

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

??? 18?? ??????? 2013 (*)

«????????????? ?????????? – ??? ?????? ??? – ?????? 6, ?????????? 2, ????? ??????,
????????? ?, ??? 13, ?, ?????????? ?? – ?????????? ?????????? – ?????????? ?????? ?????????? ??
????????? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????????? ??? ??? ??? ??????
????????? ??? ?????????? – ?????? ?????????? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??????????»

???? ?????????????????? ?????????? C-210/11 ??? C-211/11,

? ?????????? ?????????? ?????????????? ?????????? ?????????? ??? ?????? 267 ???, ???
????????? ?? Cour de cassation (?????) ?? ?????? ??? 7?? ?????????? 2011, ? ?????? ??????????
??? ?????????? ??? 9 ?????? 2011, ??? ?????? ??? ??????

État Belge

????

Medicom SPRL (C-210/11),

Maison Patrice Alard SPRL (C-211/11),

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

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

?????? ??????????: J. Kokott

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

?????? ????? ??? ?????? ????????????,

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

– ? ??????? ????????, ?????????????? ??? ??? M. Jacobs ??? ??? J.-C. Halleux,

– ? ??????? ????????, ?????????????? ??? ??? K. Szíjjártó ????? ??? ??? M. Fehér
??? G. Koós,

– ? ??????? ????????, ?????????????? ??? ??? C. Soulay ??? ??? W. Roels,

?????? ??? ??????? ??? ??????, ??? ?????? ?? ?????? ???????????, ?? ?????????? ???
?????? ??? ?????? ??????? ??? ????????,

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

???????

1 ?? ??????? ?????????????? ?????????? ??? ?????? ??? ??????? ??? ?????? 6,

? ?????????? 2, ???? ??????, ??????? ??, ??? 13, ?, ??????? ??, ??? ?????? ???????
77/388/??? ??? ??????????, ??? 17?? ??? 1977, ??? ?????????? ??? ?????????? ???
?????? ??????, ??? ??????? ?? ??? ?????? ?????? ?????? ?????? – ??? ?????? ?????? ???
????????????? ????: ?????????? ?????? ??? (?? ??. ???. 09/001, ?. 49), ??? ???
????????????? ?? ??? ?????? 95/7/??. ?? ??????????, ??? 10?? ?????? 1995 (?? L 102, ?.
18, ??? ????: ??? ??????).

2 ?? ?? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? État
Belge ??? ??? Medicom SPRL, ?????? (???: Medicom) (?????? C-210/11), ??? Maison
Patrice Alard SPRL, ?????? (???: MPA) (?????? C-211/11), ?????????? ??????
????????? ??????, ?? ?????????? ??? ?????? ??? ?????? ?????????????? ??? (???: ???:
???) ??? ??? ??????, ?????? ?? ?????? ?? ?????? ??????????????, ?? ???, ??? ???
????? ?????? ??? ?????????? ??? ?? ??? ??????.

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

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

3 ?? ????? 6, ?????????? 2, ????? ??????, ??? ?????? ?????? ?????? ?? ???:

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

?) ? ?????????? ????, ?? ?????? ?????? ? ??????????, ??? ??? ?????? ?????? ???
????????? ????, ?? ?????? ??? ?????? ?????? ???, ??????????, ??? ?????? ?????? ???
?????????, ??? ?????? ?? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ???
??? [??]?

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

4 ?? ????? 11, A, ?????????? 1, ??? ?????? ?????? ?????? ?? ???:

«????? ?????? ??? ?????? ????:

?) ??? ??? ?????? ??? ?????? ??? ?????? ?????? ??????????, ??? ??? ?????? ??????????
????????? [?? ??????] ??, ?? ??? ??, ?????? ?????? ??? ??????????, ??? ???
????? ? ?????? ?? ?????? ??? ?????? ?????? ?????? ?????????? ?? ??? ?????? ???
????????? ??? ??? ??????, ??? ?????? ??? ?????? ??????, ?????????????????? ???
????????? ??? ?????? ?????? ?????? ?? ??? ?????? ??? ?????? ??????

?) ??? ??? ?????? ??? ?????????? ??? ?????? 5, ?????????? 6 ??? 7, ? ?????? ???
????? ??? ?????? ??? ?????? ?????? ???, ??? ?????? ?????? ???, ?? ???
????? ??? ??? ?????? ?????????? ??? ?? ??? ??????

