

1 “A ‘semiconductor chip product’ is the final or in-
2 intermediate form of a product—

3 “(1) having two or more layers of metallic,
4 insulating, or semiconductor material, deposited
5 on or etched away from a piece of semiconductor
6 material in accordance with a predetermined pat-
7 tern;

8 “(2) intended to perform electronic circuitry
9 functions; and

10 “(3) that is a writing or a discovery, or the
11 manufacture, use, or distribution of which is in or
12 affects commerce.

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

14 “(1) having the predetermined, three-dimen-
15 sional pattern of metallic, insulating, or semicon-
16 ductor material present or removed from the
17 layers of a semiconductor chip product; and

18 “(2) in which series the relation of the
19 images to one another is that each image has the
20 pattern of the surface of one form of the semicon-
21 ductor chip product.

22 “A ‘mask’ is a substantially two-dimensional, par-
23 tially transparent and partially opaque sheet. A mask
24 embodies a mask work if the pattern of transparent
25 and opaque portions of the mask is substantially similar

1 to the pattern of one of the images of the mask work.
2 Masks and mask works shall not be deemed pictorial,
3 graphic, or sculptural works. The copyright in a mask
4 or mask work shall not extend to any other work of
5 authorship embodied therein.

6 “As used in sections 109(a), 401, 405, 406, 501(A),
7 503, 506, 509, and 602 of this title, ‘copy’ includes a semi-
8 conductor chip product that is subject to the exclusive rights
9 described in section 106.”

10 SUBJECT MATTER OF COPYRIGHT

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

13 (1) by adding after paragraph (5) the following:

14 “(6) mask works;”; and

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

17 EXCLUSIVE RIGHTS

18 SEC. 4. Section 106 of title 17 of the United States
19 Code is amended—

20 (1) by striking out “and” at the end of paragraph
21 (4);

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

24 (3) adding at the end thereof the following:

25 “(6) in the case of mask works—

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

4 “(2) When the applicant first purchased such
5 semiconductor chip product (hereinafter in this section
6 referred to as the ‘infringing product’), the applicant
7 did not have actual knowledge that or reasonable
8 grounds to believe that the infringing product was an
9 infringing product (hereinafter in this section referred
10 to as ‘having notice of infringement’).

11 “(3) The applicant, before having notice of in-
12 fringement, committed substantial funds to the use of
13 the infringing product; the applicant would suffer sub-
14 stantial out-of-pocket losses (other than the difference
15 in price between the infringing product and a nonin-
16 fringing product) if denied the use of the infringing
17 product; and it would be inequitable in the circum-
18 stances not to permit the applicant to continue the use
19 or proposed use of the infringing product.

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

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

○