

WORLD TRADE ORGANIZATION

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**Council for Trade-Related Aspects
of Intellectual Property Rights**

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

Netherlands

The present document reproduces¹ the Act of 28 October 1987, containing regulations for the protection of original topographical designs for semi-conductor products, as amended, as notified by the Netherlands under Article 63.2 of the Agreement (see document IP/N/1/NLD/1/Rev.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**

Pays-Bas

Le présent document contient le texte¹ de la Loi du 28 octobre 1987 réglementant la protection des topographies originales de produits semi-conducteurs, telle que modifiée, notifiée par les Pays-Bas au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/NLD/1/Rev.1).

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

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

Países Bajos

En el presente documento se reproduce¹ la Ley de 28 de octubre de 1987, en su versión enmendada, que regula la protección de las topografías originales de productos semiconductores y que fue notificada por los Países Bajos en virtud de lo dispuesto en el párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/NLD/1/Rev.1).

¹English only/anglais seulement/inglés solamente.

Act of 28 October 1987, Containing Regulations for the Protection of Original Topographical Designs for Semi-Conductor Products, Statute Book 484, as amended up to 1996

We, Beatrix, by the Grace of God, Queen of the Netherlands, Princess of Orange-Nassau, etc.

Do greet all who shall read or hear of this and hereby declare:

That we consider it desirable, for the implementation of the Directive of the Council of European Communities of 16 December 1986 concerning the legal protection of topographical designs for semi-conductor products (Pb. L/24, 27 January 1987), that regulations be introduced for the protection of original topographical design for semi-conductor products:

We therefore, having heard the Council of State and in consultation with the States General, have understood and approved, and do hereby understand and approve:

Article 1

The terms used in this Act and the Orders based on it shall be defined as follows:

a. Semi-conductor product:

The final or intermediate form of a product which:

1. Consists of a body containing a layer of semi-conductor material and one or more layers of conducting, insulating or semi-conducting material, in which the composition of each layer corresponds to a predetermined three-dimensional pattern of the body and
2. Is intended to fulfill an electronic function, alone or in combination with other functions.

b. Topographical design:

A series of related images, as laid down in any form:

1. Which show the three-dimensional pattern of the layers of which the semi-conductor product is composed and
2. In which each image represents the surface pattern of the semi-conductor product, or a part thereof, at any stage of its production.

c. The Office:

The Industrial Property Office, within the meaning of article 4 of the Act of 25 April 1963 (Statute Book 221).

d. The Register:

The Register, as maintained by the Office, of submissions filed under this Act.

e. Exploitation:

The sale, lease or other transaction involving copies of the topographical design, or of the semi-conductor product based on the topographical design, or an offer to conduct such a transaction. Exploitation, for the purposes of articles 4, 7 and 13, shall not refer to exploitation subject to confidentiality requirements, provided that these requirements apply only between the contract parties concerned.

Article 2

The producer of an original topographical design for a semi-conductor product shall hold sole rights to that design.

Article 3

If work performed in the service of another party involves the production of topographical designs for semi-conductor products, the party in whose service the designs are made shall be deemed to be the producer of the designs, unless otherwise agreed.

Article 4

In cases other than those described in article 2, in conjunction with article 2, the sole rights to topographical designs shall be granted to persons who, for the first time, exclusively exploit an original design, which has not previously been exploited elsewhere in the world, in one of the Member States of the European Communities or in another State which is party to the Agreement on the European Economic Area, provided that such exploitation occurs with the permission of the designer.

Article 5

1. The sole rights to a topographical design entitle the holder to:
 - a. Duplicate the design
 - b. Produce semi-conductor products based on the design
 - c. Exploit, offer, stock or import copies of the design or semi-conductor products based on the design.
2. The sole rights to a topographical design may be exercised in respect of third parties only after the registration file for the design has been registered by the Office.