?) ??? ??? ?????? ??? ?????????? ??? ?????? 6 ?????????? 2, ?? ??? ??? ?????? ???
????????? ??? ??? ?????? ?????? ???, ??? ??? ?????? ??? ?????? ??? ?????? ???

[...]»

5 ??? ?? ??? 13, ?, ??? ??????, ??????? ??, ??? ?????? ??????, ?? ??? ???
????????? ??? ??? «??? ?????? ??? [...]».

6 ?? ????? 17, ?????????? 2, ??? ?????? ??????, ??? ?????????????? ?? ?? ???
28??

?????, ?????? ?? ????:

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

?) ??? ??????????? ? ?????????????? ??? ?????????? ??? ?????? ??? ????? ?????????????? ???
??? ?? ?????? ??? ?? ?????????? ? ?????????? ?? ??? ?????????? ??? ?? ?????? ??? ?????? ???
??? ?? ?????????? ? ?????????? ?? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ???

[...]».

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

7 ?? ?????? 19, ??????????? 1, ??? ?????? ?????? ?????? ?????????????????? ??????, ???? ????
????????????? ???? ?????????? ??? ?????? ?????? (??? ????: ??????? ???), ?????????:

9 ?? ?????? ?? ??? ?????????? ?? ?????????? 3, ?? 10?? ?????????? 1969, ?? ??
????????? ?? ?? ?? ?????? ?? ?? ?????? ?????? ?????? (Moniteur belge ?? 12??
????????? 1969, ?, 9), ???????:

«§1. ?? ??? ?????????? ?? ?????????? ?? ?????? 45, ?????????? 1?, 2 ??? 3, ??? ?????? [??], ? ?????????? ?? ??? ????? ???????, ?? ??? ?????? ?? ?????????????? ?? ??? ?????? 2 ??? 4 ??? ??????? ???????????, ????? ?????? ?????? ?? ??? ?????? ?? ??? ?????? ?? ??? ?????? ?? ??? ?????? ?? ??? ?? ?????????? ?????? ?? ?????? 45, ?????????? 1, ?????? 1 ??? 5, ??? ??????.

§2. ??? ?????????? ?? ??? ????? ?????????? ?????? ??? ???? ?????? ??? ???? ?????????? ???
????????????? ??? ???? ????? ?????????? ??? ???? ?????? ? ??? ???? ?????? ?????? ??? ????
????????????? ??? ??????????????.

????? ???? ?????? ? ???. ?????????? ?????????????? ?? ?????????????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????, ? ??????? ?????????????? ????. ?? ?????? ?????? ?????????????? ????. ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? »..

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

10 ????? ?????? ??? ??????? C-210/11, ?????????? ??? ???? ??????? ????? ??????????? ??? ?
Medicom ?????? ??????? ?? ?????? ??????????????? ??? ?????????? ??? ?????? ??? ?
???????????????, ???????????, ?????????? ??? ??????? ?????????? ?????? ??? ?????? ???
???????????????, ?????? ??? ??? ?????????? ?????? ??????. ? ?? ??? ?????? ?????? ?????????? ??????
???? ?????? ?? ?????????? ??? ??? ?, ?????????, ?? ?????????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ?????? ?????????? ??????. ??? ?????? ??? ??? ?????? ??? ?????? ???
Medicom ??????, ??? ?????? ???, ??? ??? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ??
???? ??????.

11 ??? ??????? ??? 3?? ??????????? 1996, ? ??????? ?????????? ??? ?????? ?????????? ???
?? ?? ??? ?????? ??????????????? ??? 50 % ??? ??? ?????? ?????? ??? ?????????? ??? ?
??? Medicom ??? ??? ?????? ?? «????????????? ??? ?? ??? ?????? ??????????» ?? ???
????????? ? ?????? ????. ?????????? ??? ?????? ?? ?????? ??? ??? ?????? ??? ?????? ???
????????????? ?????? ?????????? ?? ???????, ? ?????? ?????????? ?????? ??? ?????? ???
Medicom ?????? ?????? ?????????? ?? ?????? ??? ?????????? ??? ??? ??? ?????? ???
????????????? ?????? ??? ?????? ??? ?????? ?????? 1997.

