

**ACT XXXIX OF 1991
ON THE LEGAL PROTECTION OF TOPOGRAHIES OF MICROELECTRONIC
SEMICONDUCTOR PRODUCTS**

CHAPTER I

SUBJECT MATTER OF AND RIGHTS CONFERRED BY PROTECTION

Protectable topography

Article 1

(1) Protection shall be granted for the topography of a microelectronic semiconductor product (hereinafter referred to as „topography”) if it is original.

(2) Topography shall mean 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) The topography shall be considered 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 right to protection

Article 2

(1) The person who has created the topography shall be deemed to be the creator.

(2) The right to protection shall belong to the creator or his successor in title.

(3) If two or more persons have created the topography jointly, the right to protection shall belong to them or their successors in title jointly.

(4) If two or more persons have created the topography independently of each other, the right to protection shall belong to the creators or their successors in title independently.

Article 3

Foreign persons shall be entitled to right to protection only under an international treaty or in the case of reciprocity. The President of the Hungarian Intellectual Property Office shall be competent to give a ruling on matters of reciprocity.

Article 4

(1) Where the creator is under the obligation, by reason of his employment or under other laws, to create topographies (service topography), the right to protection shall belong to the employer or the person entitled by other legal relationships.

(2) The creator of a service topography shall be entitled to remuneration.

Article 5

In any other matters concerning the moral rights of the creator of the topography, the right to protection and the service topography, the provisions of the Act on the protection of inventions by patents (hereinafter referred to as „the Patent Act”) on the moral rights of the inventor, the right to a patent and service inventions shall apply *mutatis mutandis*.

Establishment and term of protection

Article 6

(1) Protection shall be established by registration of the topography.

(2) The protection shall be effective retroactively from the date of filing of the application or, if it is earlier, to the date of the first commercial exploitation in any country, and shall have a term of ten years.

(3) Protection may be claimed only within two years from the first commercial exploitation of the topography in any country.

Effects and scope of protection

Article 7

(1) The protection shall afford the holder the exclusive right to exploit the topography or to license another person to exploit it, as provided for by legislation. Exploitation shall mean the reproduction, whether by incorporation in a semiconductor product or otherwise, for commercial purposes and the importation for commercial purposes or marketing of the topography or of the semiconductor product incorporating the topography.

(2) The scope of protection shall be determined by the illustration of the registered topography.

(3) Protection shall cover the original parts of the topography which may be used independently and the devices which inseparably bear the topography.

(4) Protection shall not cover

(a) concepts, processes and systems on which the topography is based, or any information stored in a semiconductor product,

(b) the reproduction of the topography for purposes of analysis, evaluation or teaching and the original topography created on the basis thereof,

(c) the topography identical with the topography concerned, created independently by a third party,

(d) marketing of the topography or of the semiconductor product incorporating the topography, put on the market by the owner or with his consent, in the European Economic Area.

(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 such semiconductor products, 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, at a charge of the usual royalty payable to the owner of the protection.

Succession in title, contract of exploitation, joint protection

Article 8

(1) Rights deriving from topography and from its protection, with the exception of moral rights of the creator, may be transferred, assigned and pledged.

(2) Under a contract of exploitation the holder of protection licenses the right to exploit the topography, and the person exploiting the topography is required to pay royalties.

(3) With respect to succession in title, contracts of exploitation and joint protection, the provisions of the Patent Act shall apply *mutatis mutandis*.

CHAPTER II

INFRINGEMENT OF TOPOGRAPHIES AND TOPOGRAPHY PROTECTION

Infringement of topographies

Article 9

Where the subject matter of a topography application or a topography protection has been unlawfully taken from another person, the injured party or his successor in title may claim the assignment of the application or the protection wholly or partly.

Infringement of topography protection

Article 10

(1) Any person who unlawfully exploits the topography under protection commits infringement of topography protection.

(2) The holder of the protection may have recourse to the same civil remedies against the infringer as a patentee, by virtue of the Patent Act, may have recourse to against the infringer.

(3) In case of infringement of topography protection, the provisions of the Patent Act shall apply to the rights of the licensee authorised by the holder.

Decision on lack of infringement

Article 11

(1) Any person believing that proceedings for infringement of topography protection may be instituted against him may, prior to the institution of such proceedings, request a decision ruling that the topography exploited or to be exploited by him does not infringe the protection of a particular topography specified by him.