Article 6

If copies of a topographical design, or of semi-conductor products based on the design, are traded in one of the Member States of the European Communities or in another State which is party to the Agreement on the European Economic Area by the holder of the sole rights, or with the holder's permission, actions as referred to in article 5, paragraph 1c, by the party acquiring such products shall not be deemed to be an infringement of the sole rights to the design.

Article 7

The sole rights to a topographical design shall lapse if the design has not been registered by the Office within two years of the first occasion on which a copy of the design, or of a semi-conductor product based on the design, is exploited within or outside the Netherlands by the holder of the sole rights, or with his permission.

Article 8

1. Registration shall take place through the submission of an application, giving
 - a. the name, address and domicile of the producer, if other than the party filing for registration
 - b. a description of the topographical design
 - c. is accompanied by drawings or illustrations of the topographical design
 - d. the date on which a copy of the topographical design or a semi-conductor product based on the design was exploited for the first time, if such has already occurred.

An example of the semi-conductor product may be filed with the application.

2. The party filing for registration may state which sections of the items listed in paragraph 1c of this article contain confidential business information which may not be disclosed to third parties, provided that the topographical design remains identifiable as such.
3. The application and the accompanying items shall be drawn up in Dutch and signed by the party filing for registration or an authorised representative of such party, as evidenced by an authorisation accompanying the document.
4. If the party filing for registration, or its authorised representative, has no domicile in the Netherlands, a

correspondence address in the Netherlands must be supplied and the Office must be notified of all changes thereof.

5. Documentary evidence of payment to the Office of a fee to be fixed order in council must be submitted with the registration documents.
6. Further regulations relating to the stipulations of this article may be laid down by order in council.

Article 9

1. The Office will record the filing date on the application, as referred to in article 8, paragraph 1. The registration file shall be registered within four weeks of that date.
2. The Office shall not register the file if the date referred to in paragraph 8d precedes the date of the file by more than two years.
3. The method of registration and the information to be included in the register shall be laid down by order in council.

Article 10

1. The Office cannot be required to investigate the contents of any file submitted for registration.
2. The Office will announce the registration of the file as soon as possible, in a journal which it shall publish.
3. Further regulations relating to the stipulations of paragraph 2 of this article may be laid down by order in council.

Article 11

1. From the date of registration of the file, any person may, upon request, inspect the registration and the documents relating to the file, and may obtain a copy of the registration. The documents referred to in article 8, paragraph 2 may also be inspected, if the holder of the sole rights has given permission. No charge shall be made for inspection.
2. Further rules regarding the provisions of the previous paragraph may be laid down by order in council and the amount payable for the copy referred to therein shall be laid down by order in council.
The documents referred to in article 8, paragraph 2, may be inspected only with the permission of the holder of the sole rights. No charge shall be made for inspections.

2. Further regulations relating to the stipulations of paragraph 1 of this article and the fees payable for copies of the documents may be laid down by order in council.

Article 12

1. Without prejudice to the stipulations of article 7, the sole rights to a topographical design shall lapse if the file is deleted from the register on request, or on expiry of the period of validity.
2. The holder of the registration of a topographical design may request deletion of the file from the register at any time. If the register shows that rights have been granted to third parties, deletion is subject to their permission.

Article 13

1. The sole rights to a topographical design shall lapse after ten years, commencing at the end of the calendar year in which the file is submitted for registration or, if earlier, at the end of the calendar year, as recorded in the registration document in which a copy of the design, or of a semi-conductor product based on the design, is exploited for the first time.
2. The sole rights to a topographical design which is not exploited and which has not been filed for registration shall lapse after fifteen years, commencing at the end of the calendar year in which the design is produced.

Article 14

1. The sole rights to a topographical design may be transferred, in whole or in part, by succession or otherwise.
2. The sole rights to a topographical design may be the subject of a licence.
3. Rights which have been transferred or limited rights that have been conferred or rights that have been granted under licence may not be exercised in respect of third parties until the deed has been registered. Article 8, paragraphs 3 to 6, article 9 and article 10 shall apply accordingly.