12 ?? ???????, ?? ?????????? ??? Medicom ?????????? ???, ??? ?? ??????????
??? 1997 ?? 1998, ????? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ??
??????. ??? ?????? ??? ???????, ? ?????? ?????????? ??? ???????, ??? 16 ???????
2000, ??? ?????? ?????????? ??? ??? ?? ??? 1996 ??? ?????? ??? Medicom, ??? 15
????????? 2001, ??? ?????? ?????? ??????.

13 ?????? ? ??????? ??? ??????? ??? ?? Medicom ??? ?? ?????????????? ???
?????? ?????????? ?????????? ??? ?????? ???, ? ??????? ?????? ??? ?????? ???
cour d'appel de Liège. ?? ?? ??? ???????????, ?? ??? ??? 24 ?????? 2006 ?????? ??,
?????? ??? ?????????? ?????? ?????????? ???????????, ??? ??? ?????? ?????? ???
???? ??????, ??? ??? ?????????? ?? ?????????? ??? ?????? ??? ??? 8?? ?????? 2003, C-
269/00, Seeling (?????? 2003, ?. ?-4101).

? ?????? C-211/11

14 ??? ?????? ??? ??????? C-211/11, ?????????? ??? ??? ??????? ????? ?????????? ??? ?
??? ?????? ??????? ?? ?????? ?????????????? ??? ?????????? ??? ??? ?????? ???
????????? ??? ?????????? ?????? 1991, ??????? ?????? ??? ?????? ??? ??
????????? ??? ??? ?????, ?????????, ?? ?????????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????? ?????? ?????????? . ??? ?????? ???, ? MPA ??????, ???
????? ???, ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??? ?????? ???.

15 ?????????? ??? ? ?? ??????? ?? ?????? ??? ?????? ???, ??? ?????? ??? ??????
???? ?????? ??? ?? ??????? ??? ???????????, ? ?????? ?????????? ??? ?????? ???, ???
6 ??????? 1995, ?????? ?????? ??? ?????? ??? ??.

16 ?? ?????????? ???????, ??????? ??? ?????? ?????????? ? ?? ?????????? ???
?????? ??? ?????????? ???????, ?? ?????? ?????? ??? ?????? ??? ?????? ???, ?? ?????? ???
????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? cour d'appel de Bruxelles, ?? ??? ??? 4?? ?????????? 2006
??????, ???, ???, ??? ?????? ??? ? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????, ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

17 ?? ?????????? ??? ???????, ? ??????? ?????????? ??? ?????? ?????? ?????? ?????????? ??????????
?????????????, ?????? ???, ???????, ??? ? ?????????????? ?????? Seeling ??? ??????
?? ?????????? ?? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ?? ?? ??? ??????????.
?? ???????, ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????????? ???
????????? ??? ?????? ?? ??????????????, ??? ?????? ??? ?????? ?????? ??????????, ?? ??? ????
??????????, ??? ?? ??? ?????? ?? ?????? ??? ?????? ??? «?????» ??????? ?
????????? ??? ?????? «????? ??????». ????, ? ?????? ??? ?????? ??????????
?? ?????????? ?? ???????, ???' ?????????? ?? ?????? 17, ?????????? 2 ??? 5, ??? ????
??????, ?????? ??? ?????? ?????? ??? ?????? ?????????????? ?????? ?????? ?????? ??? ??
?????????? ?????? ?????? ??? ?????? ???, ??? ?????????? ??????????, ?????????. ???? ?? ???,
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ??
?????????. ????, ???, ??? ??????????.

18 ??? ??? ?????????? ??? Cour de cassation ?????????? ?? ?????????? ???
????????? ??? ?????????? ??? ?? ?????????? ??? ?????????? ?? ?????????? ??????????
?????????, ?? ??? ?????? ?????? ?????????? ???' ?????? ?????? ?? ?????????? ??? ?????????? C-
210/11 ??? C-211/11:

