

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

<b>In the Matter of</b>	)	
	)	
<b>ROBERT BOSCH, GmbH</b>	)	<b>ET Docket No. 10-253</b>
	)	
<b>Request for Waiver of Section 15.510(b) of the</b>	)	
<b>Commission’s Rules to Permit the Marketing,</b>	)	
<b>Sale and Operation of Ultra-Wideband</b>	)	
<b>Through-Wall Imaging Device</b>	)	
<b>To: The Chief, Office of Engineering and Technology</b>		
<b>Via: Office of the Secretary</b>		

**REPLY COMMENTS ON REQUEST FOR WAIVER**

Robert Bosch, GmbH (Bosch), by and through counsel and pursuant to the Public Notice (DA 10-2376, released December 17, 2010) (hereinafter the “Public Notice”), hereby respectfully requests that the Commission proceed to grant expeditiously the proposed waiver of Section 15.510(b) [47 C.F.R. §15.510(b)] and/or Section 15.503(h) or (i) of the Commission’s Rules governing the operation of Ultra-Wideband (UWB) devices, so as to permit Bosch to market and sell in the United States, and for its customers to operate its UWB wall imaging device for use by skilled professional workers in the building and construction trades. Bosch also requests that functionally identical versions of this device marketed under the name “HILTI” be permitted under the same waiver. As good cause therefor, Bosch states as follows:

1. Bosch is grateful to the Commission for its fast handling of the Bosch waiver request, filed November 15, 2010. The Public Notice, released a month later, noted that the Commission’s Office of Engineering and Technology was reviewing the waiver request, and wanted to develop a complete record on the Bosch waiver proposal. It

therefore labeled this proceeding as a “permit but disclose” proceeding and provided the public with an opportunity to file comments on the waiver proposal. Comments were due not later than January 18, 2011 and reply comments were due February 1, 2011. Bosch has regularly reviewed the ECFS files in this proceeding and the only entry, to date, is the Bosch waiver request itself. Under the circumstances, there are no comments of any third party filed, indicating a complete lack of opposition to the waiver proposal.

2. The rule sought to be waived in this proceeding is, in the context of this Bosch wall scanning device, something of a “Catch-22” in that the device simply cannot be marketed under the Commission’s rules as they read now. Furthermore, the rule is conceptually difficult, because the determination of whether or not the device can be certified, sold and marketed in the United States is based on the type of wall that the device might measure - an extrinsic factor. This is not an objective means of regulating Ultra-Wideband devices in particular or RF devices in general. Bosch is well-aware that the Commission, for good reason, proceeded slowly in authorizing Ultra-Wideband devices, so as to avoid any interference from UWB devices *ex ante* to licensed terrestrial RF users. However, the Bosch *Wallscanner D-tect 150 Professional* provides a case of first impression and a case in which a device that has little or no interference potential has extensive, valuable uses to professionals in the building and construction trades, and to building inspectors and structural engineers. Waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation would better serve the public interest than would strict adherence to the general rule. *Northeast Cellular*, 897 F. 2d 1164, 1166 (D.C. Cir. 1990). The Commission may grant a waiver of its rules in a particular case if the relief requested would not undermine the policy

objective of the rule in question and would otherwise serve the public interest. *WAIT Radio v. FCC*, 418 F2d 1153, (DC Cir 1969); *Dominion Video Satellite, Inc., Order and Authorization*, 14 FCC Rcd 8182 (Int'l Bur. 1999). In *WAIT Radio*, it was held that even if the overall objectives of a general rule have been adjudged to be in the public interest, it is possible that application of the rule to a specific case may not serve the public interest if an applicant's proposal does not undermine the public interest policy served by the rule. 418 F. 2d at 1157.

3. As stated in the waiver request, the Bosch device meets all Commission technical regulations except those sought herein to be waived, and it would operate well below the maximum radiated emission level established by the Commission, which is an EIRP of -43.1 dBm in the band 3,100-10,600 MHz.<sup>1</sup> Yet, the Bosch *Wallscanner D-TECT 150 Professional* is a UWB device which is uniquely caught between two definitional regulatory limitations, each of which preclude its marketing, sale and operation in the United States. This is, Bosch suggests, precisely the situation that the Court in *Wait Radio* held to justify grant of a waiver -- "a safety valve procedure" -- to permit consideration of an application for exemption based on special circumstances. The Commission should take into account here "consideration[s] of hardship, equity, [and] more effective implementation of overall policy..." *Wait Radio*, at 1159 and as well the public interest in having access to a product with proven success in deployment outside the United States and which has obviously beneficial applications in facilitating and in insuring safety in building construction and in evaluating the integrity of existing construction..

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<sup>1</sup> The device is permitted to operate in, *inter alia*, Europe, where the emissions are restricted to an RMS average limit of -50 dBm/MHz EIRP --a much more stringent limit than in the United States.

4. Therefore, Bosch reiterates its request that the Commission waive, for the *Wallscanner D-tect 150 Professional* and for functionally identical versions of that device, either (1) the requirement in Section 15.503(h) of the Commission’s Rules applicable to Wall Imaging Systems that requires that the walls measured be thick or dense enough in every case to absorb “the majority” of the RF energy on the far side of the wall being measured, and which exclude “stud locator” devices; or (2) the eligibility requirements for operation of a through-wall UWB device to permit the operation of the *Wallscanner D-tect 150 Professional* by those engaged commercially in the construction or building trades, or for building inspectors and structural engineers in the United States. Bosch remains willing to have this waiver conditioned on the absence of reported and unresolved interference to licensed services in the subject frequency band, and Bosch will include any necessary interference resolution obligations in the operating manual distributed with the product in the United States. Bosch will also comply with the product registration requirements for UWB devices at point of sale.

Therefore, the foregoing considered, Robert Bosch GmbH again respectfully requests that the Commission grant to it a waiver of Sections 15.510(h) [47 C.F.R. §15.510(h)] and/or 15.510(b) [47 C.F.R. §15.510(b)] of the Commission’s Rules governing the operation of Ultra-Wideband devices, so as to permit Bosch to market and sell, and for professionals in the construction industry to operate, the *Wallscanner D-tect*

*150 Professional* and functionally identical versions of the product marketed by HILTI Corporation in the United States.

Respectfully submitted,

**ROBERT BOSCH GmbH**

By: Christopher D. Imlay  
Christopher D. Imlay  
Its Counsel

Booth, Freret, Imlay & Tepper, P.C.  
14356 Cape May Road  
Silver Spring, MD 20904-6011  
(301) 384-5525

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