(2) Where a final decision on lack of infringement has been given, infringement proceedings may not be instituted on the basis of the specified protection in respect of the same topography.

CHAPTER III

LAPSE OF PROTECTION

Cases of lapse of protection

Article 12

Protection shall lapse:

- (a) when the period of protection expires, on the day following the date of expiration,
- (b) if the holder surrenders protection, on the day following the receipt of the surrender or at an earlier date specified by him,
- (c) if the protection is revoked, *ex tunc*.

Surrender of protection

Article 13

The holder entered in the Topography Register may surrender protection by a written declaration addressed to the Hungarian Intellectual Property Office. If the surrender affects the rights of third parties deriving from legislation, from rulings of an authority or from a license contract recorded in the Topography Register, or if a lawsuit is recorded in the Topography Register, it shall take effect only with consent of the parties concerned.

Revocation of protection

Article 14

- (1) Protection shall be revoked if
 - (a) the topography has not satisfied the requirements laid down in Article 1,
 - (b) the foreign person has not been entitled to protection under Article 3,
 - (c) the topography protection has not been claimed within the time limit specified in Article 6(3),
 - (d) the application has not contained any illustration suitable for identifying the topography [Article 20(2)].
- (2) Where grounds for revocation exist only in part, the protection shall be limited accordingly.

Reclaiming of royalties

Article 15

If protection lapses *ex tunc*, only the portion of the royalties collected in good faith by the holder of the protection or the creator of the topography that was not covered by the benefits derived from exploitation of the topography may be reclaimed.

CHAPTER IV

PROCEDURES BEFORE THE HUNGARIAN INTELLECTUAL PROPERTY OFFICE IN TOPOGRAPHY PROTECTION MATTERS

Competence of the Hungarian Intellectual Property Office

Article 16

The Hungarian Intellectual Property Office shall have competence in the following matters:

- (a) registration of topographies,
- (b) decision on lapse of protection,
- (c) revocation of protection,
- (d) decision on lack of infringement,
- (e) interpretation of the illustration of the topography,
- (f) recording of protection.

Application of the general rules of public administration procedures

Article 17

(1) The Hungarian Intellectual Property Office shall proceed in topography protection matters – with the exceptions laid down in this Act – by applying the provisions of the Public Administration Procedures Act.

(2) Against the decisions of the Hungarian Intellectual Property Office appeals, rehearing and supervisory procedures and notice of the prosecutor shall not be admissible.

(3) Decisions of the Hungarian Intellectual Property Office taken in topography protection matters shall be reviewed by the court in conformity with the provisions of Article 23.

(4) In the absence of a provision of the Patent Act to the contrary, the Hungarian Intellectual Property Office may withdraw or modify its decisions – terminating the procedure – taken in the following matters only if a request for review is made and only until such request is transmitted to the court:

- (a) grant of protection;
- (b) decision on lapse of protection;
- (c) revocation of protection;
- (d) decision on lack of infringement.

(5) In the absence of a provision of the Patent Act to the contrary, the Hungarian Intellectual Property Office may withdraw or modify its decision – terminating the procedure – taken in the matters referred to in paragraph (4)(c) and (d) on the basis of a request for review only if it establishes that its decision infringes law or if the parties request unanimously the modification or withdrawal of the decision.

Access to files

Article 18

From the date of publication of the registration any person may inspect the illustration of the topography and may obtain copies thereof. Parts of the illustration of the registered topography marked by the applicant as trade secret shall be available for inspection only to the party to the procedure. In this case right of the party to the procedure to inspect the files shall not be excluded or limited later on.

Restitutio in integrum

Article 19

In topography protection matters *restitutio in integrum* shall be excluded

- (a) in the event of failing to comply with the time limit prescribed in Article 6(3);
- (b) in the event of failing to comply with time limits prescribed for filing the request for *restitutio in integrum* and the request for continuation of the procedure.

Application

Article 20

(1) The procedure for the registration of a topography shall begin with the filing of an application with the Hungarian Intellectual Property Office.

(2) The application shall contain a request, an illustration suitable for identifying the topography and other relevant documents.

(3) Detailed formal requirements to be complied with shall be laid down by specific legislation.

(4) Right 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

Article 21

An application may seek protection for one topography only.

Registration procedure

Article 22

(1) The Hungarian Intellectual Property Office shall examine the application whether the requirements of Articles 3, 20(2) to (4) and 21 have been met.