«1) ??? ?? ??? 6, ?????????? 2, ??? ?????, ??????? ??, ??? 13, ?, ??????? ??,
??? ??? ?????, ??? ?????? ??? ?????????? ?? ?????????? ?? ?????????????? ??? ??
???? ?????? ???????, ??? ?????????? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?? ???
????? 13, ?, ??????? ??, ? ???????????, ??? ?????? ?????? ?????????? ??? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????? ?????? ?????? ???, ??? ?????? ?????? ??? ?????? ?????? ??????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?? ?????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??????
?? ?????? ??? ?????? ??? ?????????? ?? ??? ?????? ?????? ??? ?????? ?????? ??? ??????
????????? ??? ?????? ?????? ?????? ??? ?????????? ???, ??? ??? ?????? ???, ??????????
??? ?????????? ???, ?? ?????????? ??? ?????? ?????? ??? ?????????? ??? ????
????????? ???, ?? ?????????? ??? ?????? ?????? ?????? ?????? ??????;»

2) ??? ?? ?????????? ??? ?????? ??? ?????? ??? ? ?? ??? ?????? ?????????? ?????????? ???
????????????? ??? ?????????? ??? ? ?????? ??? ?????????? ??? ?????? ?????? ??????????
????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
??? ????, ??? ?????? ?????? ???, ? ?????? ?????? ??????;»

19 ?? ?????? ??? ?????? ??? ?????????? ??? 28? 2011 ?? ?????????? C-
210/11 ??? C-211/11 ?????? ??? ?????????? ??? ?????? ??? ??? ??????????

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

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

20 ?? ?? ?????? ??? ?????????? ??? ???????, ?? ?????? ?????????? ???, ???' ??????, ??
????????????? ??? ?? ??? 6, ?????????? 2, ??? ?????, ?????? ??, ??? 13, ?,
????????? ??, ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?? ?????????? ??

21 ?????????????? ?? ????? ?????????? ?? ????? ???? ??????, ?????? ?? ??????????? ??,
???? ?????????? ?? ????? ?????????? ?? ??????????????, ????? ?????????????? ?? ????? ??
?? ?????????? ?? ??????, ??? ????? ?? ?????????? ?? ????? ??????????, ?? ?? ?????? ??
??? ?? ?????????? ?? ?? ?????? ?? ?????? ?? ?????? ?? ?????????????? ?? ?????? ?? ?????? (??.,
?????? ???, ?????????? ?? 4?? ?????????? 1995, C-291/92, Armbrecht, ??????? 1995, ?. I-
2775, ????? 20, ??? Seeling, ??????????????, ?????? 40).

22 ?? ? ?????????????? ??? ???? ????? ?????? ??? ?????????????? ??? ?????? ?????? ?????? ???
????????????????? ?????????? ??? ?????????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ??? ??????????????, ??? ????? ?????????? ?????? ? ?????? ??? ?????? ??? ?????? ???
??? ??? ??? ??? ??????? ??? ?????????????? ??? ??? ?????????? ??? ?? ??? ?????? (??., ????)
?????, ??? ??????? ??? 11?? ?????? 1991, C-97/90, Lennartz, ?????? 1991, ?. I-3795, ?????
26, ??? ??? ?????????????? ?????? Seeling, ????? 41).

23 ???? ?? ?????? 6, ??????????? 2, ????? ?????, ??????? ??, ??? 11, ?, ??????????? 1,
 ??????? ??, ??? ????? ??????? ?????????? ???, ??? ????? ?? ???? ????? ?? ????? ??????
 ????? ?????????? ?????????? ?????????? ??????? ? ?????? ?????????? ?????????? ??? ?? ?? ??
 ???????, ? ????? ?? ?? ????? ?????? ??????? ??? ?????????? ??? ????? ?? ?? ?????? ??????
 ??? ?? ?????????? ?????????? ?? ?????? ?????????? ?? ?????????? ?????? ??? ?????????? ???
 ?????????? ??? ????? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????????? (??.
 ??? ?????????? ?????? Lennartz, ??? 26, ??? Seeling, ??? 42).

24 ????????, ??? ?????????? ?????? ??? ?????? ??? ?????????? ?? ??????? ?????? ??? ?????? ???'
????????? ??? ?????? ?????????? ??? ?????? ??????????????, ??? ??????????, ??? ?????? ??? ??????
????? ??? ?????? ???????, ??????, ??? ?????????? ??? ?????? ?????? ??? ?????????????? ??? ???
??? ??????? ??? ?? ?????? ??? ?????? ?????????? ??? ?? ??? ?????? ??????? ???, ????????,
????? ??? ?????????? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????
??? ??? ????.

