

Presidential Decree 45/1991

"Legal protection of the topographies of semiconductor products in compliance with the European Communities Council Directive 87/54/EEC of 16 December 1986, as complemented by the Decisions 87/532/EEC and 88/311/EEC"

THE PRESIDENT OF THE HELLENIC REPUBLIC

Taking into consideration the provisions of:

1. Articles 4 and 5, L. 1338/1983 "Implementation of community law" (Official Gazette 34, A'), as amended and complemented by article 6 par. 4, L. 1440/1984 "Participation of Greece in the capital, reserves and provisions of the European Steel and Coal Community and EURATOM Supply Agency" (Official Gazette 70, A'), as amended by article 7, L. 1775/1988 "Companies granting venture capital and other provisions (Official Gazette 101, A').

2. L. 945/1979 "On the Ratification of the Treaty on the Accession of Greece to the European Economic Community" (Official Gazette 170, A', 27.7.1979).

3. The Act on the accession of the Kingdom of Spain and the Portuguese Republic to the European Economic Community and the European Atomic Energy Community (E.E.L. 302 / 15.1.1985), ratified by L. 1572/1985 (Official Gazette 193, A', 1985).

4. Article 1 par. 2 of Law 1733/1987 "Technology transfer, inventions, technological innovation and establishment of an Atomic Energy Commission" (Official Gazette 171, A').

5. Order No. Y 1250/15 of January 1991 (Official Gazette B, 10) of the Prime Minister "Complementation of the Prime Minister's order Y 1201/5.10.1990".

6. Opinion No 628/1990 of the Council of State, following a proposal of the Deputy Minister of National Economy, the Ministers of Justice and the Minister of Industry, Energy and Technology, we decide:

CHAPTER ONE

GENERAL PROVISIONS

Article 1

Purpose

The purpose of this presidential decree is the compliance with the European Communities Council Directive 87/54/EEC of 16 December 1986 "on the legal protection of the topographies of semiconductor products" which was published in the Greek language in the official Journal of the European Communities on 27 January 1987 (EEL 24), as complemented by the 87/532/EEC Decision of 26 October 1987 and promulgated in the Greek language in the Journal of the European Communities on 4 November 1987 (EEL 313) and by the 88/311/EEC decision of 31 March 1988.

Article 2

Definitions

For the implementation of this presidential decree the following definitions shall apply:

- a) A "semiconductor product" is the final or intermediate form of any product, which:
- i) consists of a body of material that contains a layer of semiconductor material, and
 - ii) has one or more layers which are composed of conducting, insulating or semiconducting material and are arranged according to a predetermined three-dimensional pattern, and
 - iii) is intended to perform electronic functions, either exclusively or together with other functions.
- b) A "topography" of a semiconductor product is a series of related images, however fixed or encoded:
- i) representing the three-dimensional pattern of the layers comprising the semiconductor product,
 - ii) to which every image includes the pattern or part of the pattern of a surface of the semiconductor product at any stage of its production.
- c) "Commercial exploitation" is the sale, rental, leasing or any other method of commercial availability or offer for such purposes. The aforementioned commercial exploitation does not include the exploitation under confidentiality conditions, provided that the product will not be made further available to third parties, unless the exploitation of a topography is realized under the confidentiality conditions in order to protect material interests of the State safety referring to the manufacturing or trade of guns, ammunition and war material, in accordance with the terms of article 223, par. 1 sec. b) of the EEC Convention.

d) "IPA" is the Industrial Property Agency, established in Athens (L. 1733/1987).

Article 3

Terms of protection

1. The topography of a semiconductor product is the object of protection, in accordance with the provisions of this presidential decree, if:

a) is a product of its creator's intellectual effort, and

b) is not a commonality in the semiconductor industry.

2. Topographies consisted of elements that are commonalities in the semiconductor industry can be protected only if the combination of such elements, as a total, fulfils the conditions of paragraph 1.

3. The accurate reproduction of topography is not a product of intellectual effort.

4. The protection of topography is not extended to the principles, procedures, systems, technique or encrypted information that may be integrated into the topography.

CHAPTER TWO

RIGHT HOLDERS - CLAIMING

Article 4

Right to acquire protection

1. The right to the protection of a topography is given to the creator or the right holder, according to article 7 of this decree, as well as to their universal or special successors.

2. The person submitting the topography registration application, as specified in article 6 of this presidential decree, is considered to be the creator of the topography.

