

???????? C-156/09

Finanzamt Leverkusen

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Verigen Transplantation Service International AG

(?????? ?? Bundesfinanzhof ??? ?? ?????? ?????????????? ??????????)

«???? ??????? ??? – ?????? 13, A, ??????????? 1, ????????? ?? – ?????????? ?????????????????
???????? ?????????? – ??????? ??????? ?????????? – ??????? ??? ?????????????? ???? ???? ???? ????»

????????? ???? ????????????

????????????? ?????????? – ?????????? ??? ?????????? – ?????? ?????? ?????? – ??????
?????? ?????? ?????????????? ????? – ?????????? ?????????????? ??? ??? ??? ????? –
????????? ??? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ???
????????????? ?????????? – ??????????

(?????? 77/388 ??? ??????????, ????? 13, A, § 1, ??????? ??)

?? ?????? 13, ?, ??????????? 1, ???????? ??, ??? ????? ??????? 77/388, ??? ??????????????
?? ??????????? ??, ??? ?????? ??????, ??? ??????? ?? ??? ?????? ??????? ???????, ???
?????????????? ?? ??? ?????? 95/7/??, ??? ?????? ??????? ??? ? ?????????? ??????? ??
????????? ??????? ?? ?????? ??????? ?????? ?????? ?????? ?????? ???????????
?????????????? ?? ?????? ??????? ?? ?????????????? ?? ?????????????? ?? ?????????????? ??
????????? «?????? ??????? ??????????» ??? ?????? ??????? ??? ?????????? ???.

??????????????, ? ?????? «???????? ?????????? ??????????????» ?????? ?????? ?????????? ?? ????
?? ???????, ?? ?????????? ?????? ???, ??? ?????? ??? ??????, ??? ?????? ?????????? ?
????????? ??? ??????. ??????? ?? ?????? ?????????? ?????????? ?????? ?? ?????
????????? ???, ?????? ??? ?????? ???' ?????? ??? ? ?????? ?????????? ??????
????? ?? ?????? ?????????? ?????? ?????? ??????. ?????? ?????? ???, ??????, ??
????? ??? ?? ?????? ?????? ?????????? ?????????? ??? ?????????? ?????????? ?? ?????? ???
????????? ??? ?????????? ??????, ?????? ??? ?????? ?????????? ? ??????
????????? ?? ?????????? ?????? ?? ??????, ??? ?????? ???, ??? ??????????
?????????. ??? ?? ?????? ?? ?????? ??? ?????????? ??? ?????????? ??? ?? ?????????????? ??
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ? ?? ?????? ?????? ???
????????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??

(??, ??????? 24, 28-29, 32 ??, ???????.)

?????? ??? ?????????? (????? ????)

??? 18?? ?????????? 2010 (*)

«???? ?????? ??? – ?????????? – ?????? 13, A, ?????????? 1, ?????????? ?? – ??????????
????????????? ?????? ?????????? – ?????? ?????? ?????????? ?????????? – ?????? ???
????????????? ?????? ?????? ?? ?????? ?? ?????????? ?????? ??? ??? ??? ???
?????»

???? ?????? C?156/09,

? ? ?????????? ?????? ?????? ?????????? ?????????? ?????? ??? ?????? 234 ??,
?? ?????? ?? Bundesfinanzhof (?????????) ?? ?????? ??? 1?? ?????? 2009, ? ??????
????????? ??? ?????????? ??? 6 ????? 2009, ??? ?????? ??? ??????

Finanzamt Leverkusen

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Verigen Transplantation Service International AG,

? ? ?????????? (????? ??????),

????????? ??? ??? A. Tizzano, ?????? ??????, J.-J. Kasel, A. Borg Barthet (?????????),
E. Levits ??? M. Berger, ???????,

????? ??????????: E. Sharpston

?????????: A. Calot Escobar

????????? ??? ?????? ??? ?????????? ??? ??????????:

- ? ?????????? ????????, ?????????????? ??? ??? M. Lumma ??? C. Blaschke,
- ? ?????????? ????????, ?????????????? ??? ??? F. Díez Moreno,
- ? ?????????? ??? ?????????? ????????, ?????????????? ??? ??? ?. ??????????????,
???? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ??? ?? ???????????
??? 29?? ?????? 2010,

?????? ??? ???????

