

Conclusions

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L. A. GEELHOED

??? 15?? ??? 2003 (1)

????????????????? ?????????? C-78/02, C-79/02 ??? C-80/02

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1. ?? ?? ?????? ??? ??????????? ?????? ??? ?????? ?????? ?????? ?????????????? ????????????,
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????????? ?????? ?? ?????????? ??? ?????????? ???????????, ?? ?????? ?? ?????????????? ???
????????? ?????????????? ???????????, ?????? ?? ?????????? ?? ??? ?????? ??? ?????? ??? ??????
????????? (77/388/???) ??? ???????????, ??? 17?? ????? 1977, ??? ?????????????? ???
????????? ??? ?????? ?????, ??? ?????????? ?? ??? ?????? ?????? ?????? ?????? ??? ??????
????????? ?????? ?????????????? ?????: ?????????? ?????????? ??? (2) (??? ????: ???
?????), ?????? ??? ?????????? ???, ??????, ?????????? ??? ?????????? ??? ?????? ??? ?? ?
????????? ??????????????, ??? ?? ?????? ???????????, ???, ????????, ?? ?? ?????? ??? ?????? ???
????????????? ??? ?? ??? ?????????? ???????, ??? ?????????? ??? ?????? ??? ?????????? ???
??? ?????? ???, ??? ? ?????? ?????????? ??????? ?????? ??? ?????? ?????????? ??? ?? ??????
????? ?????? ??? ?????? ???, ??? ? ?????? ?????????? ??????? ?????? ??? ?????? ?????????? ???
????? ?????? ??? ?????? ???, ??? ? ?????? ?????????? ??????? ?????? ??? ?????? ?????????? ???).

2. ??????????, ?? ?????????? ?????? ?????? ??? ? ?????????????? ??? ?????? 21,
?????????? 1, ?????????? ??, ??? ?????? ?????? ??? ?????? ??? ?????????????? ??? ?????? ??? ?????? ???
????????? ??? ?? ??????, ?????? ?????????? ?????????????? ???' ??????????
????????? ???????, ??? ??? ?? ?????????? ??? ?????, ??? ??? ?????? ??? ?????? ??? ?????? ???
????????? 5, ??? ?????? ??????, ??? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
? ?????????? ?? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ? ?? ??????
??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?? ?????????? ??? ?????? ??? ?????? ???.

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3. ??? ???? 2, ??? 1, ??? ????? ??????, ??? ????? ?????????????? ???
?????????: ?? ?????????? ?????? ??? ???? ?????? ??????????, ??? ?????????????? ??
????????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?, ??? ?????? ???
??? ?????? ??? ??.

4. ?? ??? 4 ??? ????? ?????? ?????? ?? ????: 1. ?????????? ?? ?????????? ???
????????? ????, ??? ????? ?????? ?????? ??? ?? ?????????? ????, ??? ??? ???
????????? ?????? ?????????? ??? ?????? ?????? 2, ?????????? ????
????????? ?????? ??? ?????? ??? ?????? ?????? 1, ??? ?????? ?? ?????????? ???
?????????, ??? ?????? ??? ?????? ?????? ?????? ??????, ?????????? ??? ????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????? ?????? ?????? ?????? [..]4. ? ?????????? ?????? ??? ?????? 1 ??? ??
????? ?????? ?????? ?????? ??? ???? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???
????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ??? ??? ?????? ??? ?????? [...]5. ?? ??????, ?? ?????? ???, ?? ??????, ?? ??????
??? ?????? ??? ???? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???
????????? ??? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ??????, ??? ??? ??, ??' ?????? ??? ?????? ??? ?????? ?????? ???, ???
????????? ?????? ???, ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ???
????????? ?? ??? ??? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ???? ? ??
????????? ??? ??? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ???? ???
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5. ?? ??? 17, ?????????? 2, ??????? ??, ??? ????? ?????? ??? ?? ??????????: 2. ???
?? ??? ???? ?? ??? ???? ?? ?????? ?????? ?????????????? ??? ?? ?????????????? ???
????????? ???, ? ?????? ?????? ??? ?????? ?????? ?????? ?? ?????? ??? ???? ??
????, ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???, ??? ?????? ??? ???? ??
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?) ??? ?????? ???? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ???? ??
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6. ?? ??? 18, ?????????? 1, ??????? ??, ??? ????? ?????? ?????? ?? ????: 1. ??? ??
????? ?? ?????????? ?????? ??? ?????? ?????? ???, ? ?????????? ??? ???? ??
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?) ??? ??? ?????? ?????? ??? ?????? 17, ?????????? 2, ??????? ??, ??????, ?? ??????
?????????, ?? ?????? ??? ?????? ?????? ?? ?????? 22, ?????????? 3.

