

PRESIDENTIAL DECREE 45/1991

"Legal protection of topographies of semiconductor products in compliance with Council Directive 87/54/EEC of 16 December 1986 as supplemented by Decision 87/532/EEC and 88/311/EEC"

THE PRESIDENT
OF THE HELLENIC REPUBLIC

1. Having regard to Articles 4 and 5 of Law 1338/1983 on the Implementation of Community Law (Greek Government Journal 34, vol. A) as amended and supplemented with Article 6(4) of Law 1440/1984 on participation of Greece in the Capital, Reserves and Commitments of the European Coal and Steel Community and the Euratom Supply Organisation (GGG 70, vol. A), as amended with Article 7 of Law 1775/1988 on companies providing venture capital and other provisions (GGG 101, vol. A);
2. Having regard to Law 945/1979 on Ratification of the Treaty of accession of Greece to the European Economic Community (GGG 170, vol. A) of 27 July 1979;
3. Having regard to the Act of Accession of the Kingdom of Spain and the Portuguese Republic to the European Economic Community and the European Atomic Energy Community (Official Journal No. 302/15.01.1985) as ratified by Law 1572/1985 (GGG 193, vol. A, 1985);
4. Having regard to Article 1(2) of Law 1733/1987 on the Transfer of Technology, Inventions, Technological Innovation and the Creation of an Atomic Energy Committee (GGG 171, vol. A);
5. Having regard to Decision of the Prime Minister G 1250 of 15 January 1991 (GGG vol. B, 10) supplementing decision G 1201 of 5 October 1990,
6. Having regard to the opinion No. 628/1990 of the Council of State following proposal from the Deputy Minister of the National Economy and the Ministers of Justice, Industry, Energy and Technology,

HEREBY DECIDES:

CHAPTER ONE

GENERAL PROVISIONS

Article 1

Objective

The objective of this Decree is to transpose Council Directive 87/54/EEC of 16 December 1986 on the legal protection of topographies of semiconductor products, published in Greek in the Official Journal of the European Communities on 27 January 1987 (Official Journal NO. 24), as amended by Decision 87/532/EEC of 26 October 1987 published in Greek in the Official Journal of the European Communities on 4 November 1987 (Official Journal No.131) and Decision 88/311/EEC of 31 May 1988.

Article 2

Definitions

For the purposes of this Decree:

- a. a "semiconductor product" shall mean the final or an intermediate form of any product:
 - i) consisting of a body of material which includes a layer of semiconducting material; and
 - ii) 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

- iii) intended to perform, exclusively or together with other functions, an electronic function;
- b. the “topography” of a semiconductor product shall mean a series of related images, however fixed or encoded;
 - i) representing the three-dimensional pattern of the layers of which a semiconductor product is composed; and
 - ii) 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;
- c. a “commercial exploitation” means the sale, rental, leasing or any other method of commercial distribution, or an offer for these purposes.

The above-mentioned commercial exploitation shall not include exploitation under conditions of confidentiality to the extent that no further distribution to third parties occurs, unless the exploitation of a topography occurs under conditions of confidentiality for the protection of the essential interests of State security which are connected with the production or trade of arms, munition and war material in accordance with the provisions of Article 223(1)(b) of the EEC Treaty.

- d. “OBI” is the Athens-based Industrial Property Organisation (Law No. 1733/1987).

Article 3

Conditions of protection

1. The topography of a semiconductor product shall be protected in accordance with the provisions of this Decree, provided
 - a. it is the result of its creator’s own intellectual effort; and
 - b. it is not commonplace in the semiconductor industry.
2. Topographies which consist of elements that are commonplace in the semiconductor industry shall be protected only to the extent that the combination of such elements, taken as a whole, fulfils the conditions set out in paragraph 1.
3. The true copy of a topography shall not be a product of intellectual effort.
4. Protection of a topography does not extend to the principles, procedures, systems, technology or coded information incorporated in that topography.

CHAPTER TWO

ENTITLEMENTS AND PROCEDURES

Article 4

Right to acquire protection

1. The creator or owner pursuant to Article 7 of this Decree, and his successors, shall be entitled to have their topography protected.
2. The creator is the person who first files an application for registration of a topography in accordance with Article 6 of this Decree.

