

Law of December 29, 1988,

on the Legal Protection of Topographies of Semiconductor Products*

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Chapter 1 Definitions

Definitions

1.–

(1) For the purposes of this Law:

(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

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** Added by WIPO.

(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) “commercial exploitation” shall mean the sale, rental, leasing or any other method of commercial distribution, or an offer for these purposes. However, for the purposes of Sections 3(4), 4(1), 7(1), (3) and (4) and of Section 9, “commercial exploitation” shall not include exploitation under conditions of confidentiality to the extent that no further distribution to third parties occurs, except where exploitation of a topography takes place under conditions of confidentiality required by a measure taken in conformity with Article 223(1)(b) of the Treaty of Rome.

(2) The definitions contained in subsection (1)(a)(i) and (ii) may be amended by Grand-Ducal Regulation.

Chapter 2 Protection of Topographies of Semiconductor Products Constitution of Exclusive Rights

2.–

(1) Any topography of a semiconductor product that complies with the definitions adopted in implementation of Section 1 and meeting the conditions set out in subsection (2) shall afford exclusive rights within the limits laid down by this Law.

(2) The topography of a semiconductor product shall be protected insofar as it satisfies the conditions that 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.

Ownership of Exclusive Rights

3.–

(1) Subject to subsections (2) to (5), the right to protection shall apply in favor of the creators of the topographies of semiconductor products.

(2)

(a) Where a topography is created in the course of the creator’s employment, the right to protection shall apply in favor of the creator’s employer unless the terms of employment provide to the contrary;

(b) where a topography is created under a contract other than a contract of employment, the right to protection shall apply in favor of the party to the contract by whom the topography has been commissioned, unless the contract provides to the contrary.

(3)

(a) As regards the persons referred to in subsection (1), the right to protection shall apply in favor of natural persons who are nationals of a Member State of the European Economic Community or who have their habitual residence on the territory of a Community Member State;

(b) In the cases referred to in subsection (2), the right to protection shall apply in favor of:

(i) natural persons who are nationals of a Member State of the European Economic Community or who have their habitual residence on the territory of a Community Member State;

(ii) companies or other legal persons who have a real and effective industrial or commercial establishment on the territory of a Community Member State.

(4) Where no right to protection exists in accordance with other provisions of this Section, the right to protection shall also apply in favor of the persons referred to in subsection (3)(b)(i) and (ii) who:

(a) first commercially exploit within a Member State of the European Economic Community a topography which has not yet been exploited commercially anywhere in the world;

(b) have been exclusively authorized to exploit commercially the topography throughout the Community by the person entitled to dispose of it.

(5) The right to protection shall also apply in favor of the successors in title of the persons referred to in subsections (1) to (4).

(6) The right to protection shall also apply in favor of persons to whom applies a decision taken by the Council of the European Communities on extension of protection to a non-Member State or a bilateral or multilateral convention on the legal protection of topographies of semiconductor products to which the European Economic Community as such or the Grand Duchy of Luxembourg is a party, whereby the latter shall act in conformity with Community law.

The above-mentioned decisions of the Council of the European Communities shall be published in the *Mémorial*.

Application for Registration

4.–

(1) The topography of a semiconductor product shall not enjoy or shall no longer enjoy the exclusive rights afforded under Section 2 if an application for registration has not been filed with a public authority within two years of its first commercial exploitation. The application for registration shall be supplemented by material identifying or exemplifying the topography or any combination thereof as well as a statement as to the date of first commercial exploitation of the topography where it precedes the date of the application for registration. It may be supplemented by a document stating the surname and forename of the true creator of the topography.

(2) The material filed under subsection (1) shall not be made 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 the court or other competent authority to persons involved in litigation concerning the validity or infringement of the exclusive rights referred to in Section 2.

The statement concerning secrecy shall be deemed to refer to all the material annexed to the application for registration, notwithstanding any mention to the contrary. The material to which such statement is not to apply may be made the subject of an additional application for registration that is not subject to secrecy. The form of application for registration may in no event contain a mention of particulars that are a trade secret.

(3) Assignments of rights in protected topographies and changes in the person of the owner of the exclusive rights shall be registered and published under the conditions laid down by the legislation on patents for invention.

(4) The fees to which are subject the registration and filing referred to in subsections (1) to (3) and their publication in the *Mémorial* shall be the same as those laid down by the legislation on patents for invention. However, the renewal fees charged for maintenance of a patent shall not be due for maintenance of protection afforded to the topography of a semiconductor product under Section 2.