7. ??? ??? 21, ?????? 1, ??????? ??, ??? ????? ?????? ?????? ?????????? ?? ??? ??
????????? ??? ??????: ? ????? ?????? ?????? ?????? ?????? ???????: 1. ??? ??????
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?) [?] ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?? ?????? ??? ???? ??
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8. ??? ?? 2, ?????????? 1, ??? ????? 1642/1986, ??? ??? ?????? ??? ????
????????? ?????? (?)125), ?? ??? ?????? ?????? ?????? ?? ?? ?????? 1, ?????????? 1,
??? ?????? 2093/1992 (?)181), ?????????? ??? ?????? ?????? ?????? ?????? ???, ????

?????, ? ??????? ?????? ??? ? ?????? ??????????, ?????? ?????????????????? ??? ??????
????? ??? ??????? ??? ???? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ??? ??? ??
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9. ??? ???? 3, ?????????? 1, ??? ????? 1642/1986, ?? ??? ????? ?????????????? ?? ??
????? 1 ??? ????? 2093/1992, ??? ????? ?????????? ??? ?????? ?? ?????? ???????, ??????
? ??????? ? ????? ???????, ?????? ?????? ?????? ?????? ?????? ?????????? ??????????
?????????????, ?????????? ??? ??? ????? ?????????? ??? ?????????? ?????? ??? ??
????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
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??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ??? ?????? ?????? ?????? ??????.

10. ??????, ?? ??? 23, ?????????? 1, ??? ?????? ????, ?? ??? ?????? ??? ??
????????? ??? ?? ?? ??? 1, ?????????? 34, ??? 2, ?????????? 18, ??? ????? 2093/1992,
????? ?? ????: ? ?????????? ?????????? ?? ?????? ??? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??
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11. ?? ??? 25, ?????????? 1, ??? ?????? ????, ?? ??? ?????? ??? ?? ?? ?????????? ?? ??
????? 1, ?????????? 38, ??? ?????????? 2093/1992, ?????????? ?? ????: ??
????????? ?????? ??? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??
?????: a) ?????? ???? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??
????????? ?????? ???? ?????? ?????? ?????? ?????? ?' ?????, b) [...].

12. ?????, ?? ??? 28, ?????????? 1, ??? ?????? ????, ?? ??? ?????? ??? ?? ??
????????? ??? ?????? ??? 1, ?????????? 42, ??? ?????????? ?? ??
????? 2093/1992, ?????????? ?? ????: ?? ??? ?????? ?????? ??? ?????? ?????? ?????? ??,
????????? ??? ?????? ??????: a) ? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??
????? ???, ?? ??? ?????? ??? ?????? ?????? b) [...] c) [...] d) ?????????? ???
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13. ?? ??? ?????? ?????????? ??? ??????, ?? ?????? ?????? ?????? ??????
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14. ? ?. ?????? (C-78/02) ???? ??. ?????? (C-79/02) ??? ? ?. ?????? (C-80/02) ????
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15. ?? ??????????, ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???
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16. ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???' ???
?? 1992 ?? 1993, ?????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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29. ? ?????????? ?????????? ?????????? ??? ?????? ?????????? ?????????? ?????????? ??? ????????

