

# EXHIBIT 2.G



Date: July 15, 2021

To whom it may concern:

This is to certify that the attached translation from Dutch and into English is an accurate representation of the documents received by this office.

The document is designated as:

- Select Excerpts from Kamerstukken II 2005-2006 30392

Alexander Danesis, Project Manager in this company, attests to the following:

“To the best of my knowledge, the aforementioned documents are a true, full and accurate translation of the specified documents.”

*Alexander Danesis*  
Signature of Alexander Danesis

# House of Representatives of the Netherlands

# 2

2005–2006 Session

**30 392**

**Amendment of the Dutch Code of Civil Procedure, the Copyright Act 1912, the Related Rights Act, the Database Act, the Trade Name Act, the Act of 28 October 1987 setting out rules on the protection of original topographies of semiconductor products (Dutch Law Gazette 484), the Seeds and Planting Materials Act 2005, and the Agricultural Produce (Quality Control) Act to implement Directive No. 2004/48/EC of the European Parliament and the Council of 29 April 2004 on the enforcement of intellectual property rights (PbEG L 195)**

No. 3

EXPLANATORY MEMORANDUM

*Article 1019a*

Article 6 of the Directive involves demanding evidence in infringement cases whereby one of the parties has sufficiently supported his claims with reasonably available evidence, but he needs further evidence to substantiate one or more of the claims, which evidence is under the control of the defendant. It is thus necessary to have a real claim, whereby an infringement has been made sufficiently plausible for the time being and whereby, for instance, the precise nature or the scope of the infringement cannot be determined without supplementary evidence.

Although various possibilities already exist in the Dutch Code of Civil Procedure in favor of collecting evidence, none of them fully satisfies Article 6 of the Directive. Thus Article 22 grants the judge the authority at any stage of the proceedings to order the parties to explain specific arguments or to submit specific documents having a relationship to the case, but this is a discretionary authority of the judge, while the Directive requires establishing an authority for the claimant. Moreover, Article 22 merely deals with the relationship between the parties in the case, while Article 6 of the Directive can also relate to requesting evidence that is under the control of third parties. Pursuant to Article 162, the judge can, in the course of a case, upon petition or ex officio, order the parties to disclose books, documents, and texts that they must keep, make, or store pursuant to the law. This provision is too limited in extent because it only applies to a specific category of texts. In addition, there are also possibilities such as preliminary hearing of witnesses and on-site inspection (Article 201) to obtain information, but these also do not fully satisfy the intent of Article 6 of the Directive.

The article that most closely approaches the intent of Article 6 of the Directive is Article 843a. A person who has a legitimate interest therein can, at his own expense, demand copying or excerpting of specific documents relating to a legal relationship to which he is a party from a person who has these documents at his disposal. According to the legislative history (*Kamerstukken II 1999/2000*, 26 855, No. 5, p. 78–79), this also covers an

obligation arising from tort. Therefore, an explicit connection is also sought to Article 843a by indicating in Article 1019a on which points in matters of intellectual property Article 843a is supplemented. As confirmation of what was reported earlier in the legislative history, it is stated in Article 1019a, first paragraph, that an obligation arising from tort due to infringement of an intellectual property right is deemed to be a legal relationship as set forth in Article 843a. An important addition to Article 843a is the possibility of not just being able to demand inspection, copying, or excerpting of documents, but also submission of other material evidence that is under the control of the counterparty (Article 1019a, second paragraph). In case of proceedings relating to intellectual property rights, the issue is, after all, primarily about infringing objects: CDs, articles of clothing, toys, perfume articles, etc. Deviating from Article 843a, first paragraph, the costs of the inspecting, the copying, the excerpting, or the submission pursuant to the Directive will be processed pursuant to Article 1019h, which implements Article 14 of the Directive on the costs related to the proceedings. They should ultimately be paid by the losing party. The decision on the costs of this measure will have to be deferred until the judge can rule on the infringement and the total award of costs.

Article 1019a, third paragraph, regulates the protection of confidential information as a reason to deny this claim. According to the conclusion of the first full sentence of Article 6, first paragraph, of the Directive, a judge can order the submission of evidence subject to protection of confidential information. Article 843a, third paragraph, already recognizes the confidentiality obligation by virtue of office, profession or relationship and remains applicable, but Article 1019a, third paragraph, is broader.

Admittedly, the practice already exists that information is only provided to the attorneys, for instance when the infringer has been ordered to write to his customers with the request to return infringing goods. The address files that can be used to check whether these letters were in fact written are relinquished to the attorney, who is not permitted to allow his client to see this competition-sensitive information. However, then the phase of execution of the judgment occurred. Article 6 of the Directive deals with the collection of evidence for the purpose of determining whether an infringement occurred. It is not customary in civil proceedings to only make evidence available to the attorneys of the parties and to the judge (Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)). One of the possibilities is indeed that the judge forbids the parties from communicating information from a proceedings to third parties pursuant to Article 29. However, Article 6 of the Directive should generally relate to information that is also confidential with respect to the counterparty and Article 29 does not provide for this. The principle of Article 6 ECHR, that all parties to a proceedings must have the same information available, allows little other space than to deny a claim as set forth in Article 1019a insofar as protection of confidential information cannot be guaranteed. The third paragraph of Article 843a remains applicable because an appeal to a confidentiality obligation by virtue of office, profession, or relationship must be respected.

The fourth paragraph of Article 843a has been declared inapplicable to proceedings dealing with intellectual property rights. Because of this paragraph, the defendant is authorized not to satisfy the claim for good cause or for the reason that due process is guaranteed even without providing the requested documents. This provision has more significance under substantive law, which derives from the circumstance that Article 843a is applicable both within and outside of a case. The Directive, on the other hand, relates to formal procedural law, whereby a ground for refusal for the judge fits better than an authority for the defendant. Incidentally, it should always be part of the judge's deliberations to deny the claim

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