



**Law on the Protection of the Topographies  
of Microelectronic Semiconductor Products  
(Semiconductor Protection Law)\***

(of October 22, 1987, as last amended by the Law of March 7, 1990)

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**Chapter 1  
The Protection of Topographies**

*Subject of Protection, Originality*

1.—(1) Three-dimensional structures of microelectronic semiconductor products (topographies) shall be protected under this Law if and insofar as they are original. The first sentence shall also apply to independently usable parts and to representations for the manufacture of topographies.

(2) A topography shall be original if it is the result of intellectual effort and has not been produced by simple reproduction of another topography and if it is not commonplace.

(3) A topography consisting of an arrangement of commonplace parts shall be protected insofar as the arrangement is original as a whole.

(4) The protection under subsection (1) shall not apply to the concepts, processes, systems or techniques on which the topography is based or to any information stored in a microelectronic semiconductor product, but only to the topography as such.



### *Right to Protection*

2.—(1) The right to protection of the topography shall apply in favor of the person who has created the topography. Where several persons have jointly created a topography, the right shall apply in favor of all of them in common.

(2) If the topography has been created in the course of employment or on commission, the right to protection of the topography shall apply in favor of the employer or the person by whom the topography has been commissioned, when not otherwise provided by contract.

(3) Any national of a Member State of the European Economic Community and any natural or legal person with habitual residence or establishment on the territory of a Member State to which the Treaty establishing the European Economic Community is applicable can be the owner of the right to topography protection under subsection (1) and subsection (2). Companies which may be subjects of rights and duties according to the law applicable to them, without having legal personality, shall be assimilated to legal persons.

(4) Notwithstanding subsection (1) and subsection (2), the right to protection of the topography shall also apply in favor of a person who, on the basis of an exclusive right of commercial exploitation in the European Economic Community, first commercially exploits the topography, other than confidentially, in one of its Member States and who fulfills the requirements of subsection (3). The topography may not have been previously exploited commercially, other than confidentially, by another person.

(5) The rights under subsection (1) to subsection (4) shall also apply in favor of the respective successors in title.

(6) Other persons shall be entitled to a right to topography protection only where

1. they are to be treated as nationals under an international treaty or the law of the European Communities, or

2. the State of which they are nationals or in which they have their residence or establishment affords equivalent protection, according to a notice by the Federal Minister of Justice in the *Bundesgesetzblatt*, to Germans within the meaning of the Basic Law and to persons with residence or establishment within the jurisdiction of this Law.

### *Application*

3.—(1) Applications in respect of topographies for which protection is sought shall be filed in writing with the Patent Office. A separate application shall be filed for each topography.

(2) Applications shall contain:

1. a request for registration of protection, which must clearly and concisely designate the topography;



2. material identifying or illustrating the topography or a combination of such material and details of the intended use if an order under Section 4(4), in conjunction with Section 9 of the Utility Model Law,<sup>1</sup> is to be considered;

3. the date of the day of first commercial exploitation, other than confidential, of the topography, where such day is earlier than the application;

4. particulars establishing the entitlement to protection under Section 2(3) to Section 2(6).

(3) The Federal Minister of Justice shall have power to issue by statutory order regulations concerning other requirements for the application. He may delegate such power by statutory order to the President of the Patent Office.

(4) Where the application does not duly comply with the requirements of Section 2(1) to Section 2(3), the Patent Office shall notify the defects to the applicant and invite him to remedy them within two months of service of notification. If the defect is remedied within the time limit, the date of receipt of the written communication at the Patent Office shall be deemed the date of the application for the topography. The Patent Office shall confirm this date and communicate it to the applicant.

(5) A fee as prescribed by the schedule of fees shall be paid with each application for protection of a topography. If the fee is not paid, the Patent Office shall notify the applicant that the application will be deemed to have been withdrawn unless payment is made within one month of service of the notification. If the application fee has not been paid within that time limit or if the defects mentioned in subsection (4) have not been remedied within the time limit mentioned in subsection (4), the application shall be deemed not to have been filed. The Patent Office shall establish this fact and refuse the registration.

#### *Registration, Publication, Amendments*

4.—(1) Where the application complies with the requirements of Section 3, the Patent Office shall order registration in the Register of Topographies without examination of the applicant's entitlement to file an application, the correctness of the facts stated in the application and the originality of the topography.

