

**In case of any discrepancy between the original Danish text and the English translation of this Act, the Danish text shall prevail.**

## **The Consolidate Protection of Topographies of Semiconductor Products Act<sup>1)</sup>**

Publication of the Protection of Topographies of Semiconductor Products Act, cf. Consolidate Act No. 222 of 26 February 2017 including the amendment which follows from section 5 of Act No. 1533 of 18 December 2018.<sup>2)</sup>

### **Part 1**

#### **General provisions**

**1.-(1)** For the purposes of this Act a semiconductor product shall mean any product in its final or intermediate form

(i) consisting of a body of material which includes a layer of semiconducting material,

(ii) having one or more other layers composed of conducting, insulating or semiconducting material, the layers being arranged in accordance with a pre-determined three-dimensional pattern and

(iii) 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 individual image represents part of or the whole 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 his successor in title may obtain the exclusive right to dispose of the topography.

(2) The topography shall be the result of the creator's own intellectual effort and shall not be commonplace in the semiconductor industry. Where the topography consists of elements which are commonplace in the semiconductor industry, the topography shall only be comprised by this Act if the combination of those elements fulfils the requirements of the 1<sup>st</sup> sentence.

**3.-(1)** For the purposes of this Act commercial exploitation of a topography shall mean the offering, sale, rental, leasing or any other commercial distribution of the topography or of a semiconductor product manufactured by means of the topography.

(2) Exploitation under conditions of confidentiality shall not be regarded as commercial exploitation under section 4(1)(iii) and section 5 provided that no further distribution to third parties occurs. Where a

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<sup>1)</sup> This Act contains provisions implementing parts of Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights (EU Official Journal 2004 No. L 195, p. 15).

topography is exploited under conditions of confidentiality in accordance with Article 223 (1) (b) of the EEC Treaty, that shall, however, be regarded as commercial exploitation.

**4.-(1)** An exclusive right may be obtained by

(i) a natural person who has created the topography and who is a national of or has his residence in a Member State of the European Communities,

(ii) a natural person who is a national of or has his residence in a Member State or a legal entity which has a commercial establishment in a Member State when the topography has been created by a person employed by the said person or entity or commissioned by that person or entity, unless it has been or might be regarded as agreed that the exclusive right belongs to the creator,

(iii) a natural person or a legal entity as referred to in paragraph (ii) when the said person or entity has obtained the exclusive right from the holder of the right to exploit the topography commercially throughout the Communities, and the first commercial exploitation of the topography takes place in a Member State,

(iv) the successor in title of one of the natural persons or legal entities referred to in paragraphs (i) to (iii).

(2) The Minister of Industry, Business and Financial Affairs may lay down rules to the effect that the exclusive right may be obtained and held by other natural persons or legal entities than those referred to in subsection 1.

**5.-(1)** An exclusive right may only be obtained if an application for the registration of the topography has been filed with the Patent and Trademark Office within two years from the date of the first commercial exploitation of the topography.

(2) The exclusive right shall be established on the first of the following dates:

(i) the date of the first commercial exploitation of the topography or

(ii) the date on which an application for the registration of the topography was filed with the Patent and Trademark Office.

(3) The exclusive right shall come to an end when ten years have elapsed from the end of the calendar year in which the exclusive right was established, cf. subsection 2.

(4) If no application for the registration of the topography has been filed with the Patent and Trademark Office and no commercial exploitation of the topography has been effected within fifteen years from the date on which the topography was first fixed or encoded, an exclusive right shall no longer be obtainable.

**6.-(1)** The exclusive right to a topography shall imply that persons other than the holder of the right may only with the consent of the latter

(i) reproduce the topography, including the manufacture of a semiconductor product by using the topography,

(ii) exploit the topography commercially, cf. section 3(1) or

(iii) import the topography or a semiconductor product manufactured by using the topography for the purpose of commercial exploitation.

(2) The exclusive right shall not extend to

(i) commercial exploitation or importation for that purpose of a topography or of a semiconductor product manufactured by using the topography when the topography or the semiconductor product has been put on the market in a Member State of the European Communities by the holder of the right or with his consent,

(ii) reproduction for the purpose of analysis or evaluation of or instruction in the topography itself or the concepts, processes, systems or techniques embodied in the topography,

(iii) any acts in connection with 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) Any person who has acquired a semiconductor product without knowing or having reasons to believe that the product embodied a protected topography may continue the exploitation of the said product on reasonable terms to be agreed upon between the parties.