Article 15

1. The duplication of a topographical design for a semi-conductor product purely for personal use for non-commercial purposes, educational purposes or analysis of

the design shall not be deemed to be an infringement of the sole rights to the design.

2. If the actions described in article 5 are performed in relation to an original topographical design produced as a result of an analysis, as referred to in paragraph 1 of this article, conducted without the permission of the holder of the sole rights to the design which is analysed, such actions shall not be deemed to be an infringement of those rights.

Article 16

1. A party who, in good faith, acquires a copy of a semi-conductor product based on a topographical design which is traded neither by the holder of the sole rights nor with the holder's permission, shall not be deemed to have infringed the sole rights to this design if he performs actions, as referred to in article 5, paragraph 1c, relating to this semi-conductor product without the permission of the holder of the rights.
2. As soon as the acquiring party, as referred to in paragraph 1 of this article, becomes aware, or should have become aware, that copies of the semi-conductor product based on the topographical design were traded neither by the holder of the sole rights nor with the holder's permission, he may perform actions, as referred to in article 5, paragraph 1c, relating to the semi-conductor products which were acquired in good faith without the permission of the holder of the rights only if appropriate restitution is made to the latter.
3. Subject to the stipulations of paragraph 2 of this article, if a copy of a semi-conductor product, as referred to in the aforementioned paragraph, is traded in one of the Member States of the European Communities or in another State which is party to the Agreement on the European Economic Area, any parties who acquire the product at a later stage and perform the actions described in article 5, paragraph 1c in respect of such product, shall not be deemed to have infringed on the sole rights to the topographical design.

Article 17

1. The holder of the sole rights to a topographical design may uphold such rights in respect of any party who performs the actions described in article 5 without authorisation.

2. Instead of claiming compensation for damages, the holder may sue a defendant for the transfer of profits resulting from the infringement and for an account thereof; however, if a court takes the view that the circumstances of a case do not justify such a ruling, it may order the defendant to pay damages.
3. The holder of the sole rights to a topographical design may also sue for damages or for the transfer of profits on behalf of, or jointly on behalf of licence-holders or pledgees, without prejudice to the power of the latter to intercede in a suit filed by the holder of the sole rights to a topographical design, on their behalf, or jointly on their behalf or otherwise, in order to make a direct claim for damages suffered or to claim the allocation of a proportional share of the profit to be transferred by the defendant. Licence-holders and pledgees may take legal action only with the permission of the holder on the sole rights to a topographical design.

Article 18

1. The sole rights to a topographical design shall entitle the holder to claim title to or demand the destruction or rendering unusable of copies of the design or the semiconductor product in respect of which actions as referred to in article 5 have been performed in contravention of such rights.
2. The power to claim title, as referred to in paragraph 1 of this article, shall also apply with respect to monies which may reasonably be assumed to have been obtained by or as a result of an infringement of the sole rights to a topographical design. The power to demand the destruction or rendering unusable of copies of the design or semiconductor product shall also apply with respect to the objects which served directly for the production of the objects referred to above.
3. The provisions of the Code of Civil Procedure concerning attachment and execution for purpose of the surrender of movable property which is not registered goods shall apply. In the event of multiple attachment, the person who levied attachment pursuant to this article shall have precedence.
4. Unless otherwise agreed, the licence-holder is entitled to exercise the powers as described in the preceding paragraphs of this article, insofar as this involves protection of rights which he is licensed to exercise.
5. The rights, as referred to in paragraphs 1 and 2 of this article, cannot be exercised in respect of copies of a

topographical design or a semi-conductor product based on that design which are in the possession of persons who do not trade in such designs or semi-conductor products and who have obtained them purely for personal use, unless they have personally infringed on the relevant sole rights to such design.

Article 19

1. In the first instance, the District Court of The Hague and the Presiding Judge of that Court in summary proceedings are solely competent to rule on all claims filed under article 17 and all petitions filed by parties, other than the holder of the sole rights to a topographical design, for a ruling to the effect that certain actions performed by the petitioner do not infringe on the sole rights to a topographical design.
2. They are also competent to hear claims or petitions filed simultaneously with claims, as referred to in paragraph 1 of this article, and which bear a sufficient relationship thereto.