(5) Conditions prescribing the fulfillment of additional formalities for obtaining or maintaining protection shall not be admitted.

(6) The legal remedies in favor of a person having the right to protection in accordance with the provisions of this Law who can prove that another person has applied for or obtained the registration of a topography without his authorization shall be those laid down by the legislation on patents for invention.

(7) The Industrial Property Service established in compliance with Article 12 of the Paris Convention for the Protection of Industrial Property shall be responsible for the administrative tasks entrusted by this Law to the public authority referred to in subsection (1), particularly as regards receipt of applications and registration of the operations referred to in subsections (1) to (3).

Effects of the Exclusive Rights

5.–

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

(a) reproduction of a topography insofar as it is protected under Section 2(2);

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

(2) The reproduction of a topography privately for non-commercial aims shall not infringe the exclusive rights referred to in subsection (1)(a).

(3) The exclusive rights referred to in subsection (1)(a) 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.

(4) The exclusive rights referred to in subsection (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 subsection (3).

(5) The exclusive right to authorize or prohibit the acts specified in subsection (1)(b) 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 of the European Economic Community by the person entitled to authorize its marketing or with his consent.

(6) 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 shall 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 rightholder may require the payment of adequate remuneration determined in accordance with the circumstances.

(7) Subsection (6) shall apply to the successors in title of the person referred to in the first sentence of that subsection.

Compulsory Licenses and Ex Officio Licenses

6. The exclusive rights referred to in Section 2 shall not be subjected to compulsory licenses granted automatically by operation of law for the sole reason that a certain period of time has elapsed. Moreover, the procedures for granting and the conditions for obtaining compulsory licenses and *ex officio* licenses shall be same as those applicable in respect of patents for invention.

Commencement and Expiration of the Exclusive Rights

7.–

(1) The exclusive rights referred to in Section 2 shall commence on the earlier of the following dates:

(a) the date on which the topography is first commercially exploited anywhere in the world;

(b) the date on which the application for registration has been filed in due form.

(2) Notwithstanding any remedies intended to ensure respect for the exclusive rights granted under Section 2, the person having the right to protection in accordance with this Law who can prove that another person has fraudulently reproduced or commercially exploited or imported for such purposes a topography may, in respect of the period prior to commencement of such rights, take legal action in accordance with the relevant provisions of the legislation on patents for invention.

(3) The exclusive rights shall come to an end after a period of 10 years as from the earliest of the following dates:

(a) the end of the calendar year during which the topography has been commercially exploited for the first time anywhere in the world, or

(b) the end of the calendar year in which the application for registration has been filed in due form.

(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, the exclusive rights referred to in Section 2 may no longer commence in accordance with subsection (1) unless an application for registration has been filed in due form within that period.

Limits of Legal Protection

8. The protection granted to the topographies of semiconductor products in accordance with Section 2 shall not extend to any concept, process, system, technique or encoded information embodied in the topography other than the topography itself.

Marking of Products

9. The semiconductor products manufactured using protected topographies may carry an indication. Such indication shall be constituted by either a capital T as follows: T, "T," [T], T, T* or T, or by a T accompanied by mention of the name of the owner of the exclusive rights and the calendar year of first commercial exploitation of the topography anywhere in the world.

Chapter 3
Application of Other Legal Provisions

Reserved Matter

10.–

(1) The provisions of this Law shall be without prejudice to legal provisions concerning rights in patents for invention. The remedies available to persons entitled to protection under this Law, introduced by reference to the legislation on patents for invention, shall only apply as from such time as such remedies are effectively available within the framework of that legislation.

(2) The provisions of this Law shall be without prejudice:

(a) to rights conferred in the Grand Duchy of Luxembourg in implementation of international agreements, including the provisions extending such rights to Luxembourg nationals or residents;

(b) to the legal provisions in respect of copyright that limit the reproduction of drawings or other artistic representations of topographies by copying them in two dimensions.

Legal Proceedings

11. Proceedings for protection of the exclusive rights afforded by Section 2 and compensation for infringements of those rights shall be governed by the relevant provisions of the legislation on patents for invention.

Chapter 4 Final Provisions

Entry into Force

12. The provisions of this Law shall apply on entry into force to topographies of semiconductor products that have been commercially exploited for the first time anywhere in the world on or after November 7, 1987.