25 ?????? ?????? ?? ?????????? ?????????? ??? ?????? 6, ?????????? 2, ?????? ??????,
????????? ??, ??? 13, ?, ??????? ??, ??? ?????? ??????, ??? ?????????? ?????? ??? ??,
????????? ??? ???? ?????? ?????? ?????? ?????????? ???' ?????????? ??? ?????? ??????????
??? ??? ??? ?????? ??? ?????? ? ??? ?????????? ???, ?? ?????????? ?????? ??? ?? ?? ???
????????? ?????????? ?? ?????? ?????????? ? ??????, ?????????? ??? ?????????? ??
????????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? 13, ?, ?????????? ??,
????????? ?????????? ?? ?????????? ??? ?????? ?????? ?????? ?????????? ?????????? ??
????????? ?????? ??????????, ?? ?????? ?????? ?????? ?????? ?????????? ?????????? ??
????????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????????? ?????? ???, ??? ??
????? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ??
????????? ?????? ??? ?????? ??? ?????? (??., ???????, ?????? Seeling,
????????? ???, ??? 56, ??? ?????? ??? 29?? ?????? 2012, C-436/10, BLM, ??? 31).

26 ???????, ??? ?? ??????? ??????? ?????????? ??? ??? ?????? ??? ?????? 13, ?,
????????? ??, ??? ?????? ??????? ??????? ?? ?????????? ?? ??????? ??? ?????? ??? ??????????????

??????????, ??? ? ?? ?????? ??? ?????? ?????????? ??????????? ??? ???????, ??????
?????????? ??? ?? ??????????? ??????, ??? ??????????? ?? ??????????? ?? ???????
??? ?? ?????????? ??? ?????? ????? ?? ?????? ??? (?????????? ??? 9?? ??????? 2001, C-
409/98, Mirror Group, ?????? 2001, ?. I-7175, ??? 31, ??? C-108/99, Cantor Fitzgerald
International, ?????? 2001, ?. I-7257, ??? 21, ??? ??? Seeling, ???????????, ???
49).

27 ???????, ?? ??? 13, ?, ??????? ??, ??? ?????? ??????? ??????? ?????????? ??
?? ?????? ??? ??????? ?? ??? ?????? ??? ??????????? ?? ??? ?????? ??????? ?????????? ??
?????????????? ?? ??????? ??????? ??? ?????????? ??? ?????????? ??? ???, ???????, ??????? ??
?????????? ????????. ??????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ???
?????????? ???, ? ?? ??? ?????? ??????? ??? ?????? ?? ?????????? ??? ???????, ??? ??? ?? ?
????????? ??? ??? ??????? ??????? ??? ??????? ?? ?????????? ?????????? ??? ??? ??
??????????, ??? ?? ??????? ??? ??????? ???????????, ?? ??????? ??? ??? ?? ??????? ???
??? ??????? (?).., ???' ??? ?????? ??? ?????????? ?????????? Seeling, ?????? 44
?? 45).

28 ??? ?????, ???????, ??? ?????????? ??? ??????? ?????? ?? ??? ??????? ??????????, ???
?? ?? ??????? ??? ?????????? ??? ????? ?? ?????? ?? «?????? ??????? [...]»,
?? ??????????????? ?? ??????? ??????», ??? ??? ?????? ??? ?????? 2, ?????? 1, ???
????? ???????, ??????????? ??? ?????? ?????? ?????? ?????? ??? ???????????
????????? ??? ??? ?????????? ?????????? (?).., ?????? ???, ?????? ??? 29??
?????? 2010, C-40/09, Astra Zeneca UK, ?????? 2010, ?. I-7505, ??? 27), ??????
????????? ??? ? ??????? ??????? ??? ??????? ?? ?????????? ?? ?????????????? ?? ???
????????? ???, ??? ??????? ??? ?????? ???????????, ??? ? ??????? ?????? ??? ???????????
????????? ?? ?????????? ?????????? ??? ?????? ??????????? ?????????? ?????????? ???
????????? ???, ?????? ???, ?????? ??? ??????? ??? ?? ?????? ??? ?????????? ?????????? ???
????? ?????????? ??? ?? ??????? ??? ?????? ??? ?????????? ??????????.

