

SCREENING MEETING ACQUIS COMMUNAUTAIRE

Brussels, 6-7 February 2006

CHAPTER 9: INTELLECTUAL PROPERTY LEGAL PROTECTION OF SEMICONDUCTOR TOPOGRAPHIES

SCREENING MEETING ACQUIS COMMUNAUTAIRE

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Directive 87/54/EEC of 16 December 1986 on the legal protection of topographies of semiconductor products

- **Technology is essential for the Community's industrial development. The development of such topographies requires the investment of considerable human, technical and financial resources;**
- **topographies of such products can be copied at a fraction of the cost needed to develop them independently;**
- **Directive aims to provide a clear legal framework and to remove the differences between the national laws in force in this field.**

ANALYTICAL EXAMINATION ACQUIS COMMUNAUTAIRE

Brussels, 6-7 February 2006

DEFINITIONS (Art. 1)

- "semiconductor product",

the final or an intermediate form of any product:

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

SCREENING MEETING ACQUIS COMMUNAUTAIRE

Brussels, 6-7 February 2006

- "topography"
a series of related images, however fixed or encoded
 - representing the three-dimensional pattern of the layers of which a semiconductor product is composed;
 - 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.
- "Commercial exploitation":
the sale, rental, leasing or any other method of commercial distribution, or an offer for these purposes.



SCREENING MEETING

ACQUIS COMMUNAUTAIRE

Brussels, 6-7 February 2006

- OBJECT OF PROTECTION (Art.2)

- Obligation on Member States to adopt legislation to protect topographies by means of exclusive rights;
- in so far as they are the result of their creator's own intellectual effort and are not commonplace in the semiconductor industry.
- Protection shall not extend to any concepts, process, system, technique or encoded information embodied in the topography other than the topography itself (Art.8)

SCREENING MEETING

ACQUIS COMMUNAUTAIRE

Brussels, 6-7 February 2006

- AUTHORSHIP AND BENEFICIARIES OF PROTECTION (Art.3)

Protection is granted to the creator, subject to that person being a natural person who is a national of a Member State or ordinarily resident there. However, Member States may specify to whom the right is granted where a topography is created in the course of the creator's employment or under a contract other than a contract of employment.

- * Under certain conditions, protection is also granted to natural persons, companies or other legal persons who first commercially exploit a topography:
 - which has not previously been exploited commercially and;
 - who have been exclusively authorised to commercially exploit the topography throughout the Community by person entitled to dispose of it.

SCREENING MEETING

ACQUIS COMMUNAUTAIRE

Brussels, 6-7 February 2006

- * The Directive lays down the procedure for extending the right to protection to persons not covered by the Directive.
- The legal protection of topographies of semiconductor products has been extended to natural persons, companies and other legal persons from the United States (Decision 93/16/EEC), Canada (Decision 94/700/EC), a Member of the World Trade Organization (Decision 94/824/EC) and the Isle of Man (Decision 96/644/EC).

SCREENING MEETING ACQUIS COMMUNAUTAIRE

Brussels, 6-7 February 2006

POSSIBILITY FOR REGISTRATION (Art.4)

Member States may refuse or remove protection in respect of the topography of a semiconductor product where an application for registration in due form has not been filed with a public authority within two years of its being commercially exploited for the first time. They may require that material identifying or exemplifying the topography be deposited. However, they must ensure that material deposited is not made available to the public where it is a trade secret.

SCREENING MEETING

ACQUIS COMMUNAUTAIRE

Brussels, 6-7 February 2006

- THE EXCLUSIVE RIGHTS + EXCEPTIONS (Art.5)

- The rights granted are exclusive rights.
- They include the right to authorise or prohibit reproduction of a protected topography and the right to authorise or prohibit commercial exploitation or the importation for that purpose of a topography or of a semiconductor product manufactured using the topography.
- The exclusive right to authorise or prohibit reproduction does not apply to the reproduction for the purpose of analysing, evaluating or teaching the concepts, processes, systems or techniques embodied in the topography or the topography itself.

SCREENING MEETING

ACQUIS COMMUNAUTAIRE

Brussels, 6-7 February 2006

- COMING INTO EXISTENCE OF THE RIGHTS (Art.7)

- Where registration of the topography constitutes a condition for the coming into existence of exclusive rights, those rights will take effect on the date on which the application for registration is filed or on the date on which the topography is first commercially exploited anywhere in the world, whichever comes first.
- If registration is not a condition for protection, the rights will come into existence when the topography is first commercially exploited anywhere in the world or when it is first fixed or encoded.

SCREENING MEETING

ACQUIS COMMUNAUTAIRE

Brussels, 6-7 February 2006

- The exclusive rights come to an end 10 years from the end of the calendar year in which the topography was first commercially exploited. Where registration is required, the 10-year period is calculated from the end of the calendar year in which the application for registration was filed or from the end of the calendar year in which the topography was first commercially exploited, whichever comes first.