(2) The provisions of the Utility Model Law concerning entry in the Register, publication in the Patent Journal [*Patentblatt*] and amendments to the Register (Section 8(2) to Section 8(4)) shall apply *mutatis mutandis*.

(3) The provisions of the Utility Model Law concerning inspection of the Register and of files of registered utility models, including files of cancellation proceedings (Section 8(5)), shall apply with the proviso that inspection of material containing trade or business secrets and marked as such by the applicant shall only be permitted in cancellation proceedings before the Patent Office, by order of the Topography Division, or in a lawsuit concerning the validity or the infringement of protection of the topography, by order of the court, and only for the parties to the cancellation proceedings or lawsuit. Material that has been filed for identifying or illustrating the topography may not be marked as trade or business secrets in its

entirety. Except in cancellation proceedings before the Patent Office or a lawsuit concerning the validity or infringement of topography protection, inspection of material shall only be permitted in the form of direct inspection.

(4) For requests relating to the protection of topographies (topography protection matters), with the exception of cancellation requests (Section 8), a Topography Section shall be established within the Patent Office, under the direction of a legal member appointed by the President of the Patent Office. Decisions on cancellation requests (Section 8) shall be taken by a Topography Division to be set up within the Patent Office, which shall consist of two technical members and one legal member. In other respects, the provisions of the Utility Model Law concerning the Utility Model Section and Utility Model Divisions (Section 10), legal remedies and procedures (Section 18) and secret utility models (Section 9) shall apply *mutatis mutandis*.

#### *Commencement and Duration of Protection*

5.—(1) Topography protection shall commence:

1. on the day of the first commercial exploitation, other than confidential, of the topography, if the latter is filed with the Patent Office within two years of such exploitation, or

2. on the day on which the topography is filed with the Patent Office if it has not been previously exploited commercially, other than confidentially.

(2) Topography protection shall terminate at the end of the tenth calendar year after the year of commencement of protection.

(3) Topography protection can only be asserted if the topography has been filed with the Patent Office.

(4) Topography protection can no longer be claimed if the topography has not been commercially exploited, other than confidentially, or has not been filed with the Patent Office within 15 years after the day of its first fixation.

#### *Effect of Protection*

6.—(1) Topography protection shall have the effect that the owner of protection alone is authorized to exploit the topography. Any other person not having his consent shall be prohibited:

1. from reproducing the topography;

2. from offering, putting on the market or distributing, or importing for such purposes, the topography or the semiconductor product containing the topography.

(2) The effect of topography protection shall not extend to:

1. acts done privately for non-commercial purposes;

2. the reproduction of the topography for the purposes of analysis, evaluation or teaching;

3. the commercial exploitation of a topography which is the result of analysis or evaluation under item 2 and is original within the meaning of Section 1(2).

(3) A person who acquires a semiconductor product without knowing or without having reason to believe that it contains a protected topography shall be entitled to continue exploiting it without the consent of the owner of the protection. As soon as that person knows or has reason to believe that topography protection exists, the owner of protection shall be entitled to claim reasonable compensation in accordance with circumstances for the continued commercial exploitation of the semiconductor product.

#### *Limitation of Protection*

7.—(1) Topography protection shall not be afforded where a claim to cancellation, assertable by any person, exists against the person registered as owner (Section 8(1) and Section 8(3)).

(2) If the essential content of the application has been taken from the topography of another person without his consent, protection under this Law may not be invoked against the injured party. The provisions of the Patent Law<sup>2</sup> concerning the right to assignment (Section 8) shall apply *mutatis mutandis*.

#### *Claim for Cancellation, Cancellation Proceedings*

8.—(1) Any person may assert a claim against the person registered as owner for cancellation of the registration of the topography:

1. if the topography does not qualify under Section 1,
2. if the applicant or the person registered as owner is not entitled to protection under Section 2(3) to Section 2(6), or
3. if the topography has not been filed within the time limit under Section 5(1).1, or has been filed after expiration of the time limit under Section 5(4).

(2) In the case under Section 7(2), only the injured party may assert a claim for cancellation.

(3) Where the grounds for cancellation relate only to a part of the topography, only that part of the registration shall be canceled.