Article 5

Joint proprietorship of a topography

If more than one persons have jointly created the topography and provided that there is no other agreement, the right is granted to all of them, jointly and severally. Every joint proprietor can freely transfer his share and procure for the protection of the joint topography.

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Article 6

Right to register the topography

1. The right to submit a registration application to the IPA and to acquire topography protection in accordance with articles 4 and 9 of this presidential decree is granted to:

a) The natural persons who are citizens of a Member-State of the Community or have their habitual residence in the territory of a Member State of the Community or a Member-State of the EFTA, apart from Switzerland. 2

b) The Companies and other legal persons having a real or industrial or commercial establishment in the territory of a Member-State of the Community or a Member-State of the EFTA, apart from Switzerland. 2

2. The right of paragraph 1 is also granted to natural persons who are citizens of the following countries or have their habitual residence in the following countries, as well as to companies or other legal persons having their commercial or industrial establishment in the following countries:

- Australia
- Territorial Collectivity of Saint Pierre and Miquelon
- French Polynesia
- French regions of the southern hemisphere and the Antarctica
- Iceland
- Japan

- Liechtenstein
- New Caledonia and Dependencies
- Norway
- Canada
- Switzerland
- Wallis and Futuna Islands

3.a. The protection right of paragraph 1 is also granted to natural persons who are citizens of the United States of America or citizens of one of the territories stated below or who have their habitual residence in this country or in one of these territories:

- Anguilla
- Aruba
- Bermuda
- British territory of the Indian Ocean
- British Virgin Islands
- Cayman Islands
- Channel Islands

- Falkland Islands
- Hong Kong
- Isle of Man
- Montserrat
- Pitcairn
- Saint Helena
- Saint Helena Dependencies (Ascension and Tristan da Cunha islands)

- South Georgia and South Sandwich Islands
- Turks and Caicos Islands
- Netherlands Antilles

b) The right of paragraph 1 is also granted to companies or other legal persons of the United States of America or one of the territories stated in section (a) that have a true and substantial industrial or commercial establishment in the United States or in one of these territories, provided that the companies and the other legal persons of Greece that have the right of protection by virtue of this presidential decree are also protected in the United States or in the specific territory and provided that the fulfillment of this condition is verified by the Committee or the Council and is announced to the Member-States.

4. In case that, according to the provisions hereof, the right of protection is not provided, this right is also granted to natural persons who are citizens of a member-state or have their habitual residence in the territory of a member-state and to legal persons with a real industrial or commercial establishment in the member-state, provided that such natural or legal persons:

- a. Exploit commercially, for the first time in Greece or in another Member-State of the Community, a topography that has not yet become the object of commercial exploitation anywhere in the world, and
- b. Have acquired an exclusive topography exploitation license, valid throughout the Community, from the person who has the right to distribute the topography.

5. The right of paragraph 1 is also granted to the right holders of the persons designated in paragraphs 1,2,3 and 4. For the cases and terms of representation before the IPA, as well as for any other detail, the provisions in force of L. 1733/87 on patents and the delegated regulatory acts shall apply.

Article 7

Topography created by an employee

Paragraphs 1, 2, 3 and 4 of article 7 are amended as follows:

- 1. Without prejudice to paragraphs 2, 3 and 4, the right to protection applies in favour of the creators of the topographies of semiconductor products.

2. When topographies are created during an employment relationship, the right to protection is granted to the creator's employer.

3. When topographies are created based on a contract, which is not an employment contract, the right to protection is granted to the party who has placed the order for the topography.

4. The right to protection under paragraphs 2 and 3 applies only if there is no opposing contractual regulation between the employee and the employer. 4

5. In any case, the creator's name is mentioned in the registration certificate and the creator has the right to demand protection from the applicant or his recognition as the creator from the holder of the certificate.

Article 8

Claiming

1. The rightholder of a topography may, if a third party has submitted, without the right holder's consent, a topography registration application referring to the right holder's topography or to material elements of such topography, claim, by suing the third party, the rights deriving from the application or, if a registration certificate has been granted, the rights deriving from such certificate.

2. The aforementioned lawsuit must be filed within two years from the publication of the registration details in the Special Industrial Property Bulletin. This period of time will not apply in case that the holder of the certificate knew at the time of the certificate grant or the topography transfer the claimant's right.

3. A summary of the irrevocable decision that accepts the aforementioned lawsuit will be registered on the Register of Topographies.