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1 ? ??? ?????? ?????? ?????? ?????????? ?????????????? ?????????? ??? ?????? ??? ?????????? ???
????? 13, ?, ?????????? 1, ??????? ??, ??? 28?, ??, ?????? ??????, ??? ?????? ??????
77/388/??? ??? ??????????, ??? 17?? ????? 1977, ??? ?????????????? ??? ?????????????? ???
????? ??????, ??? ?????? ?? ??? ?????? ?????? ?????? ?????? – ?????? ?????? ??????
????????????? ??????: ?????????? ?????????? ??? (?? ??? . ??? 09/001, ?. 49), ???
????????????? ?? ??? ?????? 95/7/?? ??? ??????????, ??? 10?? ?????? 1995 (?? L 102, ?. 18, ??? ????: ??? ??????).

2 ? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? Verigen

Transplantation Service International AG (??? ????: VTSI) ??? ??? Finanzamt Leverkusen
(????????????? ??? ????? ???? ???????????, ??? ????: Finanzamt), ?? ??????????? ??? ??????????,
?? ?????? ??? Finanzamt, ??? ??????? ?????????? ??? ??? ????? ?????????????? ??? (??
????: ???) ??? ?????? ?????????? ??? ?????????????? VTSI ??? ?????? ???
????????????? ??? ?? ?????? ??????? ??? ?????????????? ??? ?????????? ?????????? ??????????
??? ?????????? ??? ?????? ?????????????? ?? ??? ?????? ???.

?? ?????? ???????

? ????? ??????

3 ??? ?? ??? 2, ??? 1, ??? ?????? ???????, ?? ??? ?????????? «?? ??????????
?????? ??? ?? ??????? ?????????? ??? ?????????????? ?? ?????????? ???
????????? ??? ?????? ??? ?????????? ???, ??? ?????? ??? ??? ?????????? ??? ???».

4 ?? ????? 9, ?????????? 1 ??? 2, ??? ?????? ??????? ??? ?? ???:

«1. ?? ?????? ??????? ?????????? ?????????? ? ??? ??? ?????????? ?????????????? ???
????????? ??? ?????????? ? ??? ?????? ?????????? ??? ??? ??? ?????? ?????????? ???
????????? ??? ?????? ??? ??????, ? ??? ??? ?????? ??? ?????????? ? ?????????? ??? ???.

2. ??????????:

[...]

) ??? ?????? ??????? ?????????? ??? ?????? ?? ??????????????:

[...]

- ??? ?????? ??? ?????????? ??????? ????

????? ? ?????? ??? ?????????? ??????? ?? ?????? ??? ??????? ???.

[...]».

5 ?? ????? 13, ?, ??? ?????? ???????, ?? ?????? ?????? ??? ????? «????????? ??????????
????????????? ?????? ?????????? ?????????? ??????????», ?????? ??? ?????????? 1, ?????????? ?, ?? ???:

«?? ??? ?????????? ??? ?????? ?????????? ??????????, ?? ?????? ??? ?????????? ??? ???
????????????? ??? ?????? ??? ?? ?????????? ??? ? ??? ??? ?????? ?????????? ???
????????????? ??? ?????? ??? ?????????? ??? ?? ?????????? ??? ????? ?????????? ?????????? ???,
????????????? ??? ??????????:

[...]

) ??? ?????? ??????? ???????????, ?? ?????? ?????????????? ??? ?????? ???
????????? ?????? ??? ?????????? ?????????????? ?????????? ??? ?????? ??? ???
????????????? ??? ?????? ???.

[...]».

6 ?? ????? 28?, ?, ??? ?????? ?????? ?????? ?????????? ?? ???:

«???? ?????????? ??? ?? ?????? 9, ?????????? 2, ?????? ??, ? ?????? ?????? ??????????
??? ?????? ?? ?????????? ?????????????? ??? ?????? ??? ?????????? ????? ?????????? ???,

?? ??????? ??????????? ?? ?????? ? ?????? ?????????? ??????? ??????????????? ??????? ?? ??
????? ??????? ??? ?????? ??? ?????? ??? ?????? ??????????? ??????? ?? ??????????? ??????,
?????????? ?? ??????????? ??? ?????? ??? ?????? ?????? ??????? ?? ?????? ??? ??????????? ???
????? ??? ??????????? ??? ?????? ??????????? ??????? ??? ?????? ??? ?????? ??? ??????? ???
?????????? ?? ??????????? ??? ???????.

[...]».

? ??????? ??????????