Article 5

Co-ownership of a topography

If several persons created the topography together and provided no agreement specifying otherwise exists, the right shall belong to them all jointly. Each co-owner may freely transfer his share and attend to the protection of the common topography.^[1]

Article 6

Right to register a topography

1. The following persons shall have the right to file an application for registration with the OBI and to protection of topography in accordance with Articles 4 and 9 of this Decree:

a. natural persons who are nationals of a member State of European Union or have their habitual residence on the territory of a Member State or of a Member State of the European Free Trade Association (EFTA), with the exception of Switzerland; ^[2]

b. companies or other legal persons which have a real and effective industrial or commercial establishment on the territory of a Member State of the Union or of a Member State of the European Free Trade Association (EFTA), with the exception of Switzerland. ^[3]

2. The right referred to in paragraph 1 shall also extend to natural persons who are nationals of one of the following countries or have their habitual residence there in such a country, and to companies or other legal persons which have commercial or industrial establishment there:

- Australia
- Collectivité territoriale de Saint-Pierre et Miquelon
- French Polynesia
- French Southern and Antarctic Territories
- Iceland
- Japan
- Liechtenstein
- New Kalidonia and dependencies
- Norway
- Canada
- Switzerland
- Wallis and Futuna Islands

3. a. The right to protection under paragraph 1 shall also extend to natural persons who are nationals of the United States of America or nationals of one of the following territories or have their habitual residence in one of the following territories:

- Anguilla
- Aruba

¹ Paragraph 2 of Article 5 is abolished by Article 2(a) of PD 415/1995

² As amended by Article 2b of PD 415/1995

³ As amended by Article 2b of PD 415/1995

- Bermuda
- British Indian Ocean Territory
- British Virgin Islands
- Cayman Islands
- English Normand Islands
- Falkland Islands
- Hong Kong
- Man Island
- Montserrat
- Pitcairn
- St Helena
- St Helena dependencies (Ascension, Tristan da Cunha Islands)
- South Georgia and the South Sandwich Islands
- Turks and Caicos Islands
- Netherlands Antilles

b. The right referred to in paragraph 1 shall also extend to companies or other legal persons of a country of the United States of America or of any of the territories which are listed in paragraph a. and have an effective industrial or commercial establishment in the United States or in one of these territories subject to the condition that Greek companies which have the right to protection under the terms of this Decree benefit from protection in the United States or in the specific territory and as long as the fulfilment of this condition is ascertained by the Commission of the Council and is officially stated to the member – states.

4. If under the terms of above paragraphs no right to protection is provided, this right shall also apply in favour of natural persons who are nationals or residents of a Member State, or in favour of legal persons who have a real and effective industrial or commercial establishment in such a Member State, and who

a. first commercially exploit within Greece or another Member State of the Union a topography which has not yet been exploited commercially anywhere in the world; and

b. have been exclusively authorised to exploit commercially the topography throughout the Union by the persons entitled to dispose of it. [⁴]

5. The right to protection referred to in paragraph 1 shall also apply in favour of the successors in title of the persons mentioned in paragraphs 1, 2, 3 and 4.

As regards conditions of representation vis-à-vis the OBI and other data, the provisions in force relating to patents set out in Law No. 1733/1987 and the administrative acts in implementation of this law shall apply.

⁴ As amended by Article 2(c) PD 415/1995

Article 7

Topographies created by employees

1. A topography created by an employee shall belong to him (free topography) unless it is either a service topography which belongs entirely to the employer or a dependent topography, of which 40% belongs to the employer and 60% to the employee.

2. A service topography is the product of a contractual relationship between employee and employer concerning the development of intellectual effort.

In the event of creation of a service topography, the employee shall be entitled to fair supplementary remuneration, if the topography is particularly profitable to the employer.

3. A dependent topography is a topography which is created by the employee with the aid of materials, means or information provided by the firm or the legal entity employing him. The employer shall be entitled to exploit the dependent topography provided he remunerates the creator, in line with the economic value of the topography and the resultant profits. The creator of a dependent topography shall immediately inform the employer in writing that he has created the topography and provide the necessary data for filing a joint application for registration. If the employer does not declare in writing to the employee within four months of the above communication that he is interested in co-filing the application, this may be submitted by the employee alone, in which case the topography shall belong to the employee alone.

4. The protection right of paragraphs 2 and 3 is applied only in the case that there is no contrary regulatory agreement concluded by the employer and employee. ^[5]

5. At all events the name of the creator shall be mentioned in the registration certificate and the creator shall be entitled to request protection from the applicant or to request recognition as creator from the holder of the certificate.