4. The exploitation licenses as well as any other right that has been granted to the topography are valid from the date of the registration. The defeated litigant and any third parties who exploit the topography in good faith or had proceeded to the necessary preparations for the exploitation of the topography can ask from the acknowledged right holder the paid concession of a non exclusive exploitation license for a reasonable period of time. In case of dispute between the parties, the terms are set by the one-member court of first instance of the place where the applicant has its residence, in accordance with articles 741 to 781 of the code of civil procedure.

Article 9

Submitting an application

1. For the registration of a topography an application must be submitted to IPA, and the application must contain:

a) The full name or the trade name, the nationality and the domicile or main establishment address of the person submitting the application, as stipulated in article 6 of this presidential decree.

b) A description identifying the topography, in accordance with article 2 of this presidential degree.

c) A statement regarding the date of the first, non-confidential commercial exploitation of the topography, when this date precedes the submission date of the registration application. This statement must prove the adherence to the time limit set by paragraph 4 below.

d) A request for the registration of the topography. The request is accompanied by the receipt of the topography submission and registration fee.

2. If the application fulfils the conditions of paragraph 1, it is accepted for submission, it is deemed proper, a submission date is assigned to it and the application is registered on the Book of Reports.

3. The following must be attached to the application:

a) The drawings or images to which the description refers.

b) The material, if any, that constitutes a representative sample of the topography.

c) The applicant's legalization documents, in the case of a legal or natural person who is not the creator.

4. Within the next two years from the first commercial exploitation of a topography, the right holder of the topography must submit to the IPA a topography registration application.

Otherwise, the application is deemed overdue, the IPA does not assign a submission date and there are no rights to exclusiveness.

5. For all other issues, the provisions in force of the law 1733/1987 on patents shall apply mutatis mutandis.

Article 10

"Secrecy" of a topography

1. During the submission to the IPA of the items specified in article 9 par. 1, b) and par. 3, a) and b) of this presidential decree, if the applicant declares that this is a case of commercial secrecy, the IPA assigns the characterization "CONFIDENTIAL" and seals the information in a special envelope. The "confidential" items will not be disclosed nor will they be made accessible to the public. The disclosure of confidential items is punished with the penalties stipulated in article 17 of l.146/1914 "On unfair competition" (Official Gazette. 30).
 2. The secrecy of paragraph 1 is revoked upon decision of the competent court for the persons who are involved in a dispute with regard to the validity or violation of the rights to exclusiveness deriving from the protected topography.
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Article 11

Supplemental items

1. Within four months from the proper submission, the applicant must submit to the IPA the attached items according to article 9 par. 3 of this presidential decree, and then the application is deemed complete.
 2. If, after the elapse of this time limit, the IPA discovers that not all items of the application have been included, the application is deemed as not to have been submitted.
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Article 12

Registration certificate

1. If the topography registration application is complete and proper, in accordance with articles 9 and 11 of this decision, the IPA grants a registration certificate for the topography of semiconductor products, without any previous control of the conditions contained in article 3 of this presidential decree, on the applicant's responsibility.

2. Without prejudice to the provisions of article 10, after the grant of the registration certificate, any third party can ask information and copies of the application and supplemental items referring to the protected topography.

3. Items of the application are published in the Special Industrial Property Bulletin.

SECTION D

RIGHTS FROM THE PROTECTED TOPOGRAPHY- TERM OF PROTECTION – SUCCESSION AND EXPLOITATION LICENSES

Article 13

Content of the right

1. The creator of a protected topography of a semiconductor product has the exclusive and time-limited, subject to article 14, right to allow or forbid any of the following actions:

a) Reproduction of topographies that are protected under article 3 of this presidential decree.

b) Commercial exploitation or import for this purpose of a topography or a semiconductor product manufactured by using a protected topography.

2. The creator of the protected topography cannot prohibit, within the meaning of the previous paragraph, the following actions:

a) The private reproduction or use of a topography for non commercial purposes.

b) The reproduction of a topography for the purposes of analyzing, evaluating or teaching the principles, procedures, systems or techniques that are integrated in the topographies, or the topographies themselves.

3. In case that any analysis and evaluation of a protected topography, under paragraph 2b, leads to the creation of another topography that fulfils the conditions of article 3 of this presidential decree, the rights to exclusiveness deriving from the protected topography are not extended to the newly-created topography.

