

Law of June 30, 1989, on the Legal Protection of Topographies of Semiconductor Products

(No. 16/1989)*

1.—

(1) The provisions of this Law shall be applicable to all Portuguese nationals and to nationals of the Member States of the European Communities, without restriction as to domicile or establishment, subject to special provisions on matters of competence and procedure.

(2) Nationals of any non-Community country who have their domicile or a real and effective industrial or commercial establishment on the territory of one of the countries of the Community shall be assimilated to nationals of Member States of the European Communities.

(3) The same provisions shall be further applicable to the nationals of the countries and territories that figure in the list reproduced in the Annex to this Law, to natural persons ordinarily resident therein and to legal entities having a real and effective industrial or commercial establishment therein.

(4) The application provided for in the foregoing paragraph shall cease to operate on November 7, 1989, without prejudice to exclusive rights acquired under this Law.

(5) With regard to all other foreigners, the provisions of agreements concluded between Portugal and any other country concerned or, failing such agreements, the principle of reciprocity, shall apply.

2.—

(1) For the purposes of this Law, “semiconductor product” means the final or intermediate form of any product:

(a) consisting of a body of material which includes a layer of semiconducting material;

(b) 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

(c) intended to perform, exclusively or together with other functions, an electronic function.

(2) “Topography of a semiconductor product” means a series of related images, however fixed or encoded, representing the three-dimensional pattern of the layers of which a product is composed, in which series each image has the pattern or part of the pattern of a surface of the product at any stage of its manufacture.

3.—

(1) Any creator of a final or intermediate topography of a semiconductor product shall enjoy an exclusive right of disposal in relation to that topography provided that he complies with legal requirements, notably those related to deposit.

(2) However, the deposit may no longer be effected on expiration of a period of two years following the first commercial exploitation anywhere of the topography, or of a period of 15 years following the date on which the topography was first fixed or encoded, if it has never been exploited.

(3) Any deposit that does not meet the conditions specified in this Section shall be void.

(4) 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 known in the semiconductor industry.

(5) Where the topography consists of elements that are known in the semiconductor industry, it shall be protected only to the extent that the combination of such elements, taken as a whole, fulfills the conditions specified in this Section.

* Portuguese title: Lei No 16/89 de 20 Junho. Protecção Jurídica das Topografias dos Produtos Semicondutores.

Entry into force: September 3, 1989, for the continental territory; September 8, 1989, for the islands; and September 30, 1989, for Macao. See also Section 1(4).

Source: *Diário da República*—1 Series, No. 148, of June 30, 1989, pp. 2549 *et seq.*

(6) The protection granted to the topographies of semiconductor products shall not extend to any concept, process, system, technique or encoded information embodied in the topography other than the topography itself.

4. In the absence of agreement to the contrary, the provisions of Section 9 of the Industrial Property Code and of its paragraphs (1), (2) and (3) shall be applicable to the topographies of semiconductor products created by workers on behalf of public or private entities.

5. Where the topography of a semiconductor product is the work of two or more persons, the right deriving from deposit shall be governed by the provisions of civil law concerning joint ownership, in the absence of agreement to the contrary.

6. As long as the deposit is in force, the owner of the rights relating to it may affix on semiconductor products manufactured using protected topographies a capital T in any of the following forms: T, "T," [T], T, T* or T.

7. The deposit of topographies shall produce its effects during a period of 10 years from the date on which the corresponding application was filed in due form, or from the date on which the topography was first exploited anywhere, if that exploitation occurred earlier.

8. Deposits of topographies shall be null and void:

- (a) where it is found that the topography does not meet the conditions specified in Section 3;
- (b) where compliance with legal formalities has been omitted on registration of the deposit.

9.–

(1) Deposits of topographies of semiconductor products may not be declared void otherwise than by court decision, at the request of any concerned party or the Public Prosecutor.