7 ?? ?????? 3?, ?????????? 2, ?????? 3, ??? ?????? ??? ?????? ?? ?????? ?????? ???????
(Umsatzsteuergesetz, *BGBI.* 1979 I, ?. 1270, ??? ????: UstG), ??? ?????? ??? ?????? ??
?????????? ??????????? ??? ?????????? ??? ??????? ??????, ?????? ?????? ?????? ?? ????:

«?? ?????????? ??? ?????? ??????? ?????????????????? ??? ?????? ??? ?????? ??? ??????????????
????????????????? ??? ?????????? ??? ?????? ????:

[...]

c) ??????? ?? ?????????? ??????? ??????? ?????? ?? ?????????????????? ?? ?????? ?? ??
????? ????. ?? ? ?????? ?? ??????? ???????????, ?????? ?? ???????????
??????????????, ?????? ??????????? ??????? ?? ?????? ??? ?????? ??????????? ?? ??? ?????? ???
????, ?? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????????????? ??? ??? ?????? ???
????????? ?? ?????? ??? ?????? ?????? ??? [...]».

8 ??? ?? ?????? 4, ?????? 14, ??? UStG, ????????????, ?????? ??? ?????? ???
????????? ??? ?????? 1, ?????????? 1, ??? UStG:

«?? ??????? ?? ?????????? ??? ??????? ??? ?????? ??? ?????????? ??? ?????????????? ?? ??
??????????, ?????????? ????, ?????????????? (?????????????????), ??? ?????? ??? ??????
????? ?????????? ?????????? ?????????????? ??? ?????? ??? ?????? ??? ?????? 18, ?????????? 1,
????? 1, ??? ?????? ??? ?????????? ??? ?????????? [Einkommensteuergesetz], ?????? ??? ???
????????? ??? ?????????????? ??? ?????????? ??? [...]».

? ??????? ?? ?????? ?????? ??? ?? ?????????????? ??????????

9 ? VTSI ??? ?????????????? ??? ??????? ?????? ???????????????, ? ?????? ???
????????????? ??? ??????? ?? ?? ??????? ??????. ? ?????? ???, ???????????, ???????
??? ??????? ??? ?????? ?????????? ??? ?? ??????? ??? ?? ??????? ??? ?????????? ???
????????? ???, ?????? ?? ??? ??????.

10 ??? ?????????? ??? ??????? ??? ?????? ??? ?????? ?????? ?????????? ?? ?????? ?????????? ???
VTSI ??? ?????????????? ??? ??????? ??? ?????????? ?????????????? ?????????? ??? ?????? ???
?? ?????????? ??? ?????? ??? ?????????? ??? ?????????? (????? ? ??????) ?????? ??? ?????? ???
????? ??? ??? ?????????? ??? VTSI ?????????? ? ?????? ??? ?????? ?????????? ?????????? ????.
??.

11 ??? ?????????? ?????????? ??? ?? Bundesfinanzhof ?? ??? ??????? ????. ?
????? ? ? ?????? ?????????? ??? VTSI ??? ???? ?? ??????, ?? ?????? ??? ???????????
??? ??? ?????? ??? ?????? ?????????? ?? ??????. ? VTSI ?????????????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??????. ?????? ??????????????
??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?? ?????? ??? ??????????, ?? ?????? ???
????????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ???.

?????????. ?? ??????? ??? ?????????? ???' ?????? ??? ????? ?????????? ?? ??????????????
????? ?? ??????? ??????????, ???? ?? ?????????? ??? «????? ??????». ?? ???
?????????, ?????????????? ??? ?????????? ?????? ? ?? ?????? ?????????? ?????????? ??
?????????????.

12 ? VTSI ??????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??? ??????????, ??? ???
??? ?? ?????????? ??? ?????? ?????????????? ?? ??? ?????? ???.

13 ? Finanzamt, ????????, ??? ?????? ?????????? ??? ??????????, ?? ??????? ???
17?? ?????????? 2003, ?? ??????? ??? ?????? ?????? ?????? ??? ?????? VTSI ??? ??
???? 2002.

14 ??? ??????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???
??? ??? ??? ?????? ??? ?????????? ??? ?????? ??? Finanzgericht Köln, ? VTSI ?????????? ???
? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? «????? ?????? ???
?????????», ??? ?????????? ??? «????????? ?????? ?????? ?????? ??????», ?? ??????
????????? ??? ?????? ??? ?????? ?????????? ? ?????????? ?????? ?????????? ?????? ??????
?? ??? ?? ?????????? ?????? ?????? ?????????? ??? ?????? ?????????? ?????? ??????????
??? ??? ??????, ?????????? ?????? ??? ??????.