Article 20

Notwithstanding section 8:7 of the General Administrative Law Act, The Hague District Court shall be competent to hear appeals lodged against decisions given by the Office concerning the registration of a file pursuant to this Act.

Article 21 (deleted)

Article 22

A copy of all court rulings on the sole rights to a topographical design shall be sent to the Office free of charge, within four weeks, by the Clerk of the Court which most recently heard the case. The Office shall attach such rulings to the documents in the file.

Article 23

The Office is required to supply the Court with all information and technical advice which it requests in order reach a verdict on claims or request relating to the sole rights to a topographical design which are subject to its ruling. The Office may claim indemnification and wages, to be estimated by the Court, for the supply of technical advice.

Article 24

1. The defendant found guilty of wilful infringement on the sole rights to a topographical design may be sentenced to a maximum of six months imprisonment or to payment of a Category 5 fine.
2. Wilful infringement, within the meaning of paragraph 1 of this article, is a criminal offence.

Article 25

Topographical designs, within the meaning of article 2, produced after the date on which this Act comes into effect, shall not be entitled to protection under the 1912 Copyright Act.

Article 26

The following are eligible for protection under this Act:

- a. Producers who are subjects of a European Community Member State or whose normal domicile or actual industrial or commercial establishment is one of those States, and
- b. Producers who are subjects of countries other than those referred to in item a., or whose normal domicile or actual industrial or commercial establishment is in such a country, if such is laid down by order in council or agreed by the Council of the European Communities, and
- c. Persons, within the meaning of article 4, who are subjects of one of the Member States of the European Communities or in another State which is party to the Agreement on the European Economic Area or whose normal domicile or actual industrial or commercial establishment is in one of those States.

Article 27

1. This Act also covers original topographical designs produced prior to the date on which the Act comes into effect, on the understanding that actions, as described in article 5, shall not be deemed to have infringed on the sole rights to a topographical design if they were performed prior to the abovementioned date by a party other than the later holder of the sole rights.
2. Original topographical designs exploited for the first time prior to the date on which this Act comes into effect should be filed for registration, within the meaning of article 8, within two years of the aforementioned date.

Article 28

This Act shall come into effect on a date to be determined by Royal Decree.

We hereby charge and order that this shall be included in the Statute Book and that all Ministries, authorities, organisations and officials concerned shall ensure its faithful enforcement.

As issued in The Hague, 28 October 1987

Beatrix

F. Korthals Altes
Minister of Justice

R.W. de Korte
Minister of Economic Affairs

As published on the fifth of November 1987

F. Korthals Ales
Minister of Justice

Statute Book
of the Kingdom of the Netherlands

Volume: 1987

485

Order of 28 October 1987, stipulating the date on which the Act of 28 October 1987, Containing Regulations for the Protection of Original Topographical Designs for Semi-Conductor Products (Statute Book 484) shall take effect.

We, Beatrix, by the Grace of God, Queen of the Netherlands, Princess of Orange-Nassau, etc.

On the recommendation of Our Minister of Justice of 27 October 1987, Staff Department for Private Law, No. 474/687;
Submitted jointly on behalf of the Minister of Economic Affairs;
In view of Article 28 of the Act of 28 October 1987, Containing Regulations for the Protection of Original Topographical Designs for Semi-Conductor Products (Statute Book 484);

Have understood and approved:

The Act of 28 October 1987, Containing Regulations for the Protection of Original Topographical Designs for Semi-Conductor Products (Statute Book 484) shall take effect as of 7 November 1987.

Our Minister of Justice is charged with the execution of this Decree, which shall be included in the Statute Book.

The Hague, 28 October 1987

Beatrix

F. Korthals Altes
Minister of Justice

As published on the fifth of November 1987

F. Korthals Altes
Minister of Justice