**7.-** The protection of a topography under section 2 shall only comprise the topography and not the concepts, processes, systems, techniques or encoded information embodied in the topography.

## **Part 2**

### **Registration, etc.**

**8.-** The Minister of Industry, Business and Financial Affairs shall lay down rules concerning the form and contents of applications for registration. The application shall be subject to a fee.

**9.-** If the right to a registered topography is transferred to another party, or if any party acquires a licence, including a compulsory licence, that shall on request be entered in the Register.

**10.-** The Patent and Trademark Office shall revoke the registration of a topography if it is proved that the requirements referred to in section 2(2), section 4 or section 5(1) and (4) are not complied with.

**11.-(1)** If an application for the registration of a topography has been filed, and if any party proves to the Patent and Trademark Office that he, and not the applicant, is entitled to the

topography, the Patent and Trademark Office shall transfer the application to him if he so requests. The processing of the request shall be subject to a fee.

(2) If a party other than the party entitled thereto has obtained registration of a topography, the registration may be transferred to the entitled party by a court decision.

(3) Subsections 1 and 2 may only be invoked by a party who complies with the requirements of this Act for obtaining an exclusive right.

(4) Any person who pursuant to subsection 2 is deprived of the registration and who in good faith has exploited the topography in this country, cf. section 6(1), or has made substantial preparations for such exploitation, shall be entitled, for a reasonable compensation and on reasonable terms in other respects, to continue the exploitation already commenced or to implement the planned exploitation retaining its general character. Such a right shall also, under the same conditions, be enjoyed by holders of registered licences.

(5) Rights pursuant to subsection 4 may only be transferred to other parties together with the business in which they are exploited or in which the exploitation was intended.

**12.-(1)** The Minister of Industry, Business and Financial Affairs shall lay down rules concerning the Register and its organisation, concerning the access of the public to the Register and concerning the publication of registrations.

(2) The Minister of Industry, Business and Financial Affairs may lay down rules concerning the payment for special transactions, publications, transcripts, courses, etc.

## **Part 2 A**

## Fees

**12 a-**(1) For an application for the registration of a topography of a semiconductor product a fee of 1,500 DKK shall be paid, cf. section 8.

(2) For the processing of a request for the transfer of an application a fee of 1,000 DKK shall be paid, cf. section 11.

(3) Fees paid pursuant to subsection 1 or 2 shall not be refunded when the payment has been effected in due time.

(4) Fees not paid in due time or paid in insufficient amounts at the expiry of the time limit resulting in non-acceptance of the payment shall be refunded.

(5) If the Patent and Trademark Office rejects the examination and other processing paid for, fees paid in connection with the examination and other processing shall be refunded.

**12b-**(1) The fees referred to in section 12a are stated at the 2011-level.

(2) The Patent and Trademark Office may adjust the amounts stated in section 12a in accordance with the general price and wage development used for the purposes of the Government Budget. The Patent and Trademark Office shall publish the current fees in a price list.

**12c-** The Patent and Trademark Office may transfer income from fees charged under this Act to the payment of costs involved in the administration by the Patent and Trademark Office of other fields under the jurisdiction of the Office where fees are charged.

(2) The Patent and Trademark Office may transfer income from fees charged under this Act to Nævnenes Hus to the payment of costs associated with the Board of Appeal for Patents and Trademarks.

## Part 3

## Compulsory Licence

**13-**(1) If a semiconductor product is not put on the market to a reasonable extent by the holder of the right despite the offer of a suitable compensation, the Maritime and Commercial Court may grant a third party a compulsory licence to perform the acts referred to in section 6(1).

(2) The Maritime and Commercial Court shall lay down the terms of the compulsory licence, including the amount of the compensation. If circumstances change considerably, the Court may, at the request of either party, cancel the licence or lay down new terms of the licence.

## Part 4

### Damages, liability to punishment, etc.

**14-**(1) Any person who intentionally or negligently infringes an exclusive right under this Act shall pay

(i) a reasonable compensation to the injured party for the exploitation and

(ii) damages to the injured party for the further injury which the infringement has caused.

(2) In fixing the damages according to subsection 1(ii) *inter alia* the loss of profit suffered by the injured party and the illicit profit obtained by the infringer shall be taken into consideration.