29 ???????, ???????, ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? 45 ???
????????????? ??? Seeling, ?? ??? 13, ?, ??????? ??, ??? ?????? ???????
??? ?????? ?? ?????????? ???' ??????? ???????????, ??? ?????????? ?? ??????
?????????, ?? ??? ?????? ?????????? ?? ??????? ??? ?????????? ?????? ?? ??? ??
????????? ??? ?????????? ?????? ??????.

30 ???????, ??????? ???, ?? ??????? ???? ?? ??????? ? ?????? ???????, ??? ??????? ??
????????? ??????? ??? ?????? ??? ?????? ??? ?????? ?? ?? ?????????? ?????????? ??
????????? ? ?????????? ?????? Astra Zeneca UK. ???????, ??? ?????????? ?? ??? ??
????????? 29 ??? 31 ??? ?? ??? ???????, ??? ?????????? ???, ??? ?????? ??????? ???,
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ??? ??
Astra Zeneca Ltd ?????? ?????????? ??? ??? ??? ?????????? ?????????? ??? ???????
????? ?? ?????? ??? ?? ?????? ?? ?????????? ?????? ??? ?????????? ?????? ?? ??? ??
????????? ??? ?? ?????? ??? ?????? ??????. ??? ?????????? ??? ?????? ???, ???????, ???
????????? ??? ?? ?????????? ??? ?? ?????????? ?????? ?????????? ?????? ??? ?????? ???
????????? ??? ?? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ??? ??? ??? ?????? ??? ?? ??? ?????????? ?????? ??? ?????? ?? ?????????? ?? ?????????? ???
?? ??? ??? ??? ?????? ??? ?????? ??? (?).., ???' ??????, ??? ?????? ??? 16?? ???????
1997, C-258/95, Fillibeck, ?????? 1997, ?. I-5577, ?????? 15 ??? 16).

31 ???, ??? ?? ????? 15 ??? ?????????? ?????? BLM ??????? ??? ??? ??
????? ??? ?????????? ?? ?????? ???, ???' ?????? ??? ?????? ?????? ?????? ???????
????? ?????? ??? ?? ?????? ?????? ??? ?? ??? ?????? ???, ??? ?????? ??? ??? ??

???? ?????? ??????????, ? ??????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??????
????????????? ?????????? ??? ?????? BLM SA, ?????? ?? ?????????? ? ??????
????????? ?? ?????? ??? ??? ??????????, ??????????, ??? ?????? ??? ?????????? ??????
??????, ?? ??? ????? ??????????, ?????????????? ???' ??????. ??? ? ???????,
?????????, ? ?????? ??? ?????????? ??? ?????? 23 ??? 30 ??? ??????????????
?????????, ??????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ??????????.

32 ????????? ?????????? ??? ?????????????? ??? ?? ?????????? ??? ?? ?????????????? ???????,
??? ?????? 32 ??? ?????????????????? ??? ?????????? ??? BLM, ??? ?????????? ??? ??????
????????? ?? ?????????? ???, ?? ?????????? ??? ?? ?????? ??? ?????? ???, ?????? ??
????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? 13, ?, ?????????? ??,
??? ?????? ??????.

33 ????????, ????????, ?????? ???????????, ??? ??? ?????? ???????????, ??? ?????? ?? ???
?????? ?? ??????????? ?? ??????????? ???????????, ?????????? ?? ???????????,
????????????? ?? ?????? ?? ??????????? ?????? ???????????, ?? ?????? ??????????????? ??
????????? ??????? ???????????, ??????????? ?? ?? ??????????????? ??? ?? ?????? ?? ???
?????? (??., ???' ???? ?? ??????, ??????? ?? 27?? ??????? 2011, C-530/09, Inter-Mark
Group, ??????? 2011, ?. ?-10675, ????? 32). ???????, ??? ?? ?????? ??? ??? ??????? ??
?????????? ?? ??????????? ??? ??? ??????????? ??? ?????? ???????, ?????????? ?? ??? ??????? ??
??? ?????? ???????????, ?? ?????? ?????? ?? ?????? ??????? ?? ??? ??? ??????????? ??
????????? ??????????? ??????? ?????? ?????? ??? ??????????????? ??? ??????????? ??
??? ?????????? ?? ???????????, ?????? ?? ??????????? ??? ??????????? ??? ??????????? ??
????????? ?? ??? ?? ??????????????? ?????? ??? ?????? ??? ?????? 13, ?, ???????
??, ??? ?????? ???????.

