



Law No. 11 of May 3, 1988,

on the Legal Protection of Topographies of Semiconductor Products*

TABLE OF CONTENTS**

	<i>Section</i>
Definitions.....	1
Requirements for Protection.....	2
Right to Protection	3
Registration	4
Content of Exclusive Rights.....	5
Compulsory Licenses	6
Duration of Protection.....	7
Actions for Violation of Exclusive Rights.....	8
Subject Matter Protected	9
Notice of Protected Rights	10
Continued Application of Other Legal Provisions	11
Additional Provisions	
Final Provisions	

Definitions

1. For the purposes of this Law:

- (1) a “semiconductor product” shall mean the final or an intermediate form of a product:
 - (a) consisting of a body of material which includes a layer of semiconducting material, and
 - (b) having one or more other layers composed of conducting, insulating or semiconducting material, the layers being arranged in accordance with a predetermined three-dimensional pattern, and
 - (c) intended to perform, exclusively or together with other functions, an electronic function;
- (2) the “topography” of a semiconductor product shall mean a series of related images, however fixed or encoded:
 - (a) representing the three-dimensional pattern of the layers of which a semiconductor product is composed, and
 - (b) in which series each image has the pattern or part of the pattern of a surface of the semiconductor product at any stage of its manufacture;
- (3) “commercial exploitation” means the sale, rental, leasing or any other method of commercial distribution, or an offer for these purposes.

For the purposes of the foregoing definition, “commercial exploitation” shall not include exploitation under conditions of confidentiality to the extent that no further distribution to third parties occurs. Nevertheless, such exploitation shall be included as takes place under conditions of confidentiality where those conditions are required for security reasons connected with military applications.

* *Spanish title:* Ley 11/1988, de 3 de mayo, de Protección Jurídica de las topografías de los productos semiconductores.

Source: *Boletín Oficial del Estado*, No. 108, May 5, 1988, pp. 1366.

Entry into force: September 5, 1988

** Added by WIPO.

Requirements for Protection

2.—

(1) The topographies of semiconductor products shall be protected by the grant of exclusive rights in accordance with the provisions of this Law.

(2) The topography of a semiconductor product shall be protected insofar as 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.

Right to Protection

3.—

(1) Subject to the provisions of the following paragraphs, the right to protection shall apply in favor of persons who are the creators of the topographies of semiconductor products.

(2)

(a) The right to protection for topographies of semiconductor products created by an employee during the validity of his employment contract, or in the course of employment relations with the employer, shall be governed by the provisions of Title IV, Employee Inventions, of Law No. 11/1986 of March 20, on Patents.¹

(b) The right to the protection of topographies of semiconductor products created under a contract other than a contract of employment shall apply in favor of the party to the contract who commissioned the topography, unless the contract provides to the contrary.

(3)

(a) The following shall enjoy the protection of this Law:

The natural persons referred to in paragraphs (1) and (2) who are nationals of a Member State of the European Economic Community or who have their habitual residence on the territory of such a Member State, and also legal entities referred to in paragraph (2) that have a real and effective industrial or commercial establishment on the territory of a Member State of the European Economic Community.

(b) The protection of this Law shall also be enjoyed by natural persons or legal entities that meet the conditions laid down in subparagraph (a) of paragraph (3) of this Section and first commercially exploit within a Member State a topography which has not yet been exploited commercially anywhere else and have been exclusively authorized to exploit commercially the topography throughout the Community by the person entitled to dispose of it.

(4) The right to protection shall also apply in favor of the successors in title of the persons mentioned in the foregoing paragraphs.

¹ See *Industrial Property Laws and Treaties*, SPAIN – Text 2–001.

Registration

4.—

(1) The exclusive rights conferred in conformity with Section 2 shall not come into existence in relation to the topography of a semiconductor product unless an application for registration is filed with the Registry of Industrial Property. Regulations shall be enacted to determine the form and conditions for the application for registration, for the processing and settlement thereof and also, where appropriate, for the publication of the registration decision.