Article 8

Vindication

1. The rightful owner of the topography may, whenever a third party has filed without his consent an application for registration of a topography relating to his topography or essential elements of this topography, file a claim against this third party for recognition of the rights deriving from his application and, if a certificate of registration has been granted, of the rights which derive from this certificate.

2. This claim must be filed within two years of publication of the registration particulars in the Industrial Property Bulletin. This deadline shall not apply if the holder of the certificate was aware at the time the certificate was registered or at the time of transfer of the topography of the right of the claimant.

3. A summary of this irrevocable decision in recognition of such a claim shall be deposited with the Register of Topographies.

4. From the date of deposition the licences as well as any other right concerning the topography are considered null and void. The losing party as well as third parties may request from the recognised owner the concession, against remuneration, of a non exclusive license for a reasonable period, provided that they are utilising the topography in good faith or had taken the necessary precautions for its utilisation. If the parties fail to reach agreement, the conditions fixed by the Court of First Instance of the claimant's place of

⁵ As amended by Article 3 PD 415/1995

residence, in conformity with the procedure laid down in Articles 741 to 781 of the Code of Civil Procedure, shall apply.

CHAPTER THREE

REGISTRATION PROCEDURE - CERTIFICATE

Article 9

Filing of applications

1. Whoever wishes to register a topography must file an application with the OBI, which must contain:

a. the full name, nationality, place of residence or head office and address of the depositor for the purposes of Article 6 of this Presidential Decree.

b. a description of the topography in accordance with Article 2 of this Presidential Decree.

c. a declaration of the date when the topography was first exploited on a non-confidential commercial basis, when this date is earlier than that of the date of registration. This declaration must prove that the time limit stipulated in paragraph 4 above has been respected;

d. an application for registration of the topography. This application shall be accompanied by proof of payment of the deposition and registration fee for the topography.

2. Insofar as the application satisfies all the conditions of paragraph 1, it shall be accepted for filing, it shall be considered regular, and a date of filing shall be recorded in the register.

3. The application shall be accompanied by the following documents:

a. the drawings or images to which the description refers

b. where relevant, the material representing the topography

c. the depositor's documents of legitimation in the case of a legal person or in the case of a natural person if he is not the creator.

4. Within a period of two years following the first commercial exploitation of a topography, the creator of the topography shall submit an application for registration of the topography with the OBI. Otherwise, the application shall be deemed to be overdue, no date of registration will be granted by the OBI, nor exclusive rights shall be granted.

5. The provisions of Law No. 1733/1987 on patents shall apply mutatis mutandis.

Article 10

Secrecy of a topography

1. If during registration with the OBI of the particulars referred to in Article 9(1)(b) and (3)(a) and (b) of this Decree the depositor declares that these particulars constitute commercial secrets, the OBI shall attribute the character "secret" and shall keep the particulars in a special sealed envelope. The secret particulars shall not be divulged or made available to the public. Divulging of secret particulars shall be punishable under the terms of Article 17 of Law No. 146/1914 on Unfair Competition (GGG 30).

2. The secrecy referred to in paragraph 1 is deemed to be withdrawn after a ruling by the responsible court on parties to disputes concerning the validity or infringement of exclusive rights derived from a protected topography.

Article 11

Additional particulars

1. Within ten months of the orderly deposition, the depositor shall submit to the OBI the annexed particulars as described in Article 9(3) of this Decree, in which case the application shall be considered complete.
2. If, on expiry of this time limit, the OBI establishes that not all of the particulars have been submitted, the application shall be considered as not filed.

Article 12

Certificate of registration

1. If the application for registration of a topography is complete and orderly, in accordance with Articles 9 and 11 of this Decree, the OBI shall grant a certificate of registration of a semiconductor product topography, without determining whether the conditions of Article 3 of this Decree have been satisfied, at the depositor's responsibility.
2. Under reserve of Article 10, on granting of the certificate of registration, third parties may request information on and copies of the application and additional particulars concerning the protected topography.
3. The data of the application shall be published in the Industrial Property Bulletin.

