



1           “(1) having two or more layers of metallic, insu-  
2           lating, or semiconductor material, deposited on or  
3           etched away from a piece of semiconductor material in  
4           accordance with a predetermined pattern; and

5           “(2) intended to perform electronic circuitry func-  
6           tions.

7           “A ‘mask work’ is a series of related images—

8           “(1) having the predetermined, three-dimensional  
9           pattern of metallic, insulating, or semiconductor mate-  
10          rial present or removed from the layers of a semicon-  
11          ductor chip product; and

12          “(2) in which series the relation of the images to  
13          one another is that each image has the pattern of the  
14          surface of one form of the semiconductor chip product.

15          “A ‘mask’ is a substantially two-dimensional partially  
16          transparent and partially opaque sheet. A mask embodies a  
17          mask work if the pattern of transparent and opaque portions  
18          of the mask is substantially similar to the pattern of one of  
19          the images of the mask work. Masks and mask works shall  
20          not be deemed pictorial, graphic, or sculptural works.

21          “As used in sections 109(a), 401, 405, 406, 501(a),  
22          503, 506, 509, and 602 of this title, ‘copy’ includes a semi-  
23          conductor chip product that is subject to the exclusive rights  
24          described in section 106.”

## 1                   SUBJECT MATTER OF COPYRIGHT

2           SEC. 3. Section 102(a) of title 17 of the United States  
3 Code is amended—

4                   (1) by inserting after paragraph (5) the following:

5                   “(6) mask works;” and

6                   (2) by redesignating paragraphs (6) and (7) as  
7 paragraphs (7) and (8), respectively.

## 8                   EXCLUSIVE RIGHTS

9           SEC. 4. Section 106 of title 17 of the United States  
10 Code is amended—

11                   (1) by striking out “and” at the end of paragraph

12 (4);

13                   (2) by striking out the period at the end of para-  
14 graph (5) and inserting “; and” in lieu thereof; and

15                   (3) by adding at the end the following:

16                   “(6) in the case of mask works—

17                   “(A) to embody the mask work in a mask;

18                   “(B) to distribute a mask embodying the  
19 mask work;

20                   “(C) to use a mask embodying the mask  
21 work to make a semiconductor chip product;

22                   “(D) in the manufacture of a semiconductor  
23 chip product, substantially to reproduce, by opti-  
24 cal, electronic, or other means, images of the

1 mask work on material intended to be part of the  
2 semiconductor chip product; and

3 “(E) to distribute or use a semiconductor  
4 chip product made as described in subclause (C)  
5 or (D) of clause (6) of this section.”.

6 **LIMITATION ON EXCLUSIVE RIGHTS AS TO MASKS**

7 **SEC. 5.** (a) Chapter 1 of title 17 of the United States  
8 Code is amended by adding at the end the following:

9 **“§ 119. Scope of exclusive rights: Compulsory licensing**  
10 **with respect to mask works**

11 “(a) In the case of mask works, the exclusive rights  
12 provided by section 106 of this title are subject to compulsory  
13 licensing under the conditions specified by this section.

14 “(b) The owner of a copyright on a mask work shall be  
15 required to grant a compulsory license under the copyright,  
16 to any applicant therefor, on the following terms and condi-  
17 tions, and in the following circumstances:

18 “(1) The applicant has purchased a semiconductor  
19 chip product made or distributed in violation of the  
20 owner’s exclusive rights under section 106 of this title.

21 “(2) When the applicant first purchased such  
22 semiconductor chip product (hereinafter in this section  
23 referred to as the ‘infringing product’), the applicant  
24 did not have actual knowledge that or reasonable  
25 grounds to believe that the infringing product was an

1     infringing product (hereinafter in this section referred  
2     to as 'having notice of infringement').

3             “(3) The applicant, before having notice of in-  
4     fringement, committed substantial sums of money to  
5     the use of the infringing product; the applicant would  
6     suffer substantial out-of-pocket losses (other than the  
7     difference in price between the infringing product and a  
8     non-infringing product) if denied the use of the infring-  
9     ing product; and it would be inequitable in the circum-  
10    stances not to permit the applicant to continue the use  
11    or proposed use of the infringing product.

12            “(4) The applicant offers, subject to the appli-  
13    cant’s rights, if any, under section 501(e) of this title,  
14    to pay the copyright owner a reasonable royalty for in-  
15    fringing products.

16            “(5) The royalty shall be for each unit of the in-  
17    fringing product distributed or used by the applicant  
18    after having notice of infringement.

19            “(6) The license shall be one to make, have made  
20    (but only if the copyright owner and the owner’s li-  
21    censees, if any, are unable to supply the applicant at a  
22    reasonable price), use, and distribute the infringing  
23    product, for substantially the same purposes that gave  
24    rise to the applicant’s right to a compulsory license,  
25    throughout the United States, for the life of the copy-

1 right, revocable only for failure to make timely pay-  
2 ment of royalties.”

3 (b) The table of sections at the beginning of chapter 1 of  
4 title 17 is amended by adding at the end the following:

“119. Scope of exclusive rights: Compulsory licensing with respect to mask  
works.”.

5 **DURATION OF COPYRIGHT**

6 **SEC. 6.** Section 302 of title 17 of the United States  
7 Code is amended by adding at the end the following:

8 “(f) **MASKS.**—Copyright in mask works endures for a  
9 term of ten years from the first authorized—

10 “(1) distribution;

11 “(2) use in a commercial product; or

12 “(3) manufacture in commercial quantities;

13 of semiconductor chip products made as described in sub-  
14 clause (C) or (D) of clause (6) of section 106 of this title.”

15 **INNOCENT INFRINGEMENT**

16 **SEC. 7.** Section 501 of title 17 of the United States  
17 Code is amended by adding at the end the following:

18 “(e) Notwithstanding the other provisions of this chap-  
19 ter, a purchaser of a semiconductor chip product who pur-  
20 chased such product in good faith, without having notice of  
21 infringement (as that term is used in section 119 of this title),  
22 shall not be liable as an infringer or otherwise be liable or  
23 subject to remedies under this chapter with respect to the use  
24 or distribution of units of such semiconductor chip product

1 that occurred before such purchaser had notice of infringe-  
2 ment.”

3

#### IMPOUNDING AND SEIZURE

4 SEC. 8. Sections 503(a), 503(b), and 509(a) of title 17 of  
5 the United States Code are each amended by inserting  
6 “masks,” after “film negatives,” each place it appears.

7

#### EFFECTIVE DATE

8 SEC. 9. The amendments made by this Act shall take  
9 effect ninety days after the date of enactment of this Act, but  
10 shall not apply to—

11 (1) semiconductor chip products manufactured in  
12 the United States or imported into the United States  
13 before the effective date;

14 (2) masks made in the United States or imported  
15 into the United States before the effective date; or

16 (3) semiconductor chip products manufactured in  
17 the United States by means of masks described in  
18 paragraph (2) of this section.

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