(3) In cases comprised by subsection 1 an additional compensation may be fixed to the injured party for non-financial injury.

**15-**(1) For the purpose of preventing further infringements the court may, when so claimed, *inter alia* decide that specimens of the topography or semiconductor products

produced by means of the topography and infringing the exclusive right pursuant to this Act shall be

- (i) withdrawn from the market,
- (ii) removed definitively from the market,
- (iii) destroyed,
- (iv) surrendered to the injured party or
- (v) altered in a specified manner.

(2) Subsection 1 shall apply *mutatis mutandis* to materials, tools or the like which have primarily been used for illegal production of the infringing products.

(3) The measures under subsection 1 shall be implemented without compensation to the infringer and shall not affect any damages to the injured party. The measures shall be implemented at the expense of the infringer unless special circumstances tell against it.

(4) In giving a court decision on measures under subsection 1 the court shall take into consideration the proportion between the extent of the infringement, the prescribed measures and the interests of any third party.

(5) The court may, when so claimed, grant permission to the infringer to have the products, materials, tools or the like referred to in subsections 1 and 2 at his disposal during the term of protection by the exclusive right or part thereof against a reasonable compensation. However, that shall only apply if

- (i) the infringer has neither acted intentionally nor negligently,
- (ii) the measures under subsection 1 would cause the infringer disproportionate harm and
- (iii) a reasonable compensation is sufficient.

**15a.**-(1) In a court decision by which a person is held liable under section 14 or 15 the court may, if so requested, decide that the court decision in full or extracts thereof shall be published.

(2) The obligation to publish shall rest with the infringer. The publication shall be made at the expense of the infringer and in such a prominent manner as may reasonably be required.

**16.**-(1) Unless a heavier penalty is provided for by other legislation a fine shall be imposed on any person who

- (i) intentionally infringes section 6(1),
- (ii) in connection with an application for registration submits false or misleading information or fails to disclose information of importance to the settlement of the case.

(2) If the infringement has been committed by a limited liability company, a co-operative society or the like, the company or society as such may be fined.

(3) Under aggravating circumstances the penalty may increase to imprisonment of up to four months.

(4) Proceedings shall be instituted by the injured party.

## Part 5

### Appeals

**17.**-(1) Decisions made by the Patent and Trademark Office pursuant to this Act may be brought before a Board of Appeal to be established by the Minister of Industry, Business and Financial Affairs. The time limit for bringing a decision before the Board of Appeal shall be two months from the date on which the party concerned was notified of the decision. The Board may disregard the time limit when special circumstances are in favour thereof.

(2) The Minister of Industry, Business and Financial Affairs shall lay down rules concerning the composition and rules of procedure of the Board of Appeal and concerning the payment of fees.

(3) The decisions of the Board of Appeal may not be brought before any other administrative authority.

(4) Decisions made by the Patent and Trademark Office may not be brought before the courts until the decision of the Board of Appeal has been given. If a party wants to bring a decision before the courts, proceedings shall be instituted not later than two months from the date on which the party concerned was notified of the decision of the Board of Appeal.

## **Part 6**

### **Provisions as to entry into force**

**18.-** This Act shall enter into force on the date after the publication in the Official Gazette (Lovtidende) cf., however, section 19.

**19.-** The date of entry into force of Part 3 of this Act shall be fixed by the Minister of Industry, Business and Financial Affairs.

**20.-** This Act shall not apply to the Faeroe Islands and Greenland.

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Act No. 1533 of 18 December 2018 to amend the Trade Marks Act and various other Acts and to abolish the Collective Marks Act (Examination of applications, grounds for refusal, reproduction of trademarks, goods in transit, transfer of fee income etc.)<sup>3)</sup> contains the following provision as to entry into force:

### **Section 8**

(1) This Act shall enter into force on 1 January 2019.

(2) (Subsection 2-7 excluded)

The Patent and Trademark Office, 29 January 2019

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/Anne Rejnhold Jørgensen

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- <sup>2)</sup> This Consolidate Act contains information about provisions as to entry into force and transitional provisions adopted during the sessional year 2018/2019 of the Danish Parliament (the Folketing). The amendment indicated below in consequence of Act No. 1533 of 18 December 2018 shall not apply to the Faeroe Islands and Greenland.
- <sup>3)</sup> The amendment of this Act relates to section 12 c.