

European Communities (Protection of Topographies of Semiconductor Products) Regulations, S.I. No. 101 of 1988.

I, Albert Reynolds, Minister for Industry and Commerce, in exercise of the powers conferred on me by section 3 of the European Communities Act, 1972 (No. 27 of 1972), and for the purpose of giving effect to Council Directive No. 87/54/EEC of 16 December, 1986 ⁽¹⁾ and Council Decision of 26th October, 1987 ⁽²⁾ hereby make the following Regulations:

1.—

(1) These Regulations may be cited as the European Communities (Protection of Topographies of Semiconductor Products) Regulations, 1988.

(2) These Regulations shall come into operation on the 13th day of May, 1988.

2.—

(1) In these Regulations —

⁽¹⁾ O.J. No. L24, 27.1.87, p.36

⁽²⁾ O.J. No. L313, 4.11.87, p.22



"the Council Directive" means Council Directive 87/54/EEC of 16 December, 1986, ⁽¹⁾;

⁽¹⁾ O.J. No. L24, 27.1.87, p.36

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“Member State” means a member state of the European Economic Communities;

“a topography” means a topography of a semiconductor product;

“a topography right” means an exclusive right conferred by Regulation 3 of these Regulations.

(2) A word or expression that is used in these Regulations and is also used in the Council Directive shall, unless the contrary intention appears, have in these Regulations the same meaning that it has in the Council Directive.

3.—

(1) A topography right shall subsist, subject to paragraph (4) of this Regulation, in favour of its creator where that topography –

- (a) is the result of the creator's own intellectual effort, and
- (b) subject to paragraph (2) of this Regulation, is not common place in the semiconductor industry.

(2) Where a topography to which paragraph (1) of this Regulation relates consists of elements that are common place in the semiconductor industry, it shall be protected by this Regulation only to the extent that the combination of such elements, taken as a whole, fulfils the condition set out in subparagraph (b) of paragraph (1) of this Regulation.

(3) Subject to paragraph (4) of this Regulation, the right to protection conferred by paragraph (1) of this Regulation shall apply in favour of creators of topographies who are –

- (a) natural persons who are nationals of a Member State or who habitually reside on the territory of a Member State, or
- (b) persons having a real and effective industrial or commercial establishment on the territory of a Member State.

(4) Where a topography is created in the course of employment or pursuant to a commission, being a contract other than a contract of employment, the topography right conferred by paragraph (1) of this Regulation shall apply in favour of the employer or the person commissioning the topography, as the case may be, unless the terms of the contract provide otherwise.

(5) Without prejudice to the generality of paragraph (1) of this Regulation, the right to protection conferred by the said paragraph (1) shall also apply to the persons referred to in paragraph (3) of this Regulation –

- (a) who first exploit commercially a topography in a Member State which has not yet been exploited anywhere in the world, and
- (b) who have been exclusively authorised to exploit commercially the topography throughout the territories of the Member States by the person entitled to dispose of the rights in that topography.

(6) The right to protection conferred by these Regulations shall apply to successors in title to that right.

4.—

(1) Where a right to protection subsists in a topography by virtue of Regulation 3 of these Regulations it shall include the right to authorise or prohibit –

- (a) the reproduction of a topography insofar as it is protected under Regulation 3 of these Regulations, or
- (b) subject to paragraph (4) of this Regulation, the commercial exploitation or the importation for that purpose of a topography or of a semiconductor product manufactured by using the topography.

(2) Notwithstanding paragraph (1) of this Regulation, a person may –

- (a) reproduce a topography privately for non-commercial aims,

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(b) reproduce a topography for the purpose of analysis or evaluation or teaching of the concepts, processes, systems or techniques embodied in a topography.

(3) It is not an infringement to do any of the Acts referred to in Regulation 4(1) in relation to a topography created on the basis of an analysis and evaluation of another topography carried out in accordance with Regulation 4(2)(b): provided that the resulting topography satisfies the requirements of Regulation 3(1) of these Regulations.