The application for registration may also be filed with the Provincial Directorates of the Ministry of Industry and Energy, except where jurisdiction in industrial property matters belongs to the Autonomous Community, whose bodies shall in that case be competent to receive filings. Under such circumstances, the administrative department that has received the application shall make a record of the day, hour and minute of filing and shall convey that record to the Registry of Industrial Property.

Both the application for registration and the other documents that are to be filed with the Registry of Industrial Property shall be drawn up in Spanish. In those Autonomous Communities that have another official language in addition, the said documents may be drawn up in that other language, but shall be accompanied by the corresponding Spanish translation, which shall be considered authentic in the case of discrepancies between the two.

The application may be filed prior to the start of commercial exploitation or within a maximum period of two years from the starting date of such exploitation. Material identifying or exemplifying the topography or any combination thereof, and also a statement in a public document as to the date of first commercial exploitation of the topography where it precedes the date of the application for registration, shall be filed with the application for registration.

(2) The material deposited in conformity with the foregoing paragraph shall not be available to the public where it is a trade secret. This provision shall be without prejudice to the disclosure of such material pursuant to an order of a court or other competent authority to persons involved in litigation concerning the validity or infringement of the exclusive rights referred to in Section 2.

(3) Any transfer of exclusive rights in the topographies of semiconductor products shall not be binding on *bona fide* third parties unless they have been registered with the Registry of Industrial Property.

(4) Persons who have the right to protection for topographies of semiconductor products in accordance with the provisions of this Law and who can prove that another person has applied for and obtained the registration of a topography without their authorization may apply to the courts to claim ownership of the topography, without prejudice to whatever other rights or actions may be available to them. Actions claiming ownership may only be brought within a period of two years following the date on which the registration of the topography of the semiconductor product was published.

Content of Exclusive Rights

5.—

(1) The exclusive rights referred to in Section 2 shall include the right to authorize or to prohibit any of the following acts:

(a) reproduction of a topography insofar as it is protected under Section 2(2), with the exception of reproduction for private and non-profit-making purposes;

(b) commercial exploitation or importation for that purpose of a topography or of a semiconductor product manufactured by using the topography.

(2) The exclusive rights referred to in paragraph (1) shall not apply to reproduction for the purpose of analyzing, evaluating or teaching the concepts, processes, systems or techniques embodied in the topography or the topography itself.

(3) The exclusive rights referred to in paragraph (1) shall not extend to any such act in relation to a topography meeting the requirements of Section 2(2) and created on the basis of an analysis and evaluation of another topography, carried out in conformity with paragraph (2) of this Section.

(4) The exclusive rights to authorize or prohibit the acts specified in subparagraph (b) of paragraph (1) of this Section shall not apply to any such act committed in Spain in relation to topographies or semiconductor products that have been put on the market in a Member State of the European Economic Community by the owner of the exclusive rights or with his consent.

(5) A person who, when he acquires a semiconductor product, does not know, or has no reasonable grounds to believe, that the product is protected by an exclusive right conferred in accordance with the provisions of this Law may not be prevented from commercially exploiting that product.

However, for acts committed after that person knows, or has reasonable grounds to believe, that the semiconductor product is so protected, the owner of the rights may apply to the courts to seek payment of adequate remuneration.

(6) The provisions of the foregoing paragraph shall apply also to the successors in title of the person referred to in the first sentence of that paragraph.

Compulsory Licenses

6. The exclusive rights referred to in Section 2 may be the subject of compulsory licenses when the public interest so dictates. Under such circumstances, Sections 90, 100, 101 and 102 of Law No. 11/1986 of March 20, on Patents, shall apply.

Duration of Protection

7.—

(1) The exclusive rights referred to in Section 2 shall come into existence on the earlier of the following two dates:

- (a) the date when the topography is first commercially exploited anywhere in the world;
- (b) the date when an application for registration has been filed in due form.

(2) The exclusive rights shall come to an end on expiry of 10 years from the earlier of the following two dates:

- (a) the end of the calendar year in which the topography was first commercially exploited anywhere in the world;
- (b) the end of the calendar year in which the application for registration was filed in due form.