34 ??????? ?? ??????? ????????, ??? ????? ??????? ??????? ?? ?????? ? ?????????? ??? ??
?????? 6, ?????????? 2, ??? ???????, ????????, ??, ??? 13, ?, ????????, ??, ??? ??????
?????? ?????? ??? ?????? ??? ?????????????? ??? ?? ?????????? ?? ??????? ??????????
????????????? ??? ?? ??? ?????? ???????, ??? ??? ?????? ??? ?? ???????, ??? ?? ?????? ???????, ?
????????? ??????? ??????? ???????, ??? ?????? ??????? ??? ?? ??????? ??????? ?? ??????? ??????? ??
????????? ???, ??? ?? ??? ?????? ???????, ??? ?????? ??????? ?? ??????? ?? ??????? ??? ??
????????????? ?? ?????????? ??? ?? ???????, ??? ?? ?????? ??????? ??????? ?? ??????? ?? ??????? ??
????????? ??????? ??? ?? ?????? ???????, ??? ?? ?????? ??? ??????? ?????????? ?????? ??? ??
??????????, ?? ??? ?????? ??????????? ??? ???????, ??? ??????? ?? ??????? ?? ??????? ??? ?? ??? ??
?????????? ?????????? ??? ???????, ??? ???????, ??? ??????? ??????? ?? ??????? ?? ??????? ??? ??
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??? ??? ?????????? ??????????

35 ?? ?? ??????? ??????? ??, ?? ?????? ??????????? ??????, ???' ??????, ??
?????????????? ?? ?? ?????? 6, ??????????? 2, ????? ??????, ??????? ??, ??? 13, ?,
?????? ??, ??? ????? ??????? ??, ??? ?????? ??????? ??, ?? ??????????? ????? ??, ???
?????? ??, ?? ??????? ??, ?? ??????? ??, ?? ??????? ??, ?? ???????????, ???????????
???????? ? ??????? ??, ?? ??????? ? ?????? ?????? ?????????? ?????????? ???' ?????????? ??,
????????? ??, ?? ??????? ??, ?? ??????? ??, ?? ??????????? ??, ?? ??????????? ??, ??
????????? ??, ?? ??????? ??, ?? ??????? ??, ?? ??????????? ??, ?? ??????????? ??, ??

36 ???????, ?????? ?? ??????????? ??? ???? ?? ?????????? ?????????? ??? ? ?????????? ???
?????? ??? ?????????? ??? ???? ? ?????? ?????? ??? ???? ??? ?????? ?????? ??? ???? ????
??? ?????????? ??? ?????????? ??? ?????????? ??? ???? ???, ????????, ??? ??????????
?????????. ? ??? ???? ??? ??????? ??? ?????, ? ??? ?????????? ???' ????, ?????????? ???
??? ?????? ??? ??????? ?????????? ??? ???? ?????? ? ?????????? ??? ?????? ??? ??????????? ??

?????? ????? ?? ?????? 17 ??? ????? ?????? ??? ????? ?????????????????? ??? ????? ?? ?????????? ?????????? (?????? ?? 11?? ?????? 1991, C-97/90, Lennartz, ?????? 1991, ?. I-3795, ????? 15). ??????????, ??? ?????????????? ??? ????? ?????? ????? ?????????????? ??? ????? ?????????? ???, ?????? ?? ?????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? (?????? ?? 6?? ????? 1992, C-20/91, de Jong, ?????? 1992, ?. I-2847, ????? 17).

37 ??????????????, ??? ?????????? ??? ??? ?????????, ??? ????????? 21 ??? 24,
????????????? ??????????, ??? ?????????? ??? ??? ?????????? ?? ?????????? ?? ??????????
?? ?????? ??? ?????????? ??? ??? ?????????????, ??? ??????????, ??? ?????? ??? ??????
????? ??? ??? ?????????? ??????? ??? ??? ?????? ??? ?????????? ??? ?????? ??? ??????????
?? ?????????????? ?????? ??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ???,
????????, ?? ?????????? ?? ?????????????? ?????????? ??? ??? ??? ??? ?????? ??? ?????? ???
????????????? ??? ??? ?????????????? ??? ??? ?????? ???.