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

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

30. ?????????? ?????? ?????????? ??? ?? ?????????? ??? ?????????? ??? ?????? ?????????? ??????.

? ?????????? ??? ?????? 234 ??, ?????? ?????????? ?????????? ?? ?????? ?????????? ??? ?????? ???

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

? ?????????? ??? ?????? ??? ?????? (3).

31. ??? ?????? ??????? ? ?????????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????? ????????

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

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32. ??? ?? ?????? ?????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????????? ??? ?????? ??????????.

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

? ??? ?? ?????? ??? ?????? 4, ?????????? 1, ??? ?????? ??????. ?????????? ?? ??????.

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

33. ?? ??? ?????? ?????????? ?????????? ??? ?? ??? ?????? ??? ?????????? ?? ?????? ??? ?????? ???

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

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34. ? ?????????? ??? ? ?????????? ??? ?????? ?????? ?????????? ?????? ?????? ?????????? ????

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

? ?????????? ??? ?????? ?????? ?????? . ???' ?????? ?????? ??? ?????? ??? ?????? ?????? ?? ???

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

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

35. ?? ?? ?????? ?????????? ??? ?????? ??? ?????? ?????? 21, ?????????? 1, ?????????? ??, ???

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

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

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

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(????? ??? ?? ??????) ?????????? ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 21,

? ?????????? 1, ?????????? ??, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??;

36. ? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

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? ??? ?????? (4). ??? ?????? Genius Holding, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

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

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

? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? (5).

37. ??? ?????? Schmeink & Cofreth, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

? ?????????????? ??? ???? ?????????????? ?? ?????????? ??????, ?????? ?? ??????? ?
????????????? ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
?????????, ?????? ? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
???????? ???? ???? (6).

38. ?? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
????????? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
????? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
????? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
????????? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
????? . ???? ???? ???? ???? , ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
????? 21, ???? ???? 1, ???? ???? ?, ???? ???? ???? ???? ???? ???? ???? ?
V ? ?????

39. ?????? ???? ???? , ?????? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
????????? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
????? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
????? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
????????? , ??? 17? 1977, ??? ???? ???? ???? ???? ???? ???? ???? ???? ?
????? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
?????: ?????? ???? ???? , ??? ???? ???? ???? ???? ???? ???? ???? ?
????????? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
????? ???? ???? ???? ???? ???? , ?? ???? ???? ???? ???? ???? ???? ?
????????? ???? ???? ???? ???? , ??? ???? ???? ???? ???? ???? ???? ?
????????? ???? ???? ???? ???? , ??? ???? ???? ???? ???? ???? ???? ?
????????? ???? ???? ???? ???? ???? , ??? ???? ???? ???? ???? ???? ?
????????? ???? ???? ???? ???? ???? , ??? ???? ???? ???? ???? ???? ?
????????? ???? ???? ???? ???? ???? ???? ?' ???? ??.

1 – ?????? ???? ???? : ? ?????.

2 – ?? ??. ??? .09/001, ?. 42.

3 – ??., ?????? ???? , ??? ???? ???? ???? 2? ???? 1994, C-30/93, AC-ATEL Electronics
(?????? 1994, ?. ?-2305, ?????? 16 ?? 17)? ??? 1?? ???? 1998, C-326/96, Levez
(?????? 1998, ?. ?-7835, ?????? 25 ?? 26), ??? ?? 16?? ???? 1999, C-435/97,
WWF ??. (?????? 1999, ?. ?-5613, ?????? 31 ?? 32).

4 – ?????? ???? 19? ???? 2000, C-454/98, Schmeink & Cofreth (?????? 2000, ?. ?-
6973, ?????? 48 ?? 49).

5 – ?????? ???? 13? ???? 1989, C-342/87, Genius Holding (?????? 1989, ?. ?-4227,
????? 18).

6 – ?????? Schmeink & Cofreth (????????? ???? ???? ???? 4, ???? ???? 60 ?? 63).