However, any registration of a topography that has not been commercially exploited anywhere in the world within a period of 15 years from its first fixation or encoding shall be without effect.

Actions for Violation of Exclusive Rights

8.—

(1) The owner of a topography by virtue of this Law may institute before the courts of ordinary jurisdiction the civil actions and measures provided for in Title VII of Law No. 11/1986 of March 20, on Patents.

(2) Any person who, being entitled to protection under Section 3, can prove that another person has fraudulently reproduced or commercially exploited or imported for that purpose a topography created by him during the period between its first fixation or encoding and the coming into existence of the exclusive rights under paragraph (1) of Section 7, may institute before the courts the appropriate action for unfair competition.

Subject Matter Protected

9. The protection granted by Section 2 to the topographies of semiconductor products shall apply only to the topography itself, to the exclusion of any other concept, process, system, technique or encoded information embodied in the topography.

Notice of Protected Rights

10. Semiconductor products manufactured on the basis of topographies protected under the provisions of this Law may carry a visible indication, consisting of a circled capital T, to give notice of the existence of that protection.

Continued Application of Other Legal Provisions

11. The provisions of this Law shall be without prejudice to legal provisions concerning patent and utility model rights.

ADDITIONAL PROVISIONS

1. A fee, to which the following rules shall apply, is hereby created for services rendered by the Registry of Industrial Property in connection with the legal protection of the topographies of semiconductor products:

(1) Regulatory provisions. The fee shall be governed by the provisions of this Law and failing that, by the General Tax Law, No. 230 of December 28, 1963, by the Law on Taxes and Parafiscal Levies of December 26, 1958, and by Law No. 17 of May 2, 1975, Creating the Industrial Property Registry as an Autonomous Body.

(2) Acts subject to payment. The fee shall be payable for:

- (a) application for registration of the topographies of semiconductor products;
- (b) deposit of material identifying or exemplifying the topography or any combination thereof;
- (c) registration of transfers of exclusive rights in the topographies of semiconductor products.

(3) Persons liable. Applicants for the registration of topographies or for the deposit of material or for the registration of transfers shall be liable to payment of the fee.

(4) Amounts. The fees shall be payable according to the following tariff:

- (i) fee for application for registration: 6,050 pesetas;
- (ii) fee for deposit of material: 4,000 pesetas;
- (iii) fee for registration of transfers, for each registration: 1,200 pesetas.

(5) Commencement of liability. The obligation to contribute shall come into existence at the time of the application for registration or for recording of the transfer or at the time of the deposit of the material.

(6) Allocation. The fee shall accrue to the Registry of Industrial Property, the amount deriving from its collection being incorporated in budgetary income.

(7) Management. Subject to the supervision and direction of the Ministry of Economy and Finance, the management of the fee shall be entrusted to the Registry of Industrial Property, which shall have the authority to assign the funds as it sees fit.

(8) Amendment. The General Budget Laws of the State may amend the amounts specified in the tariff to adapt them to variations occurring in the costs of services remunerated according to economic and social conditions.



2. The Law on Administrative Procedure shall apply subsidiarily to any administrative acts governed by this Law that may be resorted to in administrative litigation conforming to the provisions of the Law on Jurisdiction in Administrative Litigation of December 27, 1956.

FINAL PROVISIONS

1. The Government is authorized to institute such measures and enact such provisions as are necessary for the development and implementation of the provisions of this Law.

2. The Government is authorized to amend the definitions in items (a) and (b) of paragraph (1) of Section 1 when the same definitions are revised by the bodies of the European Communities in order to adapt them to the progress of technology.

3. The Government is authorized to amend Section 3(3) with a view to broadening the right to protection to include persons originating in other countries or territories that do not otherwise enjoy protection when such a measure is laid down by the bodies of the European Communities.

The Government may likewise extend protection to persons who are not covered by the foregoing paragraph by concluding the appropriate agreement with their State of origin in accordance with the procedure provided for in Article 3(6) to (8) of Directive No. 87/54/EEC of December 16, 1986.

4. This Law shall enter into force four months after its publication in the Official Bulletin of the State [*Boletín Oficial del Estado*].