38 ?????????? ????, ??, ?????????? ??, ?????????? ? ?????????? ??????????, ?? ??? ?????
????????? ? ?????????? ?????? ???, ?????? ???, ?????? ???, ?????? ?????? ??, ?????????? ???, ??, ???
????????? ? ?????????? ?????????? ???, ?????? ?????? ???, ?????? ?????? ???, ??, ?????????? ???, ??, ???
??????????????, ?????????????? ?????? ? ?????????? ? ?????????? ???, ?????????????????? «??? ???
????????? ???, ???, ?????????????? ?????? », ???, ???, ???, ???, ???, ???, ???, 17,
????????? 2, ???, ???, ???.

39 ????????, ??? ?? ?????? ??? ?????????????? ??? ?????? ??? ?????????????? ?? ?????????? ???
????????????? ?? ?????? ??? ?????????????? ???, ??????, ??? ?????????????? ??? ?? ?????? 6,
????????????? 2, ?????????? ??, ??? ?????? ???????, ?? ?? ?????????????????? ??? ?????????? ??????
???? ?? ?????????????? ??? ?? ?????? ?????? ?? ?????????????? ?? ?????????????? ??? ? ?? ??? ??????
????????????????? ??? ?? ?????? ?????? ?? ?????????????????? ?????????????? ????. ??????, ?
????????????? ??? ?? ?????? ?????? ?????????????? ?? ?????????????? ??? ?????????? ??? ??????????
????????? ??? ?? ?????? ?????? ?????????????? ??? ?????????????? ??? ?????????????? ??? ???
????????????????? ?????????????? ??? ??????????????.

40 ??????? ?? ??????????? ?? ?????? ?? ??????? ??????? ? ??????? ?? ??????? ?? ?? ?????? 6,
?????????? 2, ????? ??, ??????, ??????? ??, ??? 13, ?, ??????? ??, ??? ????? ?????? ??,
??? ?????? ??, ?? ??????????? ?? ????? ?? ?? ?????? ?????, ?? ??????? ?? ?? ???? ??
?????? ?? ???????????, ??????????? ?? ??????? ? ?????? ?? ?????? ?? ?????? ?? ???????
???????? ?? ??????? ??' ?????????? ?? ????? ?????????? ?? ? ?? ????? ?? ?????? ?? ??
?????????? ?? ??????????? ?? ??????? ??????? ?? ??????? ?? ??????? ?? ?? ?????????? ?
???????? ?? ??????????? ?? ??????? ???????.

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41 ?????????? ??? ? ??????? ?????????? ??? ?? ??? ????? ?????????? ??? ?????? ???
??? ?????????? ?????????????? ??? ??????? ?????????? ??? ??????? ?????????? ??????????, ?' ????
?????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ????? ??? ????? ????????????
???? ??????? ?????????? ??? ??????????, ??? ??? ???????, ??? ??? ???????, ??? ???????????.

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

1) ?? ????? 6, ?????????? 2, ????? ??????, ??????? ??, ??? 13, ?, ??????? ??,
?? ????? ??????? 77/388/??? ??? ??????????, ?? 17?? ????? 1977, ???
????????????? ??? ?????????? ??? ?????? ?????, ??? ?????????? ?? ??? ????? ??????
?????? ??????? - ??? ????? ?????? ????? ?????????????? ?????: ??????????
????????? ???, ??? ?????????????? ?? ??? ????? 95/7/?? ??? ???????????, ???
10?? ??????? 1995, ??? ??? ?????? ??? ?????????? ??? ?? ??????? ???????
????????? ?????????????? ??? ??? ????? ?????????? ???????, ??? ??? ??????? ??? ??

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

2) ?? ?????? 6, ??????????? 2, ?????? ??????, ?????????? ??, ??? 13, ?, ?????????? ??,
??? ?????? ??????? 77/388, ??? ?????????????? ?? ??? ?????? 95/7, ?????? ???
?????? ??, ?? ??????????? ?? ?????? ??? ?????? ?????, ?? ??????? ?? ?
?????? ?? ? ??? ?? ?????? ??? ??????? ?? ???????????, ??????????? ??????? ?
?????? ?? ?????? ? ?????? ?????? ?????? ?????? ?????? ???' ?????????? ???
?????????? ?? ? ??? ?????? ?????? ?? ??? ?????????????? ??? ?????????????? ???
????????? ??????? ?????? ??? ?? ?????????? ???? ?????????? ??? ?????????????? ???
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(???????????)

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