
Law No. XXXIX of 1991
on the Protection of the Topography of
Microelectronic Semiconductor Products

PART I
SUBJECT AND CONTENT OF PROTECTION

Protectable topography

§ 1

- (1) Protection shall be granted to the topography of microelectronic semiconductor products (hereinafter referred to as “topography”) if it is original.
- (2) Topography means the three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and of some or all of the interconnections of a microelectronic semiconductor product, or such a three-dimensional disposition prepared for a semiconductor product intended for manufacture.
- (3) A topography shall be original if it is the result of its creator's own intellectual effort and is not commonplace in the industry at the time of its creation.
- (4) A topography consisting of an original arrangement of commonplace parts shall be eligible for protection.

Creator of the topography and owner of the protection

§ 2

- (1) The creator is the person who has created the topography.
- (2) The right to protection shall belong to the creator or his successor in title.
- (3) Where several persons have jointly created a topography, the right to protection shall jointly belong to them or their successors in title.
- (4) Where several persons have created a topography independently of each other, the right to protection shall belong independently to the creators or their successors in title.

§ 3

Foreign persons shall be entitled to a right to protection only under an international treaty or in the case of reciprocity. In matters of reciprocity the President of the National Office of Inventions shall be competent to give a ruling.

§ 4

- (1) Where the creator is, on the basis of his employment or by virtue of other legal relationships, under obligation to create topographies (employees' topography), the right to protection shall belong to the employer or the person entitled by other legal relationships.
- (2) The creator of an employees' topography shall be entitled to remuneration.

§ 5

In any other matters, for the personal rights of the creator of the topography, the right to protection and the employees' topography, the provisions of the law on the protection of inventions by patents (hereinafter

referred to as “the Patent Law”) and the decree on its implementation concerning the personal rights of the inventor, the rights to a patent and the employees' inventions shall apply *mutatis mutandis*.

Establishment and duration of protection

§ 6

- (1) Protection shall be established by registration of the topography.
- (2) The protection shall be retroactive to the date of application or – if it is earlier – to the date of the first commercial exploitation in any country, and shall have a duration of ten years.
- (3) Protection can be claimed only within two years from the first commercial exploitation, in any country, of the topography.

Effects and scope of protection

§ 7

- (1) On the basis of the protection the owner shall have, as provided for by legislation, the exclusive right to exploit the topography commercially or to grant a license of exploitation to another person. Exploitation means reproduction, whether by incorporation in a microelectronic semiconductor product or otherwise, importation for commercial purposes or marketing of the topography or of the semiconductor product incorporating the same.
- (2) The scope of protection shall be determined by the illustration of the registered topography.
- (3) Protection shall extend to original parts of the topography which may be used independently and to devices which inseparably bear the topography.
- (4) Protection shall not extend to
 - a) concepts, processes and systems on which the topography is based, or any information stored in a semiconductor product,
 - b) reproduction of the topography for purposes of analysis, evaluation or teaching and the original topography created on the basis thereof,
 - c) topography identical with the topography concerned, created independently by a third party,
 - d) importation and marketing of the topography, or of the semiconductor product incorporating the topography, put on the market by the owner or with his consent.
- (5) Exploitation shall not be considered as unlawful if a person imports for commercial purposes or markets semiconductor products incorporating a topography, or products incorporating the same, without knowing or having reason to believe that these products contain an unlawfully reproduced topography. From the date this person knows or has reason to know that the reproduction of the topography was unlawful, he may put on the market only the stock on hand or ordered, against the usual royalty payable to the owner of the protection.

Succession in title, contract of exploitation, joint protection

§ 8

- (1) Rights deriving from a topography and from its protection, with the exception of personal rights, may be transferred, assigned and encumbered.
 - (2) On the basis of a contract of exploitation the owner of the protection grants a license for the exploitation of the topography, in exchange, the exploiter pays royalties.
 - (3) The provisions of the Patent Law and of its Implementing Decree concerning succession in title, contracts of exploitation and joint protection shall apply *mutatis mutandis*.
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PART II
TOPOGRAPHY INFRINGEMENT
AND INFRINGEMENT OF PROTECTION

Topography infringement

§ 9

Where the subject of an application concerning a topography or the subject of a protection has been taken unlawfully from another person, the injured party or his successor in title may claim partial or total assignment of the protection.

Infringement of topography protection

§ 10

- (1) Any person who unlawfully exploits a topography under protection commits infringement of protection.
- (2) The owner of the protection may have recourse to the same civil remedies against the infringer as the patentee may enforce against the infringer by virtue of the Patent Law.
- (3) In the case of an infringement of topography protection, for the rights of the exploiter authorized by the owner the provisions of the Patent Law shall apply.

Decision of non-infringement

§ 11

- (1) Any person who fears that proceedings for infringement of protection will be instituted against him, may, prior to the institution of such proceedings, request a decision ruling that the topography exploited or intended to be exploited by him, does not infringe the protection of a topography specified by him.
- (2) A final decision of non-infringement bars the institution, on the basis of the specified protection, of infringement proceedings in respect of the same topography.

PART III
LAPSE OF PROTECTION

Cases when protection lapses

§ 12

The protection shall lapse

- a) when the period of protection expires, on the day following the date of expiration,
 - b) if the owner surrenders protection, on the day following the receipt of the surrender or at an earlier date specified by the person surrendering the right,
 - c) if the protection is declared null and void, with retroactive effect to the establishment of the protection.
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Surrender of protection

§ 13

The owner indicated in the Topography Register may surrender the protection by written declaration addressed to the National Office of Inventions. If the surrender affects the rights of third parties based on legislation, on decisions of an authority, on a license contract recorded in the Topography Register, or if proceedings are recorded in the Topography Register, it shall only take effect with the consent of the parties concerned.

