

WORLD TRADE ORGANIZATION

ORGANISATION MONDIALE DU COMMERCE

ORGANIZACIÓN MUNDIAL DEL COMERCIO

IP/N/1/DNK/L/1

26 August 1996

(96-3356)

Council for Trade-Related Aspects
of Intellectual Property Rights

Original: English/
anglais/
inglés

MAIN DEDICATED INTELLECTUAL PROPERTY LAWS AND REGULATIONS
NOTIFIED UNDER ARTICLE 63.2 OF THE AGREEMENT

Denmark

The present document reproduces¹ the Protection of the Topographies of Semiconductor Products Act No. 778 of 9 December 1987, as notified by Denmark under Article 63.2 of the Agreement (see document IP/N/1/DNK/1).

Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce

PRINCIPALES LOIS ET REGLEMENTATIONS CONSACREES
A LA PROPRIETE INTELLECTUELLE NOTIFIEES
AU TITRE DE L'ARTICLE 63:2 DE L'ACCORD

Danemark

Le présent document contient le texte de la Loi n° 778 du 9 décembre 1987 sur la protection des topographies de produits semi-conducteurs¹, notifiée par le Danemark au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/DNK/1).

Consejo de los Aspectos de los Derechos de Propiedad
Intellectual relacionados con el Comercio

PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS
A LA PROPIEDAD INTELLECTUAL NOTIFICADOS EN
VIRTUD DEL PÁRRAFO 2 DEL ARTÍCULO 63
DEL ACUERDO

Dinamarca

En el presente documento se reproduce¹ la Ley de Protección de Topografías de los Productos Semiconductores, N° 778, de 9 de diciembre de 1987, notificada por Dinamarca en virtud del párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/DNK/1).

¹English only/anglais seulement/inglés solamente.

DENMARK

Protection of the Topographies
of Semiconductor Products Act

(No. 778 of December 9, 1987)*

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Chapter 1
General Provisions

1.—1. For the purposes of this Act a semiconductor product shall mean the final or an intermediate form of any product

- (1) consisting of a body of material which includes a layer of semiconducting material, and
- (2) having one or more layers composed of conducting, insulating or semiconducting material, the layers being arranged in accordance with a pre-determined three-dimensional pattern, and
- (3) intended to perform, exclusively or together with other functions, an electronic function.

2. For the purposes of this Act, the topography of a semiconductor product shall mean a series of related images which, however fixed or encoded, represent the three-dimensional pattern of the layers of which the semiconductor product is composed, and 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.

2.—1. The creator of a topography for a semiconductor product, or the successor in title of the creator, can acquire the exclusive rights to dispose of the topography.

2. The topography shall be the result of the creator's own intellectual effort and must not be commonplace in the semiconductor industry. Where the topography consists of elements that are commonplace in the semiconductor industry, it shall be protected by the Act only if the combination of these elements fulfills the conditions of paragraph 1.

3.—1. For the purposes of this Act, commercial exploitation means the sale, rental, leasing or any other method of commercial distribution, or an offer for these purposes, of the topography or of a semiconductor product manufactured by means of the topography.

2. Commercial exploitation under conditions of confidentiality is not considered as commercial exploitation for the purposes of Sections 4.1(3) and 5 to the extent that no further distribution to third parties occurs. If a topography is exploited under conditions of confidentiality in accordance with Article 223(1)(b) of the EEC Treaty, this is considered as commercial exploitation.

* Official Danish title: Lov om beskyttelse af halvlederprodukters udformning (topografi).

Source: English translation communicated by the Danish authorities.

Entry into force: December 19, 1987.

Note: For the Executive Order Concerning Applications for the Protection of the Topographies of Semiconductor Products, see *Industrial Property Laws and Treaties*, DENMARK — Text I-002.

** Added by WIPO.

4.—1. Exclusive rights can be acquired by:

- (1) a natural person, who has created the topography, and who is a national or who has his habitual residence in a Member State of the EEC;
- (2) a natural person, who is a national or who has his habitual residence in a Member State of the EEC, or a legal person who has a commercial establishment in a Member State, if the topography has been created by a person who is employed by the person concerned, or commissioned by the party concerned, unless it has been agreed or must be assumed to have been agreed that the exclusive rights belong to the creator;
- (3) a natural person or a legal person as mentioned in subparagraph (2), if the person concerned has been exclusively authorized to exploit commercially the topography throughout the Community by the holder of the rights to it, and the first commercial exploitation of the topography takes place in a Member State;
- (4) the person who has taken over the rights from the natural person or the legal person mentioned in subparagraphs (1) to (3).

2. The Minister of Industry may lay down rules to the effect that exclusive rights can be acquired and maintained by other natural or legal persons than mentioned in paragraph 1.

5.—1. Exclusive rights can only be acquired if an application for registration of the topography has been filed with the Danish Patent Office within two years of its first commercial exploitation.

2. The exclusive rights shall come into existence on the earlier of the following dates:

- (1) the date when the topography is first commercially exploited; or
- (2) the date when an application for registration of the topography has been filed with the Danish Patent Office.

3. The exclusive rights shall come to an end 10 years from the end of the calendar year in which exclusive rights have come into existence, see paragraph 2.

4. If, within a period of 15 years from the date of the first fixation or encoding of the topography, no application for registration of the topography has been filed with the Danish Patent Office, and the topography has not been commercially exploited, exclusive rights can no longer be acquired.