(2) If the application is so incomplete that no right can be based on it [Article 20 (4)], the application shall be refused without further procedure and substantive examination.

(3) If the application does not meet the requirements of Articles 3, 20(2) and (3) and 21, the applicant shall be invited to submit comments, rectify the irregularities or to divide the application. If the invitation produces no result, the application shall be refused.

(4) If the application meets the examined requirements, the Hungarian Intellectual Property Office shall register the topography, shall issue a certificate thereof, and shall publish it in its official gazette.

CHAPTER V

COURT PROCEEDINGS IN TOPOGRAPHY PROTECTION MATTERS AND IN LITIGATION

Review of decisions taken by the Hungarian Intellectual Property Office

Article 23

(1) Upon request, the court may review the Hungarian Intellectual Property Office's:

(a) decisions referred to in Article 17(4);

(b) decisions suspending procedure or furnishing a basis for entries in the Topography Register;

(c) orders excluding or limiting the inspection of files against which independent legal remedy is admissible under the provisions of the Public Administration Procedures Act;

(d) orders denying persons the legal status as a party to the procedure apart from those who have submitted a request for the commencement of the procedure;

(e) decisions imposing procedural fines or ruling on the amount and the apportionment of procedural costs.

(2) A request for review brought against a decision imposing procedural fine or ruling on the amount and the apportionment of procedural costs shall have no delaying force with respect to any other provisions of the decision not contested in the request for review, and shall not prevent them from becoming final.

(3) Any order of the Hungarian Intellectual Property Office not referred to in paragraph (1) may only be contested in a request for review of the decisions referred to in paragraph (1).

(4) Review of a decision may be requested by:

(a) any party to the procedures before the Hungarian Intellectual Property Office;

(b) any person excluded from, or limited in, the inspection of files;

(c) any person whose legal status as a party to the procedure has been denied.

(5) Any other participant to the procedures before the Hungarian Intellectual Property Office may submit, in his own rights, an independent request for review of the decision or a provision of the decision relating to him.

(6) The request for review must be filed or posted by registered mail, with the exceptions laid down in paragraphs (7) and (8), within thirty days from the date of communication of the decision to the party concerned or to any other party to the procedure.

(7) The time limit of thirty days for the filing of a request for review shall be reckoned from the communication of the order refusing, or considering not to have been filed, the request for continuation of the procedure or the request for *restitutio in integrum*, if

(a) that date is later than the date of communication of the decision under paragraph (6), and

(b) the request for continuation of the procedure or the request for *restitutio in integrum* was filed to avert the consequences of an omission which served directly as a basis for the decision under paragraph (6).

(8) If the review of a decision of the Hungarian Intellectual Property Office is requested on the basis of a decision taken by the Constitutional Court under the provisions of the Public Administration Procedures Act, the time limit for filing a request for review shall open again for thirty days from the service of the decision of the Constitutional Court.

(9) The request for review shall be filed with the Hungarian Intellectual Property Office, which shall forward it, together with the documents of the topography file, to the court within fifteen days except for the case provided for in paragraph (10). Where an opposing party has taken part in the procedure, the Hungarian Intellectual Property Office shall simultaneously notify the opposing party of the forwarding of the request.

(10) If the request for review raises legal questions of fundamental importance, the Hungarian Intellectual Property Office may make a written statement on such questions and shall forward it, together with the request for review and the documents of the topography file, to the court within thirty days.

(11) The rules concerning actions shall apply *mutatis mutandis* to the requirements for a request for review.

(12) In the case of a request for review filed late, the court shall decide on the request for *restitutio in integrum*.

(13) In any other matters, the provisions on court proceedings for the review of decisions of the Hungarian Intellectual Property Office in patent matters shall apply *mutatis mutandis* in court proceedings for the review of decisions of the Hungarian Intellectual Property Office in topography protection matters.

Litigation concerning topography protection

Article 24

(1) The provisions on patent litigation shall apply *mutatis mutandis* to litigation initiated for infringement.

(2) In any other litigation concerning topography protection, the court of justice shall proceed by applying the rules governing patent litigation.

CHAPTER VI

FINAL PROVISIONS

Article 25

(1) This Act shall enter into force on January 1, 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 Act.

(3) The minister responsible for justice shall be authorized to establish by decree, in consultation with the President of the Hungarian Intellectual Property Office and in agreement with the minister exercising the rights of supervision over the Hungarian Intellectual Property Office, the detailed formal requirements for topography applications.