Section 1 shall be barred after five years from the day on which the infringement took place.

16.–

(1) Claims in respect of topographies of semiconductor products shall be heard by the first instance courts whatever the value of the claim.

Any claim based both on infringement of the exclusive right referred to in Section 1 and on an act contrary to fair trade practices shall be heard exclusively by the first instance court.

(2) Sole competence to hear a claim referred to in subsection (1) shall belong to:

1. the court established at the seat of the court of appeal in whose jurisdiction the infringement has been committed or, at the choice of the plaintiff, the court established at the seat of the court of appeal in whose jurisdiction the defendant or one of the defendants has his domicile or residence;
2. the court established at the seat of the court of appeal in whose jurisdiction the plaintiff has his domicile or residence if the defendant, or one of the defendants, has no domicile or residence in the Kingdom.

(3) Any agreement contrary to the provisions of subsections (1) and (2) of this Section, whether prior to or subsequent to the existence of the dispute, shall be null and void.

However, the provision in subsection (1) shall not prevent disputes referred to in this Section from being taken to arbitration. By derogation from Section 630(2) of the Judicial Code, the parties shall determine the place of arbitration.

## **Chapter IV Amending Provisions**

17.–

(1) Article 569(1) of the Judicial Code, as amended by the Laws of November 3, 1967, May 7, 1973, May 20, 1975, March 28, 1984, and June 28, 1984, shall be supplemented as follows:

(2) Section 627 of that same Code, as amended by the Laws of June 24, 1970, June 30, 1971, May 7, 1973, May 20, 1975, and March 28, 1984, shall be supplemented as follows:

## **Chapter V Final Provisions**

18.–

(1) The provisions of this Law shall not prejudice any other statutory provisions in respect of intellectual property.

(2) The provisions of this Law shall not prejudice the application of copyright to works fixed in the semiconductor product.

19.–

This Law shall apply only to topographies of semiconductor products fixed or encoded for the first time after its entry into force.