Nullity of protection

§ 14

- (1) Protection shall be declared null and void if
 - a) the topography does not satisfy the requirements laid down in Article 1,
 - b) a foreign person has not been entitled to protection under Article 3,
 - c) an application in respect of the topography is not filed within the time limit specified under Article 6 (3),
 - d) the application does not contain any illustration suitable for identifying the topography (Article 20 (2)).
- (2) Where conditions of nullity concern only a part of the topography, the protection shall be limited accordingly.

Reclaiming of fees

§ 15

If protection lapses with retroactive effect to its establishment, only the portion of the remuneration collected in good faith by the owner of the protection or the creator of the topography can be reclaimed which was not covered by the benefits derived from the exploitation of the topography.

PART IV PROCEDURES BEFORE THE NATIONAL OFFICE OF INVENTIONS IN MATTERS CONCERNING TOPOGRAPHY PROTECTION

Competence of the National Office of Inventions

§ 16

The National Office of Inventions shall be competent to deal with matters concerning

- a) registration of the topography,
 - b) declaration of the lapse of protection,
 - c) nullity of protection,
 - d) decision of non-infringement,
 - e) interpretation of the illustration of the topography,
 - f) recording of protection.
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Application of the general provisions on administrative procedure

§ 17

- (1) The National Office of Inventions shall proceed in matters concerning topography protection, with the exceptions prescribed in this Law, by applying the general provisions on administrative procedure.
- (2) The National Office of Inventions may retract or modify its decisions taken on the merits only on the basis of a request for review and until its transmittal to the court. Its decisions may not be invalidated or changed by a supervisory authority, they shall be without appeal.
- (3) Decisions of the National Office of Inventions may be changed by the court, in conformity with the provisions of Article 23.
- (4) For the procedure of the National Office of Inventions in matters concerning topography protection, the provisions of the Patent Law and of the Implementing Decree concerning the procedure of the National Office of Inventions in patent matters shall apply with the exceptions prescribed in this Law.

Access to the files

§ 18

From the date of registration any person may inspect the illustration of the registered topography and can obtain copies of it.

Parts of the illustration of the registered topography marked by the applicant as secret shall be available for inspection only to parties participating in the procedure, on the basis of the decision of the National Office of Inventions or of the court.

Restoration of rights

§ 19

In procedures concerning topography protection, with the exception of the time limit specified in Article 6, the applicant shall have his rights restored upon request.

Application

§ 20

- (1) The procedure for the registration of a topography shall begin with the filing of an application with the National Office of Inventions.
- (2) The application shall contain a request, as well as an illustration suitable for identifying the topography, and other relevant documents.
- (3) Detailed formal requirements to be complied with in the application shall be laid down in special regulation.
- (4) Rights can only be based on an application which contains at least the name and address of the applicant, as well as an illustration suitable for identifying the essence of the topography.

Unity of the topography

§ 21

In any application, protection may only be sought for a single topography.

Registration procedure

§ 22

- (1) The National Office of Inventions shall examine the application in order to ascertain whether it complies with the requirements prescribed in Articles 3, 20 (2) to (4) and Article 21.
- (2) If the application is so incomplete that no right can be based on it (Article 20 (4)), the application shall be rejected without further procedure.
- (3) If the application does not comply with the requirements prescribed in Articles 3, 20 (2) and (3) and Article 21, the applicant shall be invited to remedy the deficiencies, to make a declaration or to divide the application. If the invitation produces no result, the application shall be rejected.
- (4) If the application complies with the prescribed requirements, the National Office of Inventions shall register the topography, shall issue a document concerning the registered topography and the registration shall be published in the official Gazette of the National Office of Inventions.

PART V COURT PROCEDURE IN MATTERS CONCERNING TOPOGRAPHY PROTECTION AND LITIGATIONS

Review of decisions taken by the National Office of Inventions

§ 23

- (1) On request, the court may review the decisions of the National Office of Inventions taken with regard to:
 - a) registration of the topography,
 - b) declaration of expiration of protection,
 - c) nullity of protection,
 - d) declaration of non-infringement.
- (2) Review of decisions may be requested by any person who took part as a party in the procedure before the National Office of Inventions, and by the creator of an employees' topography.
- (3) The period within which the request for review may be submitted shall be thirty days from the day on which the party was notified of the decision.
- (4) The request shall be submitted to the National Office of Inventions which shall forward it to the court with the documents of the matter within fifteen days.
- (5) For court procedures aiming at reviewing the decisions taken by the National Office of Inventions in matters concerning topography protection, legislation concerning court procedures aiming at reviewing the decisions taken by the National Office of Inventions in patent matters shall apply *mutatis mutandis*.

Litigation concerning topography protection

§ 24

- (1) For actions for infringement, the provisions of patent litigation shall apply *mutatis mutandis*.
 - (2) In any other litigation concerning topography protection, the county courts (or the Metropolitan Court) shall proceed in accordance with the rules governing patent litigation.
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PART VI
FINAL PROVISIONS

§ 25

- (1) This Law shall enter into force on 1 January 1992.
 - (2) For infringement of topography protection measures may be taken only in respect of an exploitation commenced after the entry into force of this Law.
 - (3) The Minister of Justice shall be authorized to issue, in concert with the President of the National Office of Inventions, detailed rules on the formalities to be complied with in applications for topography protection.
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