6.—1. The exclusive rights to a topography imply that persons other than the holder of the rights may only with the consent of the latter

- (1) reproduce the topography, including producing a semiconductor product by means of the topography;
- (2) exploit the topography commercially, see Section 3.1. or
- (3) import the topography or a semiconductor product created by means of the topography for the purpose of commercial exploitation.

2. The exclusive rights shall not extend to:

- (1) commercial exploitation or import for this purpose of a topography or of a semiconductor product created by means of the topography if the topography or the semiconductor product has been distributed in a Member State of the EEC by the holder of the rights or with his consent;
- (2) reproduction taking place for the purpose of analyzing, evaluating or teaching the concepts, processes, systems or techniques embodied in the topography or the topography itself; or
- (3) any act in relation to the creation of a topography meeting the requirements of Section 2.2. and created on the basis of an analysis and evaluation of another topography.

3. A person who, when he acquires a semiconductor product, does not know, or has no reasonable grounds to believe, that the product embodied a protected topography, may continue to exploit the product in question on reasonable terms to be agreed upon between the parties.

7. The protection of a topography in accordance with Section 2 comprises only the topography and not the concepts, processes, systems, techniques or encoded information embodied in the topography.

Chapter 2 Registration, etc.

8. The Minister of Industry lays down rules concerning the form and contents of applications for registration. The application is subject to a fee.

9. If the rights to a registered topography are transferred to another person, or if a person is given a license, including a non-voluntary license, this is entered in the Register upon request and against payment of a fee.

10. The Danish Patent Office shall end the registration of a topography if it is proved that the conditions set out in Sections 2.2, 4 or 5.1 and 5.4 are not fulfilled.

11.—1. If an application for registration of a topography has been filed and someone proves to the Danish Patent Office that he and not the applicant is entitled to the topography, the Danish Patent Office shall transfer the application to the holder of the rights if he so requests. A fee is paid for the processing of the request.

2. If a person other than the person entitled to protection has obtained registration of a topography, the registration can be transferred judicially to the person having the right to protection.

3. Paragraphs 1 and 2 can be invoked only by the person who meets the requirements of the Act to obtain exclusive rights.

4. A person who in conformity with paragraph 2 is deprived of a registration, and who in good faith has exploited the topography, see Section 6.1, or made substantial preparations for exploiting it, is entitled against reasonable compensation and otherwise on reasonable terms to continue the commenced exploitation or to implement the planned exploitation while maintaining its general character. Holders of registered license rights are also entitled to such rights.

5. Rights in accordance with paragraph 4 shall only be transferred to other persons together with the business in which they are exploited or in which the exploitation was intended.

12.—1. The Minister of Industry lays down rules concerning the Register and its organization, the access of the public to the Register and the publication of registrations.

2. The Minister of Industry fixes the fees applicable in accordance with Sections 8, 9 and 11.1.

Chapter 3 **Non-Voluntary License**

13.—1. If a semiconductor product is not put on the market to a reasonable extent by the holder of the rights in spite of suitable remuneration, the Maritime and Commercial Court may grant a third party a non-voluntary license to perform the acts mentioned in Section 6.1.

2. The Maritime and Commercial Court lays down the terms of the non-voluntary license, including the amount of the remuneration. If circumstances change considerably, the Court may at the request of either party cancel the license or lay down new terms of the license.

Chapter 4 **Damages, Criminal Liability, etc.**

14. A person who infringes another person's exclusive rights in accordance with this Act shall pay a reasonable compensation for exploiting the topography as well as damages for the further injury which the infringement may have caused.

15.—1. If the exclusive rights to a topography have been infringed, the Court may decide that the specimens of the topography or semiconductor products produced by means of the topography shall be altered in a specified manner, destroyed, or surrendered to the injured party, possibly against compensation.

2. Under very special circumstances, the Court may, when so claimed, grant permission to continue disposal of the specimens or products mentioned in paragraph 1 during the term of protection or part of that period, against reasonable compensation and otherwise on reasonable terms.

16.—1 Unless a more severe punishment is otherwise provided for by law, a fine is imposed on a person

- (1) who intentionally infringes Section 6.1.
- (2) who, in connection with an application for registration, submits false or misleading statements or suppresses information of vital importance to the settlement of the case.

2. If the infringement is committed by a limited liability company, a cooperative society or similar, the company or society as such can be fined.

3. Under aggravated circumstances the maximum sentence may be simple detention.

4. Prosecution is instituted by the injured party.

Chapter 5 **Appeals**

17.—1. Decisions made by the Danish Patent Office in pursuance of this Act can be brought before the Board

of Appeal by the Minister of Industry. Decisions shall be brought before the Board of Appeal at the latest two months from the date when the person in question has been notified of the decision. The Board of Appeal may disregard this limit if special circumstances should indicate this.

2. The Minister of Industry lays down rules for the composition and procedures of the Board of Appeal and for the payment of fees.

3. The decisions of the Board of Appeal cannot be brought before another administrative authority.

4. Decisions made by the Danish Patent Office cannot be brought before the courts before the Board of Appeal has made a decision. If a decision by the court is requested, an action must be brought at the latest two

months from the date when the person in question has been notified of the decision of the Board of Appeal.

Chapter 6 **Entry into Force**

18. The Act shall enter into force on the day after publication in the *Lovtidende* (Law Gazette), subject, however, to Section 19.

19. The date of entry into force of Chapter 3 of this Act shall be fixed by the Minister of Industry.

20. This Act shall not extend to the Faroe Islands and Greenland.