(2) An original of the decision shall be submitted, for the purposes of registration, to the National Institute of Industrial Property and published in the Industrial Property Bulletin [*Boletim da Propriedade Industrial*].

10. The deposit of a topography confers the exclusive right to make use of it on the whole of the Portuguese territory, that is, to produce, manufacture, sell or exploit that topography or the objects to which it is applied, with the obligation to do so effectively and in a manner consistent with the means of the national economy.

11. The exclusive rights conferred by deposit shall come to an end:

- (a) on expiration of a period of 10 years from the last day of the calendar year during which the corresponding application was filed in due form, or from the last day of the calendar year in the course of which the topography was first commercially exploited anywhere, if the latter date is earlier;
- (b) where the topography has not been commercially exploited during the 15 years following the date on which it was first fixed or encoded;
- (c) by express renunciation on the part of the owner, attested by an authenticated document, except where such renunciation is prejudicial to third parties, pursuant to the exception provided for renunciation of a patent in the Industrial Property Code;
- (d) as a result of failure to pay fees.

12. The protection provided for in Section 3 shall include the right to authorize or prohibit any of the following acts:

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

13. The prohibition provided for in the foregoing Section shall not apply:

- (a) to the private reproduction of a topography for non-commercial purposes;
- (b) to reproduction for the purposes of analysis, evaluation or teaching;
- (c) to the creation, on the basis of such an analysis or evaluation, of another topography that might be eligible for the protection provided for in this Law.

14. The exclusive right to authorize or prohibit the acts specified in Section 12(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 Communities by the person qualified to authorize its commercialization, or with his consent.

15.–

(1) The person who in good faith acquires a semiconductor product without knowing that the said product is protected under this Law may not be prevented from exploiting it commercially.

(2) If the acquirer subsequently learns that the semiconductor product is protected, he may not be prevented from proceeding with the exploitation thereof, but may be required by a tribunal, at the request of the owner of the exclusive right, to pay adequate remuneration to the said owner.

(3) The provisions of the foregoing paragraphs shall apply to the legal successors or representatives of the acquirer.

16.–

(1) The exclusive right conferred by the deposit of a topography may be assigned, in whole or in part, by means of an authentic or authenticated written document.

(2) The assignment of deposited topographies of semiconductor products shall not be binding on third parties as long as it has not been authorized by the National Institute of Industrial Property.

17.–

(1) The owner of a protected topography may, without prejudice to his rights, license a third party to exploit all or part of the said topography, on part or all of the national territory, subject to conditions agreed upon by the parties and in the form indicated in the foregoing Section.

(2) Unless otherwise agreed, the right conferred by the said exploitation license may not be assigned without the express consent of the owner of the topography.

18. The deposit of the topography of a semiconductor product has to be the subject of an application, written in Portuguese, containing the following particulars:

- (a) name, signature or company name, nationality, profession and domicile or registered office of the applicant;
- (b) claims characterizing the topography.

19.–

(1) The application mentioned in the foregoing Section shall be accompanied by the following documents in triplicate, each on a separate sheet of paper:

- (a) a summary of the characteristics of the topography;
- (b) a description of the topography with the corresponding claims.

(2) The documents mentioned in the foregoing paragraph shall be drawn up in accordance with Section 15(1), (2) and (3) of the Industrial Property Code.

20. The various acts provided for in this Law shall give rise to the payment of fees, the amount of which shall be laid down by order of the Minister of Industry and Energy.

21. The provisions of Sections 55, 59 to 63, 172, 175 to 188, 190 to 194, 197 to 199, 202 to 216, 223, 224, 226 to 229, 256 to 260, 262 and 263 of the Industrial Property Code shall be applicable to the topographies of semiconductor products.



List Mentioned in Section 1(3)

Anguilla, Bermuda, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands and Dependencies, Hong Kong, Isle of Man, Montserrat, Pitcairn Island, Saint Helena and Dependencies (Ascension Island and Tristan da Cunha), Turks and Caicos Islands, United States of America.