

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**Certain Industrial Control System Software,
Systems Using Same, and Components Thereof**

Inv. No. 337-TA-1020

**ORDER DENYING REQUEST FOR ENTRY INTO EARLY DISPOSITION PILOT
PROGRAM**

On August 25, 2016, Respondent 3S-Smart Software Solutions, GmbH submitted an action request (the “Request”) that the Commission utilize the Early Disposition Pilot Program to determine the following two issues (i) whether its activities with respect to the accused software constitute a “sale for importation . . . of articles” under 19 U.S.C. § 1337(a)(1)(B); and (ii) whether the asserted patents are standards-essential and are encumbered by mandatory licensing obligations giving rise to public interest concerns. *See* August 25, 2016 Letter to Secretary. 3S clarified its request in a letter filed on August 26, 2016.

Specifically, 3S contends that, with limited exceptions, its activities with respect to the accused software are restricted to digital licensing. It further contends that the asserted patents are currently under review and may be designated as standards-essential and subject to licensing obligations. Complainant filed a response opposing the request on August 29, 2016, to which 3S responded on August 30, 2016.

The Commission has determined not to use the Early Disposition Pilot Program for this investigation. The first issue identified by 3S relates to the activities of one of the three Respondents, and therefore is outside the scope of the Early Disposition Pilot Program as it does not involve an issue that is dispositive of the entire investigation. The second issue identified by

3S is asserted to be pertinent to the statutory public interest factors. The Commission assesses the effect of potential remedies on the statutory public interest factors following an affirmative determination on violation – once the actual scope of the Section 337 violation is determined, including the scope of valid and enforceable IP rights that are infringed (or other unfair acts) as well as the scope of imported infringing articles involved. As such, this issue is outside the scope of the Early Disposition Pilot Program as the issue cannot be resolved at the beginning of an investigation.

Accordingly, the Commission hereby **DENIES** the Request.

The Secretary shall serve copies of this Order upon each party of record in this investigation.

By Order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Issued: September 13, 2016

**CERTAIN INDUSTRIAL CONTROL SYSTEM
SOFTWARE, SYSTEMS USING SAME AND
COMPONENTS THEREOF**

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PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served upon the following parties as indicated, on 9/14/2016



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

On Behalf of Complainants Rockwell Automation, Inc.:

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- Via Hand Delivery
- Via Express Delivery
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Respondents:

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