CHAPTER FOUR

RIGHTS DERIVING FROM THE PROTECTED TOPOGRAPHY - DURATION OF PROTECTION - INHERITANCE AND AUTHORISATION OF EXPLOITATION

Article 13

Content of the right

1. The creator of a protected semiconductor product topography shall have the exclusive right to authorise or prohibit any of the following acts within the time limit set out in Article 14:
 - a. reproduction of a topography insofar as it is protected under Article 3 of this Decree;
 - b. commercial exploitation or the importation for that purpose of a topography or a semiconductor product manufactured by using the protected topography.
2. For the purposes of the above paragraph, the creator of the protected topography may not prohibit the following activities:
 - a. private reproduction or use of the topography for non-commercial purposes
 - b. the reproduction of a topography with a view to analysis, evaluation or teaching the concepts, processes, systems or techniques embodied in the topography or the topography itself.
3. If analysis or evaluation in accordance with Paragraph 2(b) of a protected topography leads to the creation of another topography which satisfies the prerequisites of Article 3 of this Decree, the exclusive rights deriving from the protected topography shall not be extended to the newly created topography.

4. The exclusive rights referred to in paragraph 1 shall not apply when the topography or the semiconductor product has been put on the market in a Member State of the European Union by the person entitled to authorise its marketing or with his consent [⁶].

5. A person who, commercially exploits a semiconductor product or a topography, does not know, or has no reasonable grounds to believe that the product or the topography are protected by an exclusive right conferred by a Member State in conformity with this decision, shall be entitled to continue to commercially exploit that product.

6. The person holding the exclusive right may require the payment of adequate compensation for acts committed after that person exploiting the topography or the semiconductor product in accordance with paragraph 5 knows, or has reasonable grounds to believe that the semiconductor is so protected.

7. The court responsible for hearing claims under Paragraph 6 of this Decree shall be the Extended 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 and end of protection

1. The exclusive right granted under Article 13 of this Decree shall commence on the day following the day of orderly filing with the OBI of the application for registration of the topography [¹].

2. Whenever the date of first commercial exploitation of the topography is later than the date referred to in paragraph 1, the said exclusive right shall come into existence on the day following the date of first commercial exploitation. [¹]

3. The exclusive rights referred to in Article 13 shall come to an end ten years from the earlier of the following dates:

a. the end of the calendar year during which the topography is first commercially exploited anywhere in the world;

b. the end of the calendar year during which the application for registration has been filed with the OBI

4. Where a topography has not been commercially exploited anywhere in the world within a period of 15 years from its first fixation or encoding, any exclusive rights in existence pursuant to paragraph 1 shall come to an end.

Article 15

Succession - licenses

1. The right to registration of a topography and the exclusive rights deriving from a protected topography may be transferred through written agreement or through inheritance. Transfer shall consist of the registration of the agreement or the inheritance certificate with the Topographies Register and shall be published in the Industrial Property Bulletin. Paragraphs 2, 3, 4, 5 and 6 of law No. 1733/1987 shall apply mutatis mutandis.

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

CHAPTER FIVE

⁶ As amended by article 4 of PD 415/1995

NULLITY - INFRINGEMENT

Article 16

Nullity

The right to the topography shall be declared null and void by court order if:

- a. the holder of the certificate of the protected topography is not the creator or the transferee or the person entitled in accordance with Article 7
- b. the topography is not entitled to protection under Article 3
- c. the application for registration of the topography is submitted after expiry of the time limit set out in Article 9, paragraph 4
- d. the depositor of the application for registration does not belong to the category of persons defined in Article 6.

Otherwise Article 15(2) and (3) of Law No. 1733/1987 shall apply.

Article 17

Action before justice - infringement

1. In the event of an infringement or threatened infringement of an exclusive right deriving from the protected topography, the holder of the topography shall be entitled to request suspension of the infringement and the omission of an infringement in the future.
2. In case of intentional infringement, the plaintiff shall be entitled to demand restitution of the damage or return of the benefit deriving from the illicit exploitation of the protected topography or payment of a sum corresponding to the value of the license.
3. Paragraphs 3, 4 and 5 of Article 17 of Law 1733/1987 shall apply mutatis mutandis.
4. The rights set out in paragraph 2 shall also be recognised in respect of any person who has reason to believe that the topography is protected if a third party reproduces, commercially exploits or imports it in bad faith.

Article 18

Final provisions

1. The provisions of this Decree shall not affect the implementation of any other legal provisions concerning industrial property.
2. Protection of topographies under the terms of provisions concerning intellectual property shall not be applicable whenever the topographies have been created after the entry into force of this Decree.

Article 19

Entry into force

This Presidential Decree shall enter into force upon publication in the Government Gazette.

The Minister of Industry, Energy and Technology shall be responsible for publishing this Decree.