15 ? ??????? ??? VTSI ?????? ??? ?? Finanzgericht Köln. ?? ?????????? ???
????????? ??? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ??????
??? ?????? ??? «????? ??? ?????? ??? ?????? ??? ?????? ???» ??? ???? ?????? ??? ??????
3?, ?????????? 2, ?????? 3, ?????? ?, ??? UStG. ?????????? ??? ?????? ???, ??? ???
????????? ??? ?? ???, ?? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????? ??????. ?? ?????? ?? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ???
????????? ??? ?????? (????????? ???) ? ?????????? ??? ?????? ??? «????? ??? ?????? ???».
(????????? ???) ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? «????? ??? ?????? ???».

16 ??? ?????????? ??? ?? ?????????????? ?? ??? ?????? ??? ?????? ??? ?????????? ??? VTSI
????????????? ??? ???? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ???, ?? Finanzgericht Köln ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ??? ?????? ??? ?????? ??? ?????? ???.

17 ? Finanzamt ?????? ??????? ??? ?? ?????? ??? ?????????? ?????? ???
Bundesfinanzhof, ?????????? ??? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
????? ?? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ???, ?????? ? ??????????????
????? ??? ?????? ?? ?????? «?????» ??? ???? ?????? ??? ?????? 3?, ?????????? 2,
????? 3, ?????? ?, ??? UStG. ??? ??????, ??? ??? ?????? ??? Finanzamt,
????????? «?????» ??? ?????? ?????????? ??? ?????? ??? ??? ?????? ??? ?????? ?? ???
????? ???, ??? ??? ?????? ??? ?????? ??????, ?????? ??? ?????? ??? ?????? ?? ??? ??????
? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ??? ??????
?????.

18 ?? ?????? ?????????? ??? ?????? ??? ? ?????????? ??? ?????????????? ??? ??????
??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???? ?????? ??? ?????? «?????»
?????», ?????????? ??? VTSI ??? ?????? ?????? ?? ?????? ??? ?????? ??? ??????
?? ??? ??? ?????? ????. ? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??????
??? ??? ?????? ????. ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 28?, ??, ??? ?????? ????
????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? VTSI. ?? ??????
????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????
????? ?? ?????? ??? ?????? ??? ?????? «????? ??? ?????? ??? ??????» ???

??? ?????? ??? ?????? 13, ?, ?????????? 1, ?????????? ?, ??? ? ???? ??????.

19 ??? ??? ??????? ????, ?? Bundesfinanzhof ?????????? ?? ?????????? ??? ???????
??? ?????????? ??? ? ???? ?????? ??? ?????????? ?? ?????????? ?????????? ??????????:

«1) ??? ???? ? ???? 28?, ??, ??? ?????, ??? [????? ??????] ?? ?????????? ??? ???
?????? ???:

?) ?? ?????????? ??? ?????? (??? ?????????? ??????) ????? ?????? ?? ???
????????? ?? ?????????? ?????????? ??? ?? ?????? ?? ?????????? ?????????? ??????
??? ?? ?????? ?? ? ???? ?????? ?? ?????? ??? ?????? ?????? ?????? ?????? "??????"
????? ????" ??? ???? ?????? ??? ?????????? ???,

?) ? ?????? ??? ?????? ??? ?????? ?????? ??? ???? ???? ???? ?????? ??? ? ??
????? ?????? ?????? ?????? ?????? "?????" ??? ?????? ??? ??????
????? ??? ???? ?????? ??? ?????????? ???,

?) ? ?????? ??? ?????? ??? " ? ?????? ?????? ?????? ?????? ?????????? ??????
[??]" ??? ??? ?????? ??? ? ???? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ? ????
???:

2) ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ???? ?????? ?????????? [,]
????? ?? ??? 13, ?, ?????? 1, ??? ???? ?, ??? ?????? ?????? ?? ?????????? ???
??? ?????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ?????? ???
????????? ??? ? ? ???? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? "??????"
?????????" ??? ?????? ??? ? ???? ?????? ??? ?????? ?????? ?????? ??? ? ????
????????? ??? ?????? ???;

??? ??? ?????????? ????

??? ??? ??????

20 ?? ? ? ?????? ????, ?? ???? ???? ?? ?????? ??? ?????? ???, ?? ?????? ??????????
????? ???' ??? ? ???? ?????? ?? ? ???? 13, ?, ?????? 1, ??? ???? ?, ??,
????? ?????? ??? ? ???? ?????? ??? ?????? ??? ? ???? ?????? ?????? ???
????????? ??? ? ? ???? ?????? ??? ?????? ??? ?????? ??? ? ???? ?????? ???
????????????? ??? ? ???? ?????? «????? ?????? ?????? ??????» ??? ? ???? ??????
???? ????????, ??? ? ???? ??? ? ???? ?????? ??? ? ???? ?????? ??? ? ????
????????????? ??? ? ???.