(4) The exclusive rights to authorise or prohibit the acts specified in paragraph (1)(b) of this Regulation shall not apply to any such act committed after the topography or the semiconductor product has been put on the market in a Member State by the person entitled to authorise its marketing or with his consent.

5.—

(1) A right to protection in a topography shall commence —

- (a) when the topography is first fixed or encoded, provided, however, that these Regulations shall not apply to any topography created before the coming into operation of these Regulations, or
- (b) in a case falling within Regulation 3(5) of these Regulations, from the date of first commercial exploitation anywhere in the world.

(2) The rights subsisting in a topography by virtue of these Regulations shall come to an end 10 years from the end of the calendar year in which the topography is first commercially exploited anywhere in the world, or, where it has not been commercially exploited anywhere in the world, within a period of 15 years from its first fixation or encoding.

6.—

(1) Subject to paragraph (2) of this Regulation, the infringement of a topography right shall be actionable at the suit of the owner of that topography right.

(2) Subject to paragraph (4) of this Regulation, in an action by the owner of a topography right for an infringement thereof, all such relief, by way of damages, injunction, account of profits or otherwise, shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringement of other proprietary rights.

(3) Where in an action for infringement of a topography right, it is proved or admitted —

- (a) that an infringement was committed by reproducing, importing, distributing or dealing in a topography or a semiconductor product incorporating an infringing topography, and
- (b) that, at the time of the acquisition of a topography or a semiconductor product incorporating an infringing topography, the defendant did not know and had no reasonable ground to believe, that the topography or the semiconductor product was protected by law,

the plaintiff shall not be entitled to any relief in respect of the infringement, other than damages, and any damages awarded shall be limited to an amount which, in the opinion of the court, would have been a reasonable royalty payment under a licence had one been granted by the plaintiff to the Defendant in respect of the infringing acts.

7.—

A semiconductor product manufactured during a period in which a topography is protected may be marked with the letter T*.

8.—

The provisions of these Regulations and the Council Directives shall apply without prejudice to any other protection conferred by the Patents Act, 1964, (No. 12 of 1964), or the Copyright Act, 1963, (No. 10 of 1963).

9.—

The right to protection conferred by these Regulations shall extend to —



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- (a) All natural persons who are nationals of a country or territory listed in the Annex to Council Decision of 26th October, 1987⁽²⁾ and

⁽²⁾ O.J. No. L313, 4.11.87, p. 22.

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- (b) companies and other legal persons of a country or territory listed in the said Annex which have a real and effective industrial or commercial establishment in such a country or territory subject to the condition that companies or other legal persons of a Member State which have a right to protection under the Council Directive benefit from protection in the country or territory in question (being countries which have been so determined by the Commission).

GIVEN under my Official Seal
this 13th day of May, 1988.

Albrt Reynolds
Minister for Industry and Commerce.

(Pl.5642)

EXPLANATORY NOTE

(This Note is not part of the Instrument and does not purport to be a legal interpretation).

These Regulations are made to give effect to Council Directive 87/54/EEC (O.J. No. L 24, 27.1.1987, p. 36) on the legal protection of topographies of semiconductor products. The Regulations provide for the subsistence of a topography right in respect of topographies which are original in the sense that they are devised by the creator and are not common place in the semiconductor industry. Member States nationals/residents and legal entities automatically qualify for protection as well as certain other persons covered in Reg. 3(5) and in Annex to Council Decision of 26 October, 1987 (O.J. No. L 313, 4.11.87, p. 22). The protection given under the Regulations consists of the exclusive right to reproduce and commercially exploit the topographies. There are certain exceptions to this exclusive right [Reg. 4(2), 4(3) and 4(4)]. The right commences at the time of creation and lasts for ten years from first commercial exploitation or fifteen years after creation. The Regulations define the instances in which infringement occurs and prescribe civil remedies in cases of infringement. A clause on innocent infringement is also included [Reg. 6(3)].

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