4. The exclusive right under paragraph 1, section b on a protected topography ceases to exist and shall not apply when the topography or the semiconductor product is marketed in a Member-State of the European Communities or a Member-State of the EFTA, apart from

Switzerland by a person entitled to approve the trading or with his consent, as complemented by virtue of article 4, P.D. 415/1995.

5. The person who exploits commercially a semiconductor product or a topography and did not know or did not have reasonable grounds to believe that the product or the topography are protected by a right to exclusiveness granted by virtue of this decision, shall be entitled to continue such commercial exploitation.

6. The holder of the right to exclusiveness may claim reasonable compensation against actions committed after the person exploiting the topography or the semiconductor product in accordance with paragraph 5 has learned, or had reasonable grounds to believe that the semiconductor is so protected under this decision.

7. The competent court for hearing the claims under paragraph 6 of this presidential decree is the Multi-Member Court of First Instance at the plaintiff's place of residence and shall rule in conformity with the procedure set out in Articles 741 to 781 of the Code of Civil Procedure.

Article 14

Beginning – End of Protection

1. The exclusive right granted under Article 13 of this presidential decree shall start to apply on the day that application for the registration of the topography was properly submitted to the IPA. 5

2. Whenever the date of the topography's first commercial exploitation follows the date stipulated in paragraph 1, the said exclusive right shall apply on the date of the first commercial exploitation. 5

3. The exclusive rights under Article 13 shall cease to apply ten years after the earlier of the following dates:

a) The end of the calendar year in which the topography was first commercially exploited anywhere in the world, or

b) The end of the calendar year in which the proper registration application was submitted to the IPA.

4. The rights to exclusiveness that are granted by virtue of paragraph 1 cease to apply if the topography is commercially exploited, anywhere in the world, within 15 days from the date of

the first fixation or encoding and no further rights to exclusiveness emerge if, within this time, no registration application has been duly submitted to the IPA, since such registration is a prerequisite for the emergence or the further validity of these rights.

Article 15

Succession - Exploitation license

1. The right to register a topography and the rights to exclusiveness deriving from a protected topography can be transferred by a written agreement or inherited. The transfer takes place from the registration of the agreement or the inheritance certificate to the Register of topographies and is published in the Special Industrial Property Bulletin. Paragraphs 2, 3, 4, 5 and 6 of the law 1733/87 apply *mutatis mutandis*.

2. Articles 12, 13 and 14 of Law No. 1733/1987 shall also apply accordingly to the right on the topography.

CHAPTER E

NULLITY - INFRINGEMENT

Article 16

Nullity

The right on the topography shall be declared null and void upon court order if:

- a) The holder of a protected topography certificate is not the creator or transferee or right holder in accordance with Article 7.
- b) The topography is excluded from patent ability under the conditions of Article 3.
- c) The topography registration application has been submitted after the expiry of the time-limit set in article 9, par. 4.
- d) The person submitting the registration application is not included in the persons specified in article 6.

For all other issues, article 15, paragraphs 2 and 3 of l. 1733/1987 shall apply.

Article 17

Lawsuits – Infringement

1. In case that the rights deriving from the protected topography are infringed or threatened to be infringed, the holder of the topography is entitled to demand the cessation of the infringement and the prevention of such infringement in the future.
 2. In case that the aforementioned infringement is intentional, the topography holder who has suffered from the infringement is entitled to demand the restoration of the damage or the return of the benefit deriving from the illicit exploitation of the protected topography or the payment of an amount similar to the value of the exploitation license.
 3. Paragraphs 3, 4 and 5 of article 17 of L.1733/1987 shall apply mutatis mutandis.
 4. The rights set out in paragraph 2 are also granted to any person who is entitled to expect the protection of a topography if a third party fraudulently reproduces, commercially exploits or imports such topography.
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Article 18

Final provisions

1. The provisions of this presidential decree shall not affect the implementation of any other legal provisions on the industrial property.
 2. The protection of topographies under the provisions on copyright shall not apply in the case of topographies that have been created after the entry into force of this presidential decree.
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Article 19

Entry into force

This presidential decree shall enter into force upon its promulgation in the Official Gazette.

We assign the promulgation and execution of this decree to the Minister of Industry, Energy and Technology.

1. Paragraph 2 of article 5 is abolished by article 2a of the P.D. 415/1995

2. As amended by article 2b of the P.D. 415/1995

3. As amended by article 2c of the P.D. 415/1995

4. As amended by article 3 of the P.D. 415/1995

5. As amended by article 4 of the P.D. 415/1995, top of page