(4) A request for cancellation of the registration of the topography under subsection (1) to subsection (3) shall be filed with the Patent Office in writing. The request shall state the grounds on which it is based. A fee as prescribed by the schedule of fees shall be paid with the request; if the fee is not paid, the request shall be deemed not to have been filed. The provisions of Section 81(7) and Section 125 of the Patent Law shall apply *mutatis mutandis*.



(5) The provisions of the Utility Model Law concerning the cancellation proceedings (Section 17) and the effect of the cancellation proceedings on a lawsuit (Section 19) shall apply *mutatis mutandis*.

### *Infringement*

9.—(1) Any person who infringes topography protection contrary to the provisions of Section 6(1) may be sued by the injured party to enjoin such infringement. Any person who undertakes such action intentionally or negligently shall be liable for compensation to the injured party for the damage suffered therefrom. If the infringer is charged with only slight negligence, the court may fix, in lieu of compensation, an indemnity within the limits of the damage to the injured party and the profit which has accrued to the infringer. The provisions of Section 24c of the Utility Model Law shall apply *mutatis mutandis*.

(2) The provisions of the Utility Model Law as regards the claim to destruction (Section 24a), the claim to information in respect of third parties (Section 24b) and measures by the customs authorities (Section 25a) shall apply *mutatis mutandis*.

### *Penal Provisions*

10.—(1) Any person who

1. reproduces the topography contrary to Section 6(1), second sentence, item 1, or
2. offers, puts on the market, distributes or imports for such purposes the topography or the semiconductor product containing the topography contrary to Section 6(1), second sentence, item 2,

shall be punished by imprisonment not exceeding three years or by a fine.

(2) Where the person committing the offense does so on a commercial basis, the penalty shall be imprisonment for up to five years or a fine.

(3) The attempt to commit such an offense shall be punishable.

(4) In the cases referred to in subsection (1), criminal prosecution shall only be instituted upon request, unless, in the opinion of the prosecuting authorities, *ex officio* intervention is required in view of the particular public interest in criminal prosecution.

(5) The provision of the Utility Model Law regarding confiscation (Section 25(5)) shall apply *mutatis mutandis*.

(6) In the event of conviction, the sentence shall be published if the injured party so requests and if he has a legitimate interest in so doing. The scope and nature of the publication shall be determined in the judgment.



*Application of Provisions of the Patent Law and the Utility Model Law*

11.—(1) The provisions of the Patent Law concerning the giving of opinions (Section 29(1) and Section 29(2)), reinstatement (Section 123), the obligation to observe the truth in proceedings (Section 124), the official language (Section 126), the service of documents (Section 127) and legal assistance from the courts (Section 128) shall apply also to topography protection cases.

(2) The provisions of the Utility Model Law concerning the award of legal aid (Section 21(2)), transfer and license (Section 22), reduction of the value in dispute (Section 26), utility model litigation (Section 27), domestic representation (Section 28), authorization to issue statutory orders (Section 29) and allusion to protection (Section 30) shall apply *mutatis mutandis*.

**Chapter 2**  
**Amendments of Laws on Industrial Property**

12. to 16. . . .<sup>3</sup>

**Chapter 3**  
**Amendment of Other Laws**

17. to 25. . . .<sup>4</sup>

**Chapter 4**  
**Transitional and Final Provisions**

*Transitional Provisions*

26. Topography protection shall not be available for topographies which have been commercially exploited, other than confidentially, more than two years before the entry into force of this Law. Rights under this Law may only be asserted for the period beginning with the entry into force of this Law.

*Berlin Clause*

27. . . .<sup>5</sup>

*Entry Into Force*

28. This Law shall enter into force on November 1, 1987.



\* *German title:* Gesetz über den Schutz der Topographien von mikroelektronischen Halbleitererzeugnissen (Halbleiterschutzgesetz).

*Entry into force* (of last amending Law) : July 1, 1990.

*Source:* Communication from the German authorities.

*Note:* Translation by the International Bureau of WIPO.

\*\* Added by the International Bureau of WIPO.

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<sup>1</sup> See *Industrial Property Laws and Treaties*, GERMANY—Text 2-003 (*Editor's note*).

<sup>2</sup> See *Industrial Property Laws and Treaties*, GERMANY—Text 2-002 (*Editor's note*).

<sup>3</sup> Not reproduced here (*Editor's note*).

<sup>4</sup> Not reproduced here (*Editor's note*).

<sup>5</sup> No longer applicable (*Editor's note*).