21 ?????????? ?, ?????? ?? ?????? ??? ? ???? ?????? ?????? ??? ? ????
????????? ??? ???? ?????? ??????, ?????? ?? ???? 2 ??? ?????? ???, ?????? ?? ???
????????? ???, ???, ??? ? ???? ?????? ???, ??? ?????? ??? ???? ???? ????
??? ?????? ??? ???? ???? ? ???? ?????? ?????? ??? ? ???? ?????? ??? ???? ????
????? ??? ?????? ??? ???? ? ???? ?????? ?????? ??? ? ???? ?????? ??? ???? (??., ???)
?????, ?????? ??? 21? ???? 2006, C?255/02, Halifax ?.??., ?????? 2006, ?.I?1609,
????? 49- ??? 14? ???? 2006, C?401/05, VDP Dental Laboratory, ??????
2006, ?. I?12121, ??? 22, ??? ? ? 10? ???? 2010, C?262/08, CopyGene A/S , ???
???? ?????? ??? ???? ???? 23).

22 ?? ??? 13 ??? ?????? ???, ??????, ?????? ?????? ?????? ?????? ??? ? ???? 13 ???
??? ??? . ??? ? ???? ?????? ??? ???? ?????? ??? ? ???? ?????? ??? ? ???? 13 ???

????? ??????? ?????????? ?????????? ??????? ???? ??????? ??? ???????, ?? ?????? ???
????? ?????? ?????? ?????????? ??? ???? ??????? ??? ??????? ??? ???? ??? ???? ??????
????? ??? ??? (??., ?????? ????, ??????? ??? 25?? ?????????? 1999, C?349/96, CPP,
????? 1999, ?. I?973, ??? 15, ??? ?????????? CopyGene, ??? 24).

23 ????????, ??? ????? ????????, ?? ??? ???? ?????????? ??? ???? ?????????????? ??? ??
????????? ??? ?????????? ??? ?????? 13 ??? ????? ?????? ?????? ?? ??????????????
?????????, ?????????? ??? ?? ??? ????? ?????? ?????????? ?????????????? ??? ?? ??????
???? ??? ? ??? ?????????? ??? ??? ????? ?????? ?????? ??? ?????? ?????????? ???
????????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ?????? ??? . ??????, ? ?????????? ???
???? ??? ?????? ?????? ?? ?????? ?????? ?? ??? ????? ?????????? ??? ??? ?? ??? ??????????
????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ??? ?????????? ???????,
? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? . ?????????? ??????, ????
????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?? ??? ?????? ??? ?????????? ?????? ???
????? ?????? ??? ?????????? ??? ?????? 13 ?????? ?? ?????????? ??? ?????? ???
????? ??? ?? ?? ??? ?????? ?????????? ?? ?????????? ?????????? (??., ?????? ????, ??????)
?? 14?? ?????? 2007, C?445/05, Haderer, ?????? 2007, ?. I?4841, ??? 18 ??? ???
????????? ??????, ??? ?????????? CopyGene, ??? 26 ??? ???
????????? ??????).

24 ??? ??????, ??????????, ??? ??????? ??? ?????????? ?? ??????? 13, A, ?????????? 1,
???????, ??, ??? ?????? ??????, ??? ?? ?????????? ?????????? ??? ???? «??????»
????????? ??????» ??? ?????????? ?? ?????? ?????? ?????? ?? ?????? ?? ????????,
?? ?????????? ????, ??? ?????? ??? ??????, ??? ?????? ?????? ??? ?????? ?????????? ????
????? (?. ?????????? CopyGene, ??? 28 ??? ??? ??????????).
????????? ?? «?????? ?????? ?????? ??????» ?????? ?? ?????? ??????????
????, ??? ?????? ??? ?????? ???' ??????, ?????? ?? ?? ?????????? ??? ?????? ??????????
? ?????? ?????? ????, ??? ? ?????? «????????? ??????» ?????? ?? ??????
????????? ?????? ?????? (?. ?????????? CopyGene, ??? 29 ??? ???
????????? ??????).

25 ?? ????????, ??? ?????????? ??? ???? ???????, ? ??? ?????? ?????????? ???
????????? ?????? ?????? ?????????? ??? ?????????? ??? ???? ?? ??????????????????
?? ?????? ?? ?????????? ??? ??????, ???????, ???????, ?????????? ???.

26 ?? ?????????? ??? ??????? ??? ?????? ?????? ? VTSI ???????, ???????????,
????? ???? ??? ?????? ??????. ???????, ?????, ??? ?????? ? ??????
????????? ?? ?? ?????? 23 ??? ??????? ???, ??? ???????, ?????? ??? ??????????
????? ??? ?????????? ??? ?????? ?????? ??? ?? ?????????? ??? ?????? ??? ??????????
?? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???.

27 ??? ??? ?????? ?????? ??????? ??? ???? ?????? ?????????? ??? ??????? ???
??? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ???? ?????????? ?????????? «??????»
????????? ??????» ??? ???? ?????? ??? ?????? 13, A, ?????????? 1, ??????? ?, ??
????? ??????. ? ?? ??? ??????? ????, ???????, ?? ??? ?????? ??? ?????? ???
????? ??? ?????????? ??? ???????????, ??? ?????? ?????????? ? ?????? ??? (?. ????????
?? 8?? ?????? 2006, C?106/05, L.u.P, ?????? 2006, ?. I-5123, ??? 29).

28 ?????? ?????? ????, ??????, ?? ?????? ??? ???? ?????? ??????????
????????????? ??? ?????? ?????? ?????????? ?? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ? ?????? ??? ?????????? ??
????????? ??? ?????? ?? ???????, ??? ?????? ??? ?????? ?????????? ?????????? (?. ??'

????? ??? ???????, ??????? ??? 10?? ?????????????? 2002, C-141/00, Kügler, ??????? 2002, ?. I-6833, ????? 41, ??? ?????????????? ??????? L.u.P, ????? 39).

29 ????????????, ???????, ??? ?? ??????? ?? ?? ??????? ????? ??????????? ?? ?? ??
?????????????? ?? ??????????????? ????? ?? ?? ??????? ????? ?? ?? ??????? ????? ?? ??
????? ??????? ?????, ???' ?????, ????? ?????????? ?? ?? ?????????????? ?? ?? ?????????? ??
«?????? ??????? ??????????» (??., ???' ???????, ?????????????? ?????? CopyGene,
????? 51).

30 ????? ?????? ?? ??????????? ??? ?????????? ?????????????? ??? ? ?????????????? ???
????????? ?? ?????????? ?????????? ?? «??????? ?????? ?????????» ?????????? ??
????????? ??? ?????? ??? ?????????? ??????????????, ??? ? ?????? ??? ?? «?????
????????» ?? ????? ?????????? ? VTSI ??????, ??? ?????????? ??????, ?????????? ??
????????? ?????? ??? ??? ?????? ?? ?????? ?????????? ??? ??? ??? ???, ??? ???? ??
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????????? ?? ?????? ??? ?????????? ?????? ?????????? ?????? ??????????.

31 ????????, ??? ???? ? ?????? ?????????????? ??? ?????? 28 ??? ?????????????? ???, ???
????????? ??? ?????????????? ?????????????? ??? ?????????????? ?????????? ?? ?????????????? ???,
??? ?? ??? ???? ?????????????? ??? ?????????????? ?? ?????????????? ?? ?????????????????? ??????
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33 ??????? ???. ????????????. ???. ??????. ???. ??????. ??????, ????????. ??. ??????. ???.
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34 ?????????? ??? ? ??????? ?????????? ??? ?? ??? ????? ????? ?????????? ??? ?????? ?????
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???? ?????????? ?????????? ??? ??????????, ??? ??? ?? ??? ??????????, ???
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???? ???? ??????? ???????, ?? ??????????? (????? ????) ???????????:

?? ?????? 13, ?, ??????????? 1, ???????? ??, ??? ????? ?????? 77/388/??? ??
??????????, ??? 17?? ??? 1977, ??? ?????????????? ??? ?????????????? ??? ??????
?????, ??? ??????? ?? ??? ????? ?????? ?????? ????????? - ??? ????? ??????? ????
????????????? ????: ?????????? ?????????? ???, ??? ?????????????? ?? ???
?????? 95/7/?? ??? ???????????, ??? 10?? ?????????? 1995, ??? ?? ?????? ??? ?
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? ?????????? ?????????????? ??? ?????????? ?? ?????????????? ??? ?????????????? ???
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(???????????)

* ??????